

STATE OF MICHIGAN
COURT OF APPEALS

CALVIN CLARK,

Plaintiff-Appellant,

v

JAY-ANTHONY SABALDEN ELPADES,

Defendant-Appellee.

UNPUBLISHED
October 31, 2000

No. 214341
Oakland Circuit Court
LC No. 97-543335-NI

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a pedestrian, was struck by a vehicle owned by defendant and driven by defendant's brother with defendant's consent. Defendant was a passenger in the vehicle. Plaintiff filed suit, alleging that defendant breached his duty to entrust his vehicle to a reasonably prudent person who would drive with care, and that defendant knew or should have known that the driver of his vehicle was negligent.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that because he was not driving at the time the accident occurred he was not actively negligent, and that plaintiff was precluded from collecting damages because he was more than fifty-percent negligent. MCL 500.3135(2)(b); MSA 24.13135(2)(b). The trial court granted defendant's motion, finding that there existed no a cause of action for failure to supervise.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition, and contends that the trial court's ruling ignores the owner's liability statute, MCL 257.401(1); MSA 9.2101(1). Under this statute, the owner of a vehicle is liable for any injury caused by the negligent operation of the vehicle while it was driven with the owner's consent or knowledge. We disagree and affirm the trial court's decision. Plaintiff did not plead the applicability of MCL 257.401(1); MSA

9.2101(1) in the trial court; therefore, the issue was not considered below. As a general rule, our review is limited to issues actually decided by the trial court. *Michigan Mut Ins Co v American Community Mut Ins Co*, 165 Mich App 269, 277; 418 NW2d 455 (1987). However, we may consider an issue not raised below if it involves a question of law and if the facts necessary for its resolution have been presented. *Poch v Anderson*, 229 Mich App 40, 52; 580 NW2d 456 (1998). In support of his motion for summary disposition, defendant presented evidence that his brother was driving within the speed limit, that plaintiff could not see the traffic light that controlled defendant's vehicle, contrary to plaintiff's assertion, and that when plaintiff saw defendant's vehicle approaching, he ran toward it rather than away from it. Plaintiff did not present contrary evidence in opposition to defendant's motion. We conclude that because the facts necessary for resolution of the applicability of the owner's liability statute were not presented below, we will not consider for the first time on appeal. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98-99; 494 NW2d 791 (1992).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage