STATE OF MICHIGAN

COURT OF APPEALS

RONALD BUTLER as Conservator for DARRYL BUTLER,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee,

and

BRIDGESTONE/FIRESTONE, INC., f/k/a FIRESTONE TIRE & RUBBER COMPANY,

Defendant.

UNPUBLISHED
November 14, 1997

No. 197303
Calhoun Circuit
LC No. 95-001230 NP

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

In this products liability action, plaintiff appeals as of right the circuit court's order granting summary disposition to defendant. We affirm.

On August 30, 1989, Darryl Butler and his mother Tammy Butler were involved in an automobile collision, resulting in serious injuries to Darryl. At the time of the collision, Darryl was seated in a child restraint seat known as the GM Child Love Seat, which was designed by defendant General Motors. Plaintiff alleged that defendant was negligent in the design of the seat; that defendant had knowledge of defects in the seat rendering it unreasonably dangerous and failed to give warnings or recall the seat; and that defendant falsely warranted by implication that the seat was safe for use.

I

Plaintiff first alleges that the circuit court erred in granting defendant's motion for summary disposition where plaintiff produced sufficient evidence to establish a prima facie case of defective design.

In order to sustain a claim of products liability, a plaintiff must show either that there was a defect in a product's design or that the manufacturer failed to warn of a risk inherent in the product's design. *Gregory v Cincinnati, Inc*, 202 Mich App 474, 479; 509 NW2d 809 (1993), aff'd 450 Mich 1; 538 NW2d 325 (1995). The focus of a design-defect case is on the quality of a manufacturer's decision in light of the prevailing standards and state of technology in existence at the time the product was designed. *Id*. To establish a prima facie case of negligent design, a plaintiff must present evidence of both the magnitude of the risks involved and the reasonableness of the proposed alternative design. *Owens v Allis-Chalmers Corp*, 414 Mich 413, 429; 326 NW2d 372 (1982).

Plaintiff presented evidence that the Love Seat was not likely to be installed properly, resulting in pitching forward or ejection during an accident. However, plaintiff presented no evidence of the likelihood of such an injury and provided no evidence as to how other child seats available in the 1970s, when the Love Seat was designed, performed in comparison to the Love Seat. Plaintiff's experts did not evaluate state of the art child seats available at that time and did not analyze injuries incurred from the use of other types of child seats. Therefore, plaintiff has failed to provide evidence sufficient to establish the magnitude of the risks involved and has failed to establish that the quality of the design of the Love Seat was defective in light of the prevailing standards and state of technology in existence at the time it was designed. *Gregory, supra* at 479.

Because the likelihood of an injury occurring from use of the Love Seat is unknown, "an examination of the effects of any proposed alternative design must bear a heavy burden in determining whether the chosen design was unreasonably dangerous." *Owens, supra* at 430. Plaintiff's experts suggested that a child seat that utilized "ports" on the back of the seat, through which a seat belt was routed and secured, was a preferable alternative to the Love Seat which required a top strap to be tethered to an anchor point in the vehicle. However, plaintiff's experts could not say with certainty that use of the proposed alternative would have affected the injuries incurred by Darryl. Further, neither expert had evaluated any other child seats which were available at that time and could not point to any particular child seat on the market that would have been adequate. No field accident data involving child car seats or injury statistics involving child car seats had been studied, and neither the costs nor the effects of the proposed alternative were established.

Giving the benefit of reasonable doubt to plaintiff as the nonmoving party, *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995), plaintiff has failed to establish a prima facie case of design defect. There is no evidence of the magnitude of the risks involved, the utility or relative safety of the proposed alternative, or evidence otherwise concerning the unreasonableness of the design of the Love Seat. Therefore, the circuit court properly granted defendant's motion for summary disposition.

II

Next, plaintiff contends that the circuit court erred in granting defendant's motion for summary disposition where plaintiff presented evidence sufficient to establish a prima facie case of failure to warn or provide adequate use instructions.

A manufacturer's liability for negligent design may be premised upon failure to warn or upon defective design. *Gregory, supra* at 11. The duty to warn includes the duty to warn about dangers presented to the intended users of the product and to warn about foreseeable misuses. *Id*. To establish liability for a failure to warn, a plaintiff must show that the defendant knew of the claimed danger, that the danger was not obvious to users of the product, that the defendant failed to use reasonable care to warn users, and that the failure to warn was the proximate cause of the plaintiff's injuries. *Moody v Chevron Chemical Co*, 201 Mich App 232, 237; 505 NW2d 900 (1993).

Plaintiff did not establish that defendant failed to use reasonable care to provide warnings regarding use of the Love Seat. Plaintiff presented no evidence that the warning labels or instructions that accompanied the car seat were inadequate or defective. Plaintiff's experts asserted that because the label had fallen off of the child seat by the date of the accident in 1989, the lack of permanency of the warning made the warning defective. However, the experts were unsure of the method used to attach a warning label to the Love Seat. Although plaintiff's experts suggested that embossing would have provided a permanent warning label, they provided no evidence that such a method was available when the Love Seat was designed and manufactured. Therefore, the circuit court properly granted defendant's motion for summary disposition.

III

Finally, plaintiff argues that the circuit court erred in granting defendant's motion for summary disposition where plaintiff presented sufficient evidence to establish that the design defect was a proximate cause of the injury-producing event.

Because we have concluded that plaintiff has not established a prima facie case of defective design, the issue of causation is moot and we will not address it.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Hilda R. Gage