

STATE OF MICHIGAN  
COURT OF APPEALS

---

DEWAYNE DAVIS,

Plaintiff-Appellant,

v

CLARENCE DEBOER,

Defendant-Appellee.

---

UNPUBLISHED

March 3, 1998

No. 200393

Van Buren Circuit

LC No. 95-040592-NI

Before: Griffin, P.J., and Holbrook, Jr. and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right the entry of a judgment on jury verdict in favor of defendant. We affirm.

Plaintiff delivered feed to defendant's farm. During one such delivery, plaintiff fell from the top of a feed bin while trying to close the bin's lid. Plaintiff filed suit averring that defendant's negligent acts of failing to maintain the feed bin and to warn of the dangerous condition proximately caused his injuries stemming from the fall. After a four-day trial, the jury returned a special verdict finding defendant negligent but concluding that his negligence was not a proximate cause of plaintiff's injuries. Plaintiff filed a motion for a new trial arguing that the verdict was against the great weight of the evidence.

On appeal, plaintiff contends that the trial court abused its discretion in denying his motion for a new trial. Specifically, plaintiff argues that the verdict, finding that defendant's negligence did not proximately cause plaintiff's injuries, was against the overwhelming weight of the evidence. We disagree.

With respect to a motion for a new trial, the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party. *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997). On review, this Court must determine whether the trial court abused its discretion in making such a finding, giving substantial deference to the trial court's conclusion that a verdict was not against the great weight of the evidence. *Id.*

The cause-in-fact sub-element of proximate cause is essential before engaging in a determination of the legal cause. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). When a number of factors contribute to produce an injury, one actor's negligence will not be considered a proximate cause of the harm unless it was a substantial factor in producing the injury. *Brisboy v Fibreboard Corp*, 429 Mich 540, 547; 418 NW2d 650 (1988).

Here, plaintiff testified that one of the factors which may have caused his fall included the wind. Specifically, he testified that a gust of wind blew the bin lid out of his hands, knocked him off balance, and caused him to fall. Plaintiff believed that the wind had something to do with his fall because he had never fallen off the ladder before despite having used it over forty times over a seven to eight-year period. He also testified that the weather conditions, on the day of the incident, were the worst he had ever encountered while engaging in a delivery of feed. Chiropractor Ronald Frischman testified that plaintiff's explanation for the fall revolved around the wind "catching" the bin lid which plaintiff had been holding. Plaintiff did not attribute his fall to the ladder. On the other hand, plaintiff also testified that he fell because there was nothing to hang onto, except for the lid.<sup>1</sup>

Because the evidence adduced at trial somewhat evenly supported a finding that plaintiff's fall was caused by either the wind, the absence of a railed platform, or a combination of the two, and because plaintiff did not attribute his fall to the unattached ladder, the jury's verdict that defendant's negligence did not proximately cause plaintiff's injuries could not have been against the overwhelming weight of the evidence. Accordingly, we, hold that the trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

Having determined that the jury's finding that defendant's negligence did not proximately cause plaintiff's injuries was not against the overwhelming weight of the evidence, we need not address plaintiff's second issue on appeal.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Donald E. Holbrook, Jr.  
/s/ Janet T. Neff

<sup>1</sup> Plaintiff's expert testified that defendant's bin access constituted noncompliance with state regulations because the ladder was not fixed or attached and there was no railed working platform. The trial court instructed the jury on negligence *per se* with regard to the alleged statutory noncompliance or violation by defendant.