STATE OF MICHIGAN

COURT OF APPEALS

MICHELL ROLLINSON, Plaintiff-Appellant,	UNPUBLISHED May 8, 2012
v	No. 300820 Wayne Circuit Court
JANICE R. BERESOWSKYJ, Defendant-Appellee.	LC No. 09-019062-NO

Before: MURPHY, C.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition of her claim of negligent parental supervision. We affirm.

This case stems from an unfortunate incident wherein plaintiff was seriously injured after defendant's 17-year-old son, who had a history of assaultive conduct, struck her with a baseball bat in the head. Although many facts are in dispute concerning the events leading up to and surrounding the altercation between plaintiff and defendant's son, there are four undisputed facts. The first is that plaintiff broke a window of defendant's home, which angered defendant's son. Second, it is undisputed that one of defendant's dogs was somehow let out of the home. It is further uncontroverted that plaintiff struck the dog with a club, and that, subsequently, defendant's son grabbed a baseball bat from defendant's home and struck plaintiff in the head with the bat. Plaintiff suffered several injuries, including several fractures, hemorrhaging, and hearing loss. Due to her injuries, plaintiff lost her employment and was receiving disability income. Plaintiff sought recovery for her injuries from defendant solely under a theory of negligent parental supervision. Defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10) arguing that plaintiff failed to present a prima facie case of negligent supervision because there was no factual dispute that defendant lacked the ability to control her son's conduct. The trial court agreed and summarily dismissed plaintiff's claim.

'"This Court reviews de novo a trial court's decision on a motion for summary disposition."' *Comerica Bank v Cohen*, 291 Mich App 40, 45; 805 NW2d 544 (2010), quoting *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). "A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Id*. "This Court reviews a motion brought under MCR 2.116(C)(10) by considering the

pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id*. "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*. '"There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party."' *Id.* at 45-46, quoting *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

"[W]here a person is injured by the act of a child which proximately results from negligent parental supervision over the child, the injured party has a valid cause of action against the parents." *Amer States Ins Co v Albin*, 118 Mich App 201, 208; 324 NW2d 574 (1982) (citations omitted). As our Supreme Court has explained

> 'Aside from the relationship of master and servant, the parent may be liable for harm inflicted by a child under circumstances that constitute negligence on the part of the parent. This, of course, is not a case of responsibility of a parent for the child's tort, but liability for his own wrong.' [*Dortman v Lester*, 380 Mich 80, 84; 155 NW2d 846 (1968), quoting 1 Harper and James, Law of Torts, § 8.13, p. 662.]

Furthermore,

> The law in Michigan is that a parent is under a duty to exercise reasonable care so to control his minor children as to prevent them from intentionally harming others or from so conducting themselves as to create an unreasonable risk of bodily harm to them if the parent knows or has reason to know that he has the ability to control his children and knows or should know of the necessity and opportunity for exercising such control. [*Amer States Ins Co*, 118 Mich App at 206; see also *Zapalski v Benton*, 178 Mich App 398, 403; 444 NW2d 171 (1989).]

Viewing the evidence in the light most favorable to plaintiff, the nonmoving party, there is no question of material fact that defendant lacked the requisite ability to control her son to prevent him from assaulting plaintiff. *Amer States Ins Co*, 118 Mich App at 206. It is undisputed that defendant's son, aged 17 and weighing over 300 pounds, was significantly physically larger and heavier than defendant, who suffered from cancer and a heart condition, was unable to work due to her heart disability, and weighed only 100 pounds. It is also undisputed that defendant's son had a propensity for assaultive conduct against defendant and other family members as evidenced by deposition testimony and past police reports. Considering the substantial differential in size between defendant and her son and his past assaultive conduct toward her, we agree with the trial court that there is no genuine issue of material fact that defendant lacked the ability to physically control her son so as to prevent him from assaulting plaintiff, regardless of her awareness of his propensity for assaultive conduct.[1]

[1] Even a detective who investigated the incident opined that defendant could not have prevented the incident due to her son's large size and past abusive conduct toward her.

This is especially so where, as here, the chain of events leading to the assault started suddenly, occurred rapidly, and was clearly unforeseeable, such that defendant could not have known of the necessity to exercise control over her son, or had an opportunity to do so. Neither a lay nor an expert witness testified that defendant's son was engaged in violence before plaintiff arrived at the home. There was also no testimony that defendant's son uttered verbal threats directed at plaintiff before plaintiff left the home. This leaves us with a firm conviction that the nature and extent of his physical response to plaintiff was not reasonably foreseeable.

We disagree with plaintiff's argument that defendant could have taken other nonphysical measures to control her son's conduct to prevent the assault, but neglected to do so. Although we agree that the applicable law does not limit the requisite "control" to the ability of a parent to physically restrain his or her child to prevent potential harm or injury, the altercation in this case was not reasonably foreseeable, and thus defendant could not have known of the necessity and opportunity to exercise control over her son's conduct by taking the precautionary measures cited by plaintiff. Plaintiff argued that defendant could have called 911, but the rapidity of the events renders such a measure immaterial. Plaintiff also argues that defendant could have removed the bat or hidden the key. However, since the son's actions could not have been foreseen, the necessity for such action was also unforeseeable. The strongest argument against defendant is that she failed to assure that her son was medicated. However, this argument is based on speculation and its factual predicate is disputed. At best, plaintiff and Shelton testified as lay persons they thought the young man was unmedicated while defendant testified that he had been given his medication on the day of the encounter. Under the circumstances of this case, we conclude that summary disposition of plaintiff's claim was proper.

Affirmed.

/s/ William B. Murphy
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan