STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW S. ENGLISH,

Plaintiff-Appellant,

v

CONNIE HIMMELL-THOMPSON, Personal Representative of the Estate of JEFFREY HIMMELL, Deceased

Defendant-Appellee.

UNPUBLISHED
January 10, 2006

No. 255956
St. Clair Circuit Court
LC No. 03-000496-NI

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In this automobile negligence claim, plaintiff appeals as of right from the trial court's order granting summary disposition to defendant. We affirm, albeit for a different reason. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's claim arises out of a fatal, two-car accident that occurred on April 12, 2000. On that date, after allegedly "huffing" at a local park with two friends for a few hours, plaintiff was driving home at approximately 9:49 p.m. when he collided with an oncoming car, killing the other driver and passenger, and severely injuring a third occupant. Neither plaintiff nor the surviving passenger of the other car have any memory of the accident.

Because of the positions of the vehicles after the collision, the investigating officers were initially unsure of the direction of travel of the vehicles or which vehicle crossed the center lane, causing the accident. Then, an eyewitness to the accident came forward and told police that she observed a vehicle smaller in size than her Oldsmobile Calais pass her going westbound on Gratiot. She further stated that she later witnessed an oncoming eastbound vehicle cross the center lane, continue into the far right westbound lane, and eventually strike the westbound vehicle. From this information and their additional investigation, the officers determined that plaintiff's vehicle was the eastbound vehicle that caused the accident, and he was charged with two counts of vehicular manslaughter and one count of felonious driving.

Plaintiff pleaded no contest to all three charges against him. Plaintiff was unable to plead guilty to the charges because of his loss of memory. However, the preliminary examination testimony of the eyewitness and one of the investigating officers was offered to the court as the

factual basis of the no-contest plea. Further, plaintiff's criminal defense attorney admitted that plaintiff was driving the vehicle traveling eastbound on Gratiot. Plaintiff was originally sentenced to probation. However, because he did not comply with the terms of probation, his probation was revoked and he was sentenced to a term of imprisonment.

Plaintiff filed this auto negligence claim against defendant, alleging that Jeffrey Himmel negligently operated his car on April 12, 2000, causing his own death, as well as injuries to plaintiff, including wrongful prosecution and damage to plaintiff's reputation. Defendant moved for summary disposition arguing that plaintiff's claims were barred by the wrongful-conduct rule and MCL 600.2955b. Defendant further argued that plaintiff's claims fail as a matter of law because his convictions by no-contest plea are admissions of guilt that can be admitted in the instant civil case; judicial estoppel prevents him from asserting a position in this case that is inconsistent with his plea in the criminal case. Plaintiff opposed defendant's motion and, after oral arguments, the trial court granted defendant's motion for summary disposition.

We review a trial court's decision to grant a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In considering a motion pursuant to MCR 2.116(C)(10), a court considers the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Plaintiff argues that the trial court erred in granting defendant's motion because it based its decision on an erroneous interpretation of the relevant case law regarding the admissibility of no-contest pleas. More specifically, plaintiff argues that neither his no-contest plea nor his subsequent convictions prevent him from maintaining his innocence in this case. Plaintiff claims that, because there are genuine issues of material fact as to whether he caused the accident, the trial court should have denied defendant's motion. We need not reach plaintiff's argument because, even if the trial court erred regarding the effect that plaintiff's no-contest plea had on his subsequent civil suit, summary disposition was nevertheless appropriate in this case because plaintiff's claim is barred by MCL 600.2955b.

In MCL 600.2955b our Legislature codified the common-law wrongful-conduct rule for felonies. The statute states, in pertinent part, as follows:

> (1) Except as otherwise provided in this section, the court shall dismiss with prejudice a plaintiff's action for an individual's bodily injury or death and shall order the plaintiff to pay each defendant's costs and actual attorney fees if the bodily injury or death occurred during 1 or more of the following:
>
> (a) The individual's commission, or flight from the commission, of a felony.
>
> * * *

(7) As used in this section:

(a) "Commission of a felony" means either of the following:

(i) A conviction for a felony.

Here, because plaintiff's claim for bodily injuries arises out of the very same auto accident for which he was convicted of one count of felonious driving and two counts of vehicular manslaughter, we conclude that his cause of action is barred by MCL 600.2955b. And "[a] trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason." *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005), quoting *Gleason v Dep't of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot