STATE OF MICHIGAN

COURT OF APPEALS

JENNIFER MCGRAIL,

Plaintiff-Appellant,

v

BUCKEYE FIRE EQUIPMENT COMPANY,

Defendant,

and

FLAME RESISTANT FIRE EXTINGUISHER COMPANY,

Defendant-Appellee.

UNPUBLISHED
August 24, 2001

No. 224465
Genesee Circuit Court
LC No. 98-064384-NP

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant Flame's motion for summary disposition pursuant to MCR 2.116(C)(10). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

The plaintiff has the burden of producing evidence sufficient to make out a prima facie case. *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 712; 202 NW2d 727 (1972). The

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

happening of an accident is not, in and of itself, evidence of negligence. The plaintiff must present some facts that either directly or circumstantially establish negligence. *Whitmore v Sears, Roebuck & Co,* 89 Mich App 3, 9; 279 NW2d 318 (1979). "Where the circumstances are such as to take the case out of the realm of conjecture and bring it within the field of legitimate inference from established facts, the plaintiff makes at least a prima facie case." *Clark v Kmart Corp,* 242 Mich App 137, 140-141; 617 NW2d 729 (2000).

Plaintiff contends that her expert's opinion that the spill was most likely due to a defective O-ring plus the service records showing that the O-rings were replaced after the incident permits an inference of negligence. Plaintiff has failed to preserve this issue by citation to supporting authority. *Price v Long Realty, Inc,* 199 Mich App 461, 467; 502 NW2d 337 (1993). That aside, plaintiff did not present any evidence to show that the extinguisher at issue had a defective O-ring and that defect caused it to release its contents when it fell. She asserted only that she would present expert testimony to that effect. Mere allegations or a promise to present evidence establishing an issue of fact at trial are not sufficient to defeat a motion brought under MCR 2.116(C)(10). *Maiden v Rozwood,* 461 Mich 109, 121; 597 NW2d 817 (1999); *Crown Technology Park v D&N Bank, FSB,* 242 Mich App 538, 547; 619 NW2d 66 (2000). Moreover, it appears from the record that the expert had no facts to support his opinion and the law is clear that an expert's opinion must be based on facts in evidence, not on speculation or conjecture. *Skinner v Square D Co,* 445 Mich 153, 164-165, 173; 516 NW2d 475 (1994). We find no error in the trial court's ruling.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel