T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

KATHERINE SCHAFFNER,

Plaintiff-Appellant,

v

KEISHA SCHAFFNER and CHRYSLER CORPORATION,

Defendants-Appellees.

UNPUBLISHED
May 23, 2000

No. 214452
Wayne Circuit Court
LC No. 97-732008-NI

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Plaintiff, Katherine Schaffner ("plaintiff"), appeals as of right from an August 25, 1998, circuit court order dismissing plaintiff's complaint against defendant Keisha Schaffner ("defendant"). This was the court's final order in this action, which had previously seen the entry of a July 27, 1998, order dismissing plaintiff's complaint against defendant Chrysler Corporation ("defendant Chrysler"). On appeal, plaintiff raises issues pertaining to the trial court's grant of summary disposition in favor of defendants. We affirm.

Plaintiff, defendant's mother, initiated this personal injury action after she was injured while getting out of defendant's two-door Jeep Cherokee Sport. Plaintiff, a passenger in the back seat of the Jeep, attempted to follow two other back seat passengers out of the Jeep by climbing over the front passenger seat, which was tilted forward to facilitate such an exit. Unfortunately, plaintiff lost her balance and fell to the ground outside the Jeep, this fall resulting in plaintiff's injuries. After plaintiff had fallen, she and the other passengers observed the front passenger seat belt wrapped around plaintiff's left leg. It was determined that immediately before the back seat passengers moved to exit the vehicle, the seat belt had not fully retracted when removed by the front seat passenger. Plaintiff alleged liability on the part of defendant and defendant Chrysler related to the allegedly defective seat belt. Plaintiff claimed that she had fallen because of the loose seat belt.

Plaintiff first argues that the circuit court erred by neglecting to rule on plaintiff's claim that defendant failed to maintain her vehicle in accordance with the Michigan Vehicle Code. We disagree. Generally, an issue must be raised before and addressed by the trial court in order to be preserved for

appeal. *Auto Club Ins Ass'n v Lozanis*, 215 Mich App 415, 421; 546 NW2d 648 (1996). However, this Court may address an issue not decided below if it is a question of law for which all the necessary facts were presented. *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 326; 565 NW2d 915 (1997). Whether a statute applies to a particular case is a question of law this Court reviews de novo. *Alex v Wildfong*, 460 Mich 10, 21; 594 NW2d 469 (1999).

Plaintiff cites MCL 257.683; MSA 9.2383 in support of her argument that defendant had a duty to maintain her vehicle in a reasonably safe condition. This section, however, involves only vehicles being moved or driven on highways. Plaintiff also argues that MCL 257.710a; MSA 9.2410(1) and MCL 257.710b; MSA 9.2410(2) require that seat belts be maintained in functioning order and that the seat belt in this case was not properly maintained. Section 710a, however, refers to selling, installing, or keeping seat belts for the purpose of sale, and section 710b requires that vehicles manufactured after January 1, 1965, that are offered for sale, be equipped with seat belts. As such, the above statutes are inapplicable and the circuit court's failure to specifically address this issue presents no error.

Plaintiff next argues that the trial court erred in granting defendant's motion for summary disposition based on its finding that no duty to warn existed. We disagree. A trial court's grant or denial of a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there exists no genuine issue of material fact, thus entitling the moving party to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). This Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Id*.

In order to establish a claim of negligence, a plaintiff must prove the existence of a duty owed by the defendant to the plaintiff. *Hammack v Lutheran Social Services*, 211 Mich App 1, 4; 535 NW2d 215 (1995). Generally, there is no legal duty obligating a person to aid or protect another absent a special relationship. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 498-499; 418 NW2d 381 (1988); *Hammack, supra* at 4. In determining whether a duty exists, this Court should consider the relationship between the parties, the foreseeability of the harm, the burden on the defendant, and the nature of the risk presented. *Murdock v Higgins*, 454 Mich 46, 53; 559 NW2d 639 (1997). The issue of whether a duty exists is a question of law for the trial court. *Hammack, supra* at 4.

Plaintiff argues that defendant owed her a duty as the owner of the vehicle containing the defective seat belt. However, plaintiff cites no authority supporting her position, thereby abandoning this argument on appeal. *Settles v Detroit City Clerk*, 169 Mich App 797, 807; 427 NW2d 188 (1988). In any event, Michigan does not recognize such a duty. Plaintiff also argues that a vehicle is a form of premises, but again abandons this argument by failing to cite authority supporting this position. *Id*. It is well established, however, that premises liability claims arise by virtue of ownership or occupancy of land for injuries occurring on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). Because the injury in this case occurred inside a motor vehicle, and not on land, plaintiff cannot establish a claim of premises liability.

Plaintiff's final argument is that the trial court erred by granting defendant Chrysler's motion for summary disposition. We again disagree. A prima facie products liability case requires proof of a causal connection between an established defect and an injury. *Skinner v Square D Co*, 445 Mich 153, 159; 516 NW2d 475 (1994); *Mulholland v DEC Int'l Corp*, 432 Mich 395, 415; 443 NW2d 340 (1989). A plaintiff is not required to produce evidence that positively eliminates every other potential cause, but must establish a logical sequence of cause and effect, notwithstanding the existence of other plausible theories. *Skinner, supra* at 159-160; *Mulholland, supra* at 415. A plaintiff may rely on circumstantial evidence to prove causation, but a theory of causation is insufficient if it is, at best, just as possible as another theory. *Skinner, supra* at 163-164; *Auto Club Ins Ass'n v General Motors Corp*, 217 Mich App 594, 604; 552 NW2d 523 (1996). To establish a cause in fact of an injury, a plaintiff must present substantial evidence that more likely than not, but for defendant's conduct, the plaintiff's injury would not have occurred. *Skinner, supra* at 164-165; *General Motors, supra* at 604.

Plaintiff testified at her deposition that she was leaning on the back of the front passenger seat, supporting herself with all her weight on her left foot, still inside the vehicle. Her right foot was outside the vehicle, but it had not yet reached the ground. Plaintiff admitted that she paid no attention to the seat belt when she was attempting to exit the vehicle, but stated that she knew that it had not fully retracted because it was wrapped around her foot after her fall.

On this evidence, plaintiff fails to establish that the seat belt, even if defective, caused her fall. Simply because the seat belt was wrapped around her leg after the fall does not prove that it was the cause in fact of her fall. It is equally possible that she slipped on her own accord or simply lost her balance, and that her left foot became entangled in the seat belt on her way down. This theory is equally, if not more plausible, than plaintiff's theory. Furthermore, even if the seat belt had become wrapped around her left foot, it would not have had the force necessary to sweep her foot out from under her and cause her to fall when all her weight was concentrated on her left foot. Because plaintiff's theory is just as possible as the theory that she simply lost her balance, it is insufficient to prove causation. *Skinner, supra* at 164; *General Motors, supra* at 604.

Plaintiff relies on an expert to support her argument, this expert concluding that the seat belt was defective and that it was the cause of her fall. Plaintiff's expert, however, likewise fails to explain how the seat belt caused the fall and cannot state conclusively that it did cause the fall. At most, he can state that the seat belt was defective and that it may have caused plaintiff's fall. Because plaintiff cannot establish that more likely than not, but for the defective seat belt, her injury would not have occurred, summary disposition was properly granted in favor of defendant Chrysler. *Skinner, supra* at 164-165; *General Motors, supra* at 604.

Affirmed.

/s/ William B. Murphy
/s/ Jeffrey G. Collins
/s/ Donald S. Owens