# STATE OF MICHIGAN

# COURT OF APPEALS

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MARY L CROWELL and BRYON CROWELL, Individually and as Parents and Guardians for BYRON V. CROWELL, JR., a Minor,

Plaintiffs-Appellants,

v

CLAYTON SMITH,

Defendant,

and

CITY OF DETROIT, CITY OF DETROIT DEPARTMENT OF TRANSPORTATION, and VINCENT HOGAN, Jointly and Severally,

Defendants-Appellees.

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UNPUBLISHED
July 19, 1996

No. 181272
LC No. 93-322319-NI

Before: Griffin, P.J., and Bandstra and M.Warshawsky,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order that granted summary disposition to defendants-appellees (hereinafter "defendants"). Plaintiffs had filed a claim against defendants after plaintiffs' minor was injured when struck by a car after exiting a city bus. We affirm.

The first issue to be decided is whether plaintiffs established a question of fact as to whether defendants' conduct was a proximate cause of plaintiffs' minor's injuries. Plaintiffs' minor was on a city bus when the bus driver stopped and let passengers off at a corner where there was no marked bus stop. The light was red for the bus and the driver stopped to let off passengers, including plaintiffs' minor. Plaintiffs' minor then proceeded across the street in front of the bus. When he cleared the bus,

* Circuit judge, sitting on the Court of Appeals by assignment.

another vehicle driven by defendant Smith ran the red light striking and injuring plaintiffs' minor.

Summary disposition was appropriate on at least two grounds. First, the trial court correctly concluded that defendants owed plaintiffs' minor no duty to let him off the bus in a way different than they did. See *Poe v City of Detroit*, 179 Mich App 564, 576; 446 NW2d 523 (1989). In fact, plaintiffs did not even address this issue in their appellate brief.

Second, the trial court correctly concluded that there was no factual dispute as to whether defendants' conduct was a proximate cause of plaintiffs' minor's injuries. This Court addressed a nearly identical situation in *Poe*, supra, and reached an identical conclusion. In that case, this Court held that the bus driver's conduct was not a substantial factor in bringing about the injury. Rather, the plaintiff's decedent's injuries were caused by the negligent conduct of both the plaintiff's decedent (who ran into the intersection after alighting the bus) and the driver of the car who struck the plaintiff's decedent. Thus, the conduct of the bus driver was not and could not be a proximate cause of the plaintiff's decedent's death. *Poe, supra* at 577.

Plaintiffs attempt to distinguish this case from *Poe* on two grounds. First, plaintiffs point out that the bus driver in *Poe* let passengers off at the corner in response to a specific request by a passenger, while in the present case plaintiffs allege that no one specifically requested that the driver let passengers alight at the corner. Second, the plaintiff's decedent in *Poe* crossed the street against the light, while deposition testimony in the present case indicates that plaintiffs' decedent had the light in his favor when he entered the intersection. According to plaintiffs, the *Poe* Court found these facts to be "important intervening factors" breaking the chain of causation. Plaintiffs assert that the present case lacks these factors and, therefore, there are no superseding causes and a question of fact exists as to whether defendants' conduct was a proximate cause of plaintiffs' decedent's injuries.

This argument is without merit, for it proceeds from a false assumption. Plaintiffs' argument presumes that the *Poe* Court found that the bus driver's conduct was a proximate cause but that superseding causes intervened to break the chain of causation. This is incorrect. The *Poe* Court specifically held that the bus driver's conduct was not a proximate cause of the plaintiff's decedent's death and that the plaintiff must look to the conduct of the other actors to determine the legal cause. *Id.* at 577-578. Thus, plaintiffs cannot distinguish the present case from *Poe* by pointing to an absence of superseding, intervening causes.

Finally, plaintiffs argue that the trial court abused its discretion when it failed to consider plaintiffs' request for leave to amend their complaint "to emphasize reference to the position of the bus and its contribution to the subject accident." This argument also fails for two reasons.

First, the issue was not preserved. Plaintiffs did not file a formal motion to amend their complaint. Rather, they included a request to amend in their brief in opposition to defendants' motion for summary disposition. While this arguably could constitute a motion to amend, the trial court granted summary disposition without referring to this request. Thus, while the issue was presented to the trial

court, it was not addressed by the trial court. An issue is not preserved for review unless it is both presented to and addressed by the trial court. *Kratze v Independent Order of Oddfellows, Garden City Lodge No 11*, 190 Mich App 38, 42; 475 NW2d 405 (1991), rev'd in part on other grounds 442 Mich 136; 500 NW2d 115 (1993).

Moreover, in light of this Court's decision in *Poe*, an amendment to emphasize reference to the position of the bus and its contribution to the subject accident would be futile. Leave to amend need not be granted if the amendment would be futile. *McNees v Cedar Springs Stamping Co, 184* Mich App 101, 103; 457 NW2d 68 (1990). As previously discussed, the position of the bus was not a proximate cause of plaintiffs' minor's injuries. The obstacle that a pedestrian confronts when a bus blocks his view of the roadway is "obvious and always present when a bus is on the highway. Unless acted upon by other forces for which the bus driver is not responsible, i.e., the pedestrian, this obstacle is harmless." *Poe*, *supra* at 577. Thus, the obstruction of view created by the presence of the bus could not have been a proximate cause of plaintiffs' minor's injuries regardless of the bus' position.

We affirm.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra
/s/ Meyer Warshawsky