

STATE OF MICHIGAN
COURT OF APPEALS

ELAINE JACKSON,

Plaintiff-Appellant,

v

VINCENT TOLOMEI and DANIEL TOLOMEI,

Defendants-Appellees.

UNPUBLISHED

December 21, 2006

No. 270404

Wayne Circuit Court

LC No. 04-043688-NI

Before: Borrello, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants, Vincent Tolomei (“Vincent”) and Daniel Tolomei (“Daniel”). We reverse and remand for proceedings consistent with this opinion.

Plaintiff was injured in an auto collision, the undisputed facts of which are that plaintiff had turned out of a turnaround onto Mound Road when Vincent’s car,¹ traveling on Mound Road, struck her car. The trial judge granted defendants’ motion for summary disposition of plaintiff’s claim, reasoning that Vincent’s failure to stop at a red light at the intersection of Eight Mile and Mound Road was not a proximate cause of the accident solely because the intersection is located 50 feet north of the turnaround where the collision occurred. Plaintiff argues on appeal that there is a genuine issue of material fact concerning proximate cause because of the close proximity between the intersection and the turnaround. We agree.

This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Morreal v State, Dept of Community Health*, __ Mich App __; __ NW2d __ (Docket No. 270350, issued October 12, 2006). A motion brought under MCR 2.116(C)(10) should be granted when, after considering the pleadings, affidavits, depositions, admissions and other documentary evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 713; 706 NW2d 426 (2005). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to

¹ Daniel is the owner of the vehicle, but was not present when this collision took place.

the opposing party, leaves open an issue upon which reasonable minds could differ. *Heckmann v Detroit Chief of Police*, 267 Mich App 480, 486; 705 NW2d 689 (2005). This Court is liberal in finding a genuine issue of material fact. *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 266 Mich App 297, 306; 701 NW2d 765 (2005). Circumstantial evidence may present a factual issue. *Bergen v Baker*, 264 Mich App 376, 387; 691 NW2d 770 (2004).

In a negligence action, a plaintiff must show that the defendant owed plaintiff a duty, the defendant breached that duty, the breach was a proximate cause of plaintiff's injuries, and that plaintiff suffered damages. *Vanguilder v Collier*, 248 Mich App 633, 635; 650 NW2d 340 (2001). The Motor Vehicle Code allows for the imposition of liability for injury caused by ordinary negligence in the operation of a motor vehicle: "The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law." MCL 257.401(1).

Statutes and the common law dictate the duties of automobile drivers in Michigan. Under MCL 257.611(1) a driver must not disobey the instructions of a traffic control device unless otherwise directed by a police officer. MCL 257.649(6) requires that:

Except when directed to proceed by a police officer, the driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop After having stopped, the driver shall yield the right of way to a vehicle which has entered the intersection from another highway or which is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver would be moving across or within the intersection.²

In the absence of a relevant statute or ordinance, a driver must exercise the degree of care and caution that a reasonably prudent person would exercise under the same or similar circumstances regardless of whether such driver has the right-of-way. *Placek v City of Sterling Heights*, 405 Mich 638, 669-670; 275 NW2d 511 (1979); *Lamp v Reynolds*, 249 Mich App 591, 596; 645 NW2d 311 (2002). A plaintiff who sustains injuries in an automobile accident must have exercised ordinary care to avoid the injury at issue. *Reed v Goodin*, 285 Mich 614, 619; 281 NW 377 (1938), overruled in part *Felgner v Anderson*, 375 Mich 23, 51; 133 NW2d 136 (1965) (court abrogating assumption of the risk doctrine). In an action for injuries sustained in an accident at an intersection, negligence may be found by the court as a matter of law, but generally, it is a question of fact for the jury. *Ingram v Henry*, 373 Mich 453, 457; 129 NW2d 879 (1964); *Rector v Clark*, 344 Mich 276, 278; 73 NW2d 916 (1955).

In addition to establishing that a driver breached a duty he owed the plaintiff, the plaintiff need also establish causation between the alleged wrongful act and the resulting damages by proving that the defendant's conduct was both the cause in fact and proximate cause of the

² By statute, a driver traveling at an unlawful speed forfeits the right-of-way. MCL 257.649(5). However, there is no evidence in this case that Vincent was traveling at an unlawful speed.

plaintiff's damages. *Holton v A+ Ins Associates, Inc*, 255 Mich App 318, 326; 661 NW2d 248 (2003). Cause in fact requires a plaintiff to show that her injuries would not have occurred but for the defendant's negligence. *Zdrojewski v Murphy*, 254 Mich App 50, 63; 657 NW2d 721 (2002). Proximate cause requires a finding that the conduct at issue was a foreseeable, natural, and probable cause of the plaintiff's injury and damages. *Shinholster v Annapolis Hosp*, 471 Mich 540, 546; 685 NW2d (2004).

In the instant case, plaintiff claims that there is a genuine issue of material fact as to whether Vincent's conduct was a proximate cause of the accident. Plaintiff contends that the evidence is sufficient to support an inference that Vincent ran the red light at the Eight Mile and Mound Road intersection in violation of MCL 257.611(1). We agree. Both plaintiff and a witness to the accident, Kaisha Ingram ("Ingram"), stated that they saw multiple lanes of traffic completely stopped at the intersection, although neither of them could see the color of the light at the intersection. Ingram explained that two of southbound Mound Road's three lanes were filled with traffic that had approached the intersection, slowed down, and come to a complete stop. Ingram, like plaintiff, was watching the southbound traffic on Mound Road because Ingram was preparing to turn onto southbound Mound Road from the adjacent parking lot.

Vincent stated that he had a green light at the intersection and that there was no traffic around him. The trial judge found that a trier of fact might believe plaintiff and the disinterested witness rather than Vincent about the color of the light, but the judge concluded that Vincent's running the red light at the intersection could not be a proximate cause of the accident because the turnaround was located 50 feet south of the intersection. We disagree and hold that, looking at the facts in the light most favorable to plaintiff and drawing all reasonable inferences in plaintiff's favor, reasonable minds could differ over whether Vincent's conduct was a proximate cause of the collision between him and plaintiff. *Royal Prop Group, LLC, supra*, p 713; *Bergen, supra*, p 387.

Individuals rely on traffic signals to regulate the flow of traffic and it is reasonable for an individual to assume that traffic would stop where the signal was red. *Bucholtz v Deitel*, 59 Mich App 349, 352; 229 NW2d 448 (1975). Vincent's own statements, along with statements by plaintiff, Ingram, and another witness to the accident, Melissa Holman ("Holman"), establish that plaintiff was already proceeding with her turn when Vincent ran into her. The point of impact on plaintiff's car and the point of impact on Vincent's car both indicate plaintiff was turning when Vincent ran into her. A reasonable trier of fact might conclude, based on the evidence, that Vincent ran the red light at the intersection, that plaintiff had reasonably relied on the red light to regulate traffic such that she could safely complete her turn, and that Vincent's conduct was therefore a proximate cause of the collision.

Vincent contends that under MCL 257.649(6), he possessed the right-of-way on Mound Road; he asserts that regardless of the light's color at the intersection, plaintiff's pulling out from the stop sign at the turnaround when she did not possess the right-of-way resulted in plaintiff's conduct being the proximate cause of the collision. We disagree and find that, given the proximity of the turnaround to the light, reasonable minds could differ on the issue of whether Vincent's conduct was a proximate cause of the accident.

The trial judge found the distance between the turnaround and the traffic light was too great to support a conclusion that running the light proximately caused the collision. However,

Vincent stated that he was traveling 35 to 40 miles per hour when he crossed the intersection. Both plaintiff and Vincent stated that the distance from the intersection to the turnaround was approximately 50 feet. Using the mathematical calculation 40 miles per hour x 5280 feet per mile / 3600 seconds per hour, if Vincent had been traveling at 40 miles per hour, in one second he would have traveled 59 feet. If traveling at 35 miles per hour, he would have traveled 51 feet in one second. By Vincent's own admission as to his rate of speed, an extremely short time passed from when Vincent crossed the intersection and first saw plaintiff turning until the time he reached plaintiff's vehicle at the turnaround 50 feet south of the intersection. We find that the one second of travel time between the traffic light and the turnaround is not too great a distance to preclude a finding of proximate causation by a reasonable trier of fact.

We conclude that summary disposition was improper. A reasonable trier of fact might find, given the proximity between the intersection and the turnaround, that if Vincent ran the red light in violation of MCL 257.611(1), he breached the required standard of reasonable care by putting plaintiff in a situation where she had one second or less to react to his conduct. *Royal Prop Group, LLC, supra*, p 713; *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005). The color of the light was therefore relevant, and a genuine issue of material fact remains.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello

/s/ Janet T. Neff

/s/ Jessica R. Cooper