STATE OF MICHIGAN

COURT OF APPEALS

SHON MICKEL MEYERS,

Plaintiff-Appellant,

v

JIMMY RAY FLOWERS,

Defendant-Appellee.

UNPUBLISHED
December 20, 1996

No. 169551
LC No. 92-200475

Before: Taylor, P.J., and Markman and P. J. Clulo,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant judgment notwithstanding the verdict in this automobile negligence action. We affirm.

Plaintiff's only argument on appeal is that the trial court erred in granting defendant's motion for judgment notwithstanding the verdict inasmuch as plaintiff presented evidence at trial on which reasonable jurors could find that defendant's negligence was a proximate cause of plaintiff's injuries. We disagree.

In reviewing a motion for judgment notwithstanding the verdict, this Court views all evidence in a light most favorable to the nonmoving party. If reasonable jurors could honestly have reached different conclusions, the jury verdict must stand. *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995).

In order to establish a prima facie case of negligence, a plaintiff must prove (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages. *Rasmussen v Louisville Ladder Co, Inc*, 211 Mich App 541, 545; 536 NW2d 221 (1995). Liability for negligence does not attach unless the plaintiff establishes that the injury in question was proximately caused by the defendant's negligence. *Babula v Robertson*, 212 Mich App 45, 54; 536 NW2d 834 (1995). Proximate cause means such cause as operates to produce particular

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

consequences without the intervention of any independent, unforeseen cause, without which the injuries would not have occurred. *Id; Garabedian v Beaumont Hosp*, 208 Mich App 473, 476; 528 NW2d 809 (1995).

In proving proximate cause, a plaintiff must first establish that the contested cause in fact produced his injuries. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). While a plaintiff may show causation circumstantially, the mere happening of an unwitnessed mishap neither eliminates nor reduces a plaintiff's duty to effectively demonstrate causation. *Skinner, supra* at 163-164. To be adequate, a plaintiff's circumstantial proof must facilitate reasonable inferences of causation. *Id.*

Viewed in a light most favorable to plaintiff, as the nonmoving party, the evidence fails to facilitate reasonable inferences of causation. Plaintiff offered a number of differing explanations of the cause of his injuries. Plaintiff's records from Seaway Hospital, where he was taken immediately after the accident, indicate that he told "two or three different stories; he says that he was in a fight, that he fell." Plaintiff told two other medical providers that he fell from a moving vehicle, and told the same thing to a police officer investigating the accident. But, plaintiff told Dr. Steven R. Levine that defendant had hit him with a wrench. Defendant recalled yet another version of the accident, stating that plaintiff told him, "I will get out and walk," and then disappeared from the truck. Finally, not only did plaintiff admit to an inability to remember the actual accident, the evidence indicated that he was severely intoxicated at the time. Plaintiff drank a number of beers and shots of tequila at the boat club and arrived at Seaway Hospital with a blood alcohol level of 0.169. Under these circumstances, the trial court correctly held that the jury's verdict could not stand.

Affirmed.

/s/ Clifford W. Taylor
/s/ Stephen J. Markman
/s/ Paul J. Clulo