

STATE OF MICHIGAN
COURT OF APPEALS

JAMES F. ALTMAN, Personal Representative of the
Estate of JILL K. BURCHFIELD and MICHAEL P.
BURCHFIELD,

Plaintiff- Appellant,

v

LES CHENEAUX PROPERTIES d/b/a COMFORT
INN OF CEDARVILLE and CHOICE HOTELS
INTERNATIONAL,

Defendants- Appellees.

UNPUBLISHED
August 15, 1997

No. 191743
Chippewa Circuit Court
LC No. 94-001002-NI

Before: Cavanagh, P.J., and Holbrook, Jr. and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants Choice Hotels International, Inc. (“Choice Hotels”) and Les Cheneaux Properties, doing business as Comfort Inn Of Cedarville (“Comfort Inn”). Plaintiff also challenges an order granting partial summary disposition to defendant Choice Hotels. It appears that both dispositions were based on the determination that there was no genuine issue of material fact and that defendants were therefore entitled to judgment as a matter of law. MCR 2.116(C)(10). We affirm.

Jill and Michael Burchfield, while guests at the Comfort Inn, drowned in the hotel’s swimming pool. Plaintiff, the personal representative of the decedents’ estates, claimed that the Comfort Inn and Choice Hotels, its franchisor, were responsible for the deaths based on their negligent design, construction, and operation of the pool. Choice Hotels filed a motion for summary disposition arguing that it did not owe the decedents a duty of care. After a hearing on the matter, the trial court partially granted summary disposition to Choice Hotels and held that, as the franchisor, it did not have a duty with regard to the construction or operation of the pool, but that an issue of fact existed with regard to a duty for the design of the pool. Both defendants later filed a motion for summary disposition arguing that plaintiff could not establish proximate causation. After a hearing on the matter, the trial court granted defendants’ motion and dismissed plaintiff’s action.

Plaintiff argues that the trial court erred by granting summary disposition to defendants on the basis that plaintiff would be unable, as a matter of law, to establish causation. We disagree. Despite having the burden of proof at trial, plaintiffs failed to set forth documentary evidence of specific facts showing that there was a genuine issue of material fact, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), regarding cause in fact, a required aspect of causation. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Plaintiff failed to cite a specific negligent act and then demonstrate how the drownings would not have occurred “but for” that negligent act. *Id.* Instead, plaintiff alleged the existence of many defects and relied on the synergistic effect of the numerous defects to create an inference of cause in fact. While cause in fact may be established by circumstantial evidence, such proof “must facilitate reasonable inferences of causation, not mere speculation.” *Id.* at 163-164. “[T]he mere happening of an unwitnessed mishap neither eliminates nor reduces a plaintiff’s duty to effectively demonstrate causation.” *Id.* Plaintiff’s expert acknowledged that his theory, which was that Jill entered the pool, transitioned down the slope to the deep end, got into trouble, and that Michael unsuccessfully attempted to rescue her, was only one possible theory. While under some of the possible scenarios the drownings would not have occurred but for defendants’ alleged negligence, it was equally likely that the drownings were unrelated to any of the pool’s alleged defects. Plaintiff’s expert’s opinion, therefore, provides insufficient proof of causation because it lacks factual support that makes his proposed scenario any more likely than any other possible scenario. *Id.* at 163-166. The trial court, therefore, correctly granted summary disposition based on the lack of proof of cause in fact.

Given the lack of proximate causation, it is unnecessary to reach the remaining issues raised by plaintiff.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen