STATE OF MICHIGAN

COURT OF APPEALS

THOMAS KLECHA, JR.,

Plaintiff-Appellant,

v

DAVID MANN,

Defendant-Appellee,

YAFFA MERCED,

Defendant.

UNPUBLISHED
February 7, 1997

No. 189806
Wayne Circuit Court
LC No. 95-500120-NO

Before: Taylor, P.J. and Gribbs and R. D. Gotham,* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant summary disposition to defendant pursuant to MCR 2.116(C)(10) in this slip and fall action. We affirm.

In January 1993, plaintiff slipped and fell while descending the steps on the front porch of defendant's premises after having made a delivery of mail for the United States Postal Service. As a result of the fall, plaintiff fractured his right ankle and subsequently sued defendant seeking compensation for his injury. Defendant filed a motion for summary disposition, alleging there was no genuine issue of material fact that he had not been negligent. Plaintiff opposed the motion, stating that the theory of liability he was proceeding under was that the handrails along the steps on which he fell were inadequate, substandard, and did not meet the applicable building code requirements. Defendant argued that summary disposition was proper because plaintiff had testified at his deposition that the presence of a handrail would not have prevented his fall. Plaintiff's counsel argued that the handrail failed to comply with the building code, which required handrails to continue beyond the bottom step and noted that plaintiff had testified that it was his habit to use handrails. Plaintiff's counsel thus posited that, if the handrail had continued beyond the bottom step, the fall would not have occurred. The trial

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

court granted summary disposition on the basis that plaintiff had not presented any evidence showing a connection between the fall and the handrail.

Plaintiff argues on appeal that summary disposition was improper because the handrails alongside the steps on which he fell did not extend beyond the bottom step as required by the applicable building code requirements. Plaintiff also cites *Dukes v Glen of Michigan*, 30 Mich App 500, 507; 188 NW2d 46 (1971), for the proposition that a violation of a handrail ordinance is evidence of negligence. Plaintiff contends that it was the jury's province to determine the relationship between the inadequate railing and the accident, not the court's.

In order to establish negligence, a plaintiff must be able to establish that "but for" the defendant's actions the plaintiff's injury would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). Plaintiff testified as follows at his deposition:

> **Q**. If, in fact, there was a handrail there and you were holding onto it, that very well may have prevented you from falling; would you agree?
>
> **A**. No, because I was on the last step and I would have already let go of the rail. I was stepping onto the sidewalk.
>
> **Q**. So you wouldn't necessarily be holding on onto [sic] it when you were on the last step?
>
> **A**. I was pretty much off the steps stepping down. Had the rail been there, I would have been coming down with my hand gliding along the top of the rail. That would be my normal delivery procedure, but I don't recall the handrail.

Plaintiff failed to present evidence of a genuine of issue of material fact connecting the inadequate railing with his fall. It cannot be said that "but for" the inadequate railing plaintiff would not have fallen. Indeed, plaintiff conceded the lack of a connection. *Dukes*, *supra*, is simply inapplicable because there was no showing of proximate cause. Under these circumstances, summary disposition was properly granted. Cf. *Garabedian v Beaumont Hosp*, 208 Mich App 473, 475-476; 528 NW2d 809 (1995).

Affirmed.

/s/ Clifford W. Taylor
/s/ Roman S. Gribbs
/s/ Roy D. Gotham