STATE OF MICHIGAN

COURT OF APPEALS

ADA JEANETTE KOPJA and RAYMOND KOPJA, Plaintiffs-Appellants, v GENIE COMPANY, Defendant-Appellee.	UNPUBLISHED February 27, 2001 No. 215009 Oakland Circuit Court LC No. 97-538169-NP

Before: Saad, P.J., and White and Hoekstra, JJ.

PER CURIAM.

In this products liability action, plaintiff[1] appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff installed a garage door opener manufactured by defendant according to defendant's specifications. The owner's manual instructs the installer to attach an emergency release cord and knob supplied by defendant, to the carriage using a single, overhand knot at each end. When plaintiff's garage door jammed, plaintiff tried to disengage the automatic opener by grabbing the emergency release knob and pulling the knob down toward the ground. This is the procedure recommended by defendant both in the instructions on the tag attached to the emergency release knob and in the owner's manual. As plaintiff pulled, the knob slipped over the single-handed knot in the release cord, came free in plaintiff's hand, and allegedly caused plaintiff to fall to the ground. Plaintiff's injuries included a fractured vertebrae. One of plaintiff's claims against defendant, was that the allegation that the emergency release knob and cord were defectively designed.[2] Finding that plaintiff had failed to present a prima facie case of defective design, the trial court granted summary disposition to defendant.

Plaintiff argues that the trial court erred in granting summary disposition to defendant because she established a prima facie case of design defect sufficient to survive a motion for

[1] Plaintiff George Kopja alleged loss of consortium caused by his wife's injuries. Because his claim is derivative, the term "plaintiff" refers only to Ada Kopja.

[2] Plaintiff does not challenge the trial court's grant of summary disposition on her other claims.

summary disposition through her expert's deposition testimony. Specifically, plaintiff's expert testified that the release cord and knob were not well-designed, and "there is [sic] probably a hundred ways to fasten the rope on there that would have been better than what [defendant] used" on plaintiff's garage door opener. Asked how he would have recommended securing the knob, the expert testified that an installer could tie a bigger knot on the end of the cord, using a figure-eight knot rather than the overhand knot recommended by defendant. Alternatively, the expert testified that defendant could have installed a steel washer between the knot and the handle, fused the knob to the cord, or used a "T handle" design. However, the expert was not aware of any engineering standards, documentation, or textbooks on the design of an attachment of a knob or handle to a cord. The expert further testified that he did not believe that defendant violated any written industry standards or government regulations, but did opine that the design violated standards of good engineering practice.

Michigan law imposes on manufacturers a duty to design their products "so as to eliminate any unreasonable risk of foreseeable injury." *Prentis v Yale Mfg Co*, 421 Mich 670, 692-693; 365 NW2d 176 (1984). In products liability actions alleging defective design, the Supreme Court has adopted a risk-utility balancing test. *Id.* at 691. In determining whether a defect exists, the trier of fact must balance the risk of harm occasioned by the design against the design's utility. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 364; 533 NW2d 373 (1995). The risk-utility test balances alternative safer designs and any accompanying risk against the risk and utility of the design chosen to determine whether the manufacturer exercised reasonable care in making the design choice. *Gregory v Cincinnati Inc*, 450 Mich 1, 13; 538 NW2d 325 (1995). The test requires the plaintiff to prove that the manufacturer knew or should have known of the design's propensity for harm. *Id.* Therefore, to establish a prima facie case of defective design, a plaintiff must present evidence concerning the magnitude of the risk posed by the design, the reasonableness of the proposed alternative design, or other facts concerning the "unreasonableness" of risks associated with the design. *Owens v Allis-Chalmers Corp*, 414 Mich 413, 429, 432; 326 NW2d 372 (1982); *Haberkorn, supra* at 364.

The trial court did not err in granting summary disposition to defendant. As the trial court found, plaintiff did not establish that defendant knew or should have known of the challenged design's propensity for harm. Plaintiff presented no evidence of the magnitude of the risk in terms of the design or of defendant's failure to conform to industry standards or government regulations. Further, plaintiff's expert testimony was not sufficient to establish that defendant should have known about the danger posed by its product. The mere assertion by an expert that a proposed alternative design would have been safer is inadequate to create a genuine issue of material fact regarding whether a specific design was defective. See *Gawenda v Werner Co*, 932 F Supp 183, 188 (ED MI, 1996), aff'd 127 F3d 1102 (CA 6, 1997).

Plaintiff correctly notes that this Court has held that a plaintiff's failure to provide a statistical breakdown regarding the incidence of injuries caused by a product does not necessarily preclude the claim from going to the jury. In *Reeves v Cincinnati, Inc*, 176 Mich App 181, 185-189; 439 NW2d 326 (1989), where the plaintiff was injured when a power press unexpectedly cycled, this Court reversed a directed verdict for the defendant even though the plaintiff failed to present a statistical breakdown regarding injuries caused by similar presses compared to the cost of the alternative design. However, "there was considerable evidence of the reasonableness of

the design—that power presses in general are unsafe because of unavoidable cycling, i.e., the magnitude of the risks, and that the alternative design, the installation of the guard, would have prevented plaintiffs' accident by precluding unexpected cycling of the press." The Court noted that: "In view of this evidence, we do not believe that statistical deficiencies in the expert testimony prevented plaintiffs from making a prima facie case." *Id.* at 189.

Here, plaintiff failed to present statistical evidence about the magnitude of the risk of injury associated with the garage door's release mechanism. She also presented no other evidence showing the unreasonableness of defendant's design choices, other than her expert's testimony that defendant could have instructed the installers of the product to use a different knot, could have installed a washer, or could have replaced the knob with a T-bar handle. Plaintiff's expert opined that no industry or government standards required a different knot or handle and could point to no textbooks or other authority that recommended a different design. This testimony did not establish the magnitude of the risk posed by the product's design, the reasonableness of the proposed alternative design, or other facts concerning the unreasonableness of risks associated with defendant's design. *Owens*, *supra* at 432; *Haberkorn*, *supra* at 364. Therefore, plaintiff did not establish a prima facie case of defective product design. Because plaintiff's proffered evidence failed to establish a genuine issue regarding any fact material to her claim, the trial court did not err in granting defendant's motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra