

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DONNA KRZEMINSKI and EDMUND  
KRZEMINSKI,

UNPUBLISHED  
February 15, 2002

Plaintiffs-Appellants,

and

HEALTH ALLIANCE PLAN,

Intervening Plaintiff,

v

No. 226646  
Wayne Circuit Court  
LC No. 98-822994-NO

THE STANLEY WORKS f/k/a STANLEY  
MAGIC-DOOR, INC.,

Defendant-Appellee,

and

COUNTY OF WAYNE,

Defendant.

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Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Plaintiffs<sup>1</sup> appeal by delayed leave granted from a circuit court order granting defendant The Stanley Works' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. 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. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). In ruling on such a motion, the trial court must consider not only the

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<sup>1</sup> Plaintiff Edmund Krzeminski advanced a derivative claim for loss of consortium.

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. *Globe Life, supra*. Summary disposition is appropriate under this subrule if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

In a negligence case, the plaintiff has the burden of producing evidence sufficient to make out a prima facie case. *Berryman v Kmart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). “The mere occurrence of an accident is not, in and of itself, evidence of negligence.” *Clark v Kmart Corp*, 242 Mich App 137, 140; 617 NW2d 729 (2000), rev’d on other grounds 465 Mich 416; 634 NW2d 347 (2001). 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, supra* at 140-141, citing *Berryman, supra* at 91-92. If the plaintiff fails to establish a causal link between the accident and any negligence on the part of the defendant, summary disposition under MCR 2.116(C)(10) is appropriate. *Pete v Iron Co*, 192 Mich App 687, 689; 481 NW2d 731 (1992).

Plaintiff Donna Krzeminski was injured at Detroit Metropolitan Airport in 1995 when an automatic door closed on her. The door was activated by a control mat serviced by The Stanley Works. Plaintiffs contended that defendant was negligent in failing to use more precise tests to gauge the sensitivity and electrical resistance of the mats to determine if they were functioning within normal limits. Plaintiffs’ expert tested the mats in 1999 and found that the safety side control mat failed the recommended sensitivity test. Given that the function of the mat could deteriorate over several years and assuming the mat had never been replaced, the expert opined that it was possible that the mat had been in the same condition in 1995. However, “causation theories that are mere possibilities or, at most, equally as probable as other theories do not justify denying [the] defendant’s motion for summary judgment.” *Skinner v Square D Co*, 445 Mich 153, 172-173; 516 NW2d 475 (1994). Because an expert’s opinion must be supported by facts in evidence, *id* at 174, and where the record does not contain evidence of the mat’s condition in 1995, or that it would have failed the same test at that time, plaintiffs’ expert’s opinion testimony was insufficient to establish a genuine issue of fact for trial. The trial court did not err in granting defendant’s motion for summary disposition.

Affirmed.

/s/ David H. Sawyer  
/s/ Peter D. O’Connell  
/s/ Brian K. Zahra