

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT JAMES WOUDENBERG,

Plaintiff-Appellant,

v

KATHRYN MARIE MEINEL, DENNIS MEINEL,
and JANICE MEINEL,

Defendants-Appellees.

UNPUBLISHED

September 10, 1999

No. 210342

Ottawa Circuit Court

LC No. 96-025181 NI

Before: Markman, P.J., and Saad and P.D. Houk,* JJ.

MEMORANDUM.

Plaintiff appeals by right from the trial court's final order of dismissal in this personal injury action, challenging the trial court's order granting summary disposition in favor of defendants on the issue of proximate causation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Proximate cause means such cause as operates to produce particular consequences without the intervention of any independent, unforeseen cause, without which the injuries would not have occurred. *Babula v Robertson*, 212 Mich App 45, 54; 536 NW2d 834 (1995). Ordinarily, the determination of proximate cause is left to the trier of fact, but if reasonable minds could not differ regarding proximate causation of the plaintiff's injury, the trial court should decide the issue as a matter of law. *Id.*

Here, reasonable minds could not disagree that defendant Kathryn Meinel's act of throwing a cigarette into the open passenger side window of Jason Breuker's vehicle was not a proximate cause of the subsequent collision of Breuker's vehicle and plaintiff's bicycle at the Lafayette Street intersection. Breuker's testimony establishes that the accident occurred because he believed that plaintiff would or should stop his bicycle before entering Lafayette because Breuker had the right-of-way. There is nothing in Breuker's testimony to suggest that the presence of the cigarette in his car caused him to drive negligently, or that his driving or judgment was affected because his passenger was acting in a manner

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

which distracted him. To the contrary, Breuker's testimony unequivocally demonstrates that he was not in any way distracted. He testified that he was traveling at a slow rate of speed, purposefully and carefully moved into the left lane to turn onto Lafayette, saw plaintiff coming in the opposite direction on his bicycle well in advance of turning, but nevertheless turned in front of plaintiff because he thought that he had the right-of-way. Kathryn Meinel's conduct may have been negligent and a cause in fact of the accident in the sense that Breuker would not have decided to turn left at the intersection but for Kathryn's action, but her conduct was not a proximate cause of the accident under the circumstances.

Affirmed.

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Peter D. Houk