STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA BROWN, Personal Representative of the Estate of MELVIN BROWN, Deceased,

Plaintiff-Appellant,

v

HARLAN ELECTRIC,

Defendant-Appellee,

and

AJAX PAVEMENT INDUSTRIES,

Defendant.

UNPUBLISHED
March 13, 2001

No. 215594
Wayne Circuit Court
LC No. 97-710211-NO

BEVERLY NICHOLS,

Plaintiff-Appellant,

v

HARLAN ELECTRIC,

Defendant-Appellee,

and

AJAX PAVEMENT INDUSTRIES,

Defendant.

No. 215595
Wayne Circuit Court
LC No. 97-710212-NO

Before: Gribbs, P.J., and Kelly and Sawyer, JJ.

PER CURIAM.

These consolidated cases involve a head-on collision between plaintiff Patricia Brown's decedent, Melvin Brown, and plaintiff Beverly Nichols on I-75 after Brown entered the freeway by using an exit ramp. Plaintiffs alleged negligence, gross negligence, and wanton misconduct by defendant, a company hired to provide lighting on the freeway. The trial court granted summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant. Plaintiffs appeal by right, and we affirm.

Plaintiffs argue that the trial court erred by granting summary disposition where a genuine issue of material fact existed regarding whether inadequate lighting at the entrance and exit ramp caused the automobile accident. We disagree. This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Todorov v Alexander,* 236 Mich App 464, 467; 600 NW2d 418 (1999). When reviewing a trial court's grant or denial of a motion brought pursuant to MCR 2.116(C)(10), the appellate court, like the trial court, must view the depositions, affidavits, and documentary evidence in a light most favorable to the nonmoving party and must make all legitimate inferences in favor of the nonmoving party. *Quinto v Cross & Peters*, 451 Mich 358, 362; 547 NW2d 314 (1996). When the nonmoving party has the burden of proof at trial, that party may not rest on mere allegations or denials in the pleadings. *Id.* Rather, the party must come forward with documentary evidence setting forth specific facts showing that there is a genuine issue for trial. *Id.*

To establish negligence, plaintiffs had to prove that (1) defendant owed plaintiffs a legal duty, (2) defendant breached that duty, (3) this breach was the cause of the injury suffered, and (4) damages. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). Because a finding that the defendant had a legal duty to the plaintiff is a threshold issue in any negligence action that must be determined before assessing whether there was a breach of the duty and if the breach was a proximate cause of the injury, this Court first considers whether a duty in fact existed in this case. *Helmus v Michigan Dep't of Transportation,* 238 Mich App 250, 253; 604 NW2d 793 (1999). A negligence action may only be maintained if a legal duty exists that requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm. *Riddle v McLouth Steel Products Corp,* 440 Mich 85, 96; 485 NW2d 676 (1992).

Defendant's contract did not cover any lighting at the intersection of Madison Avenue and St. Antoine, where Brown first entered the exit ramp. Duty is essentially a question of whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor's part for the benefit of the injured person. *Lindsley v Burke,* 189 Mich App 700, 703; 474 NW2d 158 (1991). In the absence of an obligation on the part of defendant to light the location where Brown first entered the freeway system, plaintiffs did not establish duty, an essential element of negligence.

Plaintiffs further argue that proximate cause is a factual issue for the jury to determine. However, while the issue of proximate cause is usually a question to be decided by the jury, the trial court may dismiss a claim for lack of proximate cause when there is no genuine issue of material fact. *Reeves v Kmart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

Causation includes cause in fact and proximate cause. *Id.* at 479. Proximate cause is defined as "that which in a natural and continuous sequence, unbroken by any new, independent cause, produces the injury, without which such injury would not have occurred." *McMillian v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985), quoting *Weissert v City of Escanaba*, 298 Mich 443, 452; 299 NW 139 (1941). Proximate cause and duty require foreseeability. *Babula v Robertson*, 212 Mich App 45, 53; 536 NW2d 834 (1995); *Berry v J & D Auto Dismantlers, Inc*, 195 Mich App 476; 491 NW2d 585 (1992).

Plaintiffs argue that *Ridley v Collins,* 231 Mich App 381; 590 NW2d 69 (1998), is dispositive of the present situation and demonstrates that the trial court erred by granting summary disposition because, according to *Ridley,* the determination of proximate cause is ordinarily left to the trier of fact. *Id.* at 388.

In *Ridley*, the victim was beaten by a large group of men on Jefferson Avenue in Detroit. *Id.* at 383. After being attacked, the victim tried to stand but was struck by one vehicle, then another. *Id.* Several witnesses testified that the street lights were not functioning on the night of the attack or in the time preceding the attack. *Id.* at 383-384. This Court found that the attack on the victim was not a superseding cause preventing the defendant city from being liable because the defendant's negligence in lighting Jefferson Avenue was a substantial factor in bringing about harm to the victim. *Id.* at 389. The *Ridley* Court found that the trial court was correct in its finding that had the street lights been functioning normally, the drivers would have seen the victim, Jeffery Ridley, in time to avoid hitting him. *Id.* at 389.

> The question whether wrongful conduct is so significant and important as to be considered a proximate cause of an injury depends in part on foreseeability. *Moning v Alfono*, 400 Mich 425, 439; 254 NW2d 759 (1977); *Ross v Glaser*, 220 Mich App 183, 192; 559 NW2d 331 (1996). A proximate cause is one that operates to produce particular consequences without the intervention of any independent, unforeseen cause, without which the injury would not have occurred. *Id.* at 192-193. [*Ridley, supra* at 389.]

However, *Ridley* is distinguishable from the present case. The forseeability of a pedestrian walking out onto Jefferson Avenue is entirely different than a police officer, who drove on the Madison Avenue exit everyday, passing a lane of traffic and a cement barrier, entering the exit ramp and continuing to drive for one-quarter to one-half mile northbound on the southbound lanes of a freeway. Brown's actions were not foreseeable and it is not possible to establish that the lighting on the ramp of the freeway caused the collision. It is impossible to know for certain what caused Brown to travel the wrong way on a freeway on a route that he had

traveled from work on a regular basis. When viewing the evidence in the light most favorable to the nonmoving party, an expert witness would not be able to establish cause. Thus, there was no genuine issue of material fact with regard to causation, a necessary element to establish negligence, and the trial court properly granted summary disposition for defendant.

Affirmed.

/s/ Michael J. Kelly
/s/ David H. Sawyer

I concur in the result only.

/s/ Roman S. Gribbs