

STATE OF MICHIGAN  
COURT OF APPEALS

---

MARY KAY CRAWFORD-SACHS,

Plaintiff-Appellant,

v

GOODYEAR TIRE & RUBBER COMPANY,

Defendant-Appellee.

---

UNPUBLISHED

March 29, 2007

No. 271052

Oakland Circuit Court

LC No. 2004-060173-NH

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Plaintiff brought this products liability action against defendant Goodyear Tire & Rubber Company, claiming that she was injured when a defective Goodyear tire on her Ford Explorer suddenly deflated and caused the vehicle to roll over. The trial court granted defendant's 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).

Plaintiff alleges that the rear passenger-side tire on her Ford Explorer suddenly deflated (or "exploded" or "blew out") while she was driving on the freeway. Plaintiff brought this action against defendant, asserting claims for negligence and breach of warranty. Plaintiff's expert, John Woodington, testified in his deposition that the deflation was caused by tread separation, but he could not identify the cause of the separation. Woodington testified that there was no evidence that the separation was caused by an external cause, such as a road hazard or a puncture in the tire. But he also stated that a tire might blow out if proper inflation is not maintained, and he admitted that he did not know all the signs that would indicate that a tire was not properly inflated. He acknowledged that he was not qualified to determine whether the tire failed because of a defect in design or manufacturing, or under-inflation.

The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10), concluding that plaintiff was unable to prove that the tire was defective, and that her claim was therefore based on speculation.

We review de novo a trial court's resolution of a motion for summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 539; 683 NW2d 200 (2004). The trial court must consider the affidavits, pleadings, depositions, admissions, and any other evidence submitted by

the parties in a light most favorable to the nonmoving party. *Id.* at 539-540. Summary disposition may be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff argues on appeal that she was not required to identify the specific defect in order to withstand summary disposition with respect to her breach of warranty claim.<sup>1</sup> She argues that the fact that the tire exploded, absent any external cause such as a roadside hazard or tire puncture, was sufficient proof that the tire was not fit for its intended use.

In a claim of breach of implied warranty, the product's lack of fitness for its intended use amounts to an actionable defect. *Kenkel v Stanley Works*, 256 Mich App 548, 557; 665 NW2d 490 (2003). A plaintiff seeking recovery on a breach of warranty claim must prove that there was a defect attributable to the manufacturer, and a causal connection between that defect and the injury or damage. *Id.* at 556-557. It is not necessary to prove that the manufacturer failed to exercise due care. *Id.* at 557. A demonstrable malfunction is generally clear evidence of a defect, and it is within the province of the jury to infer the existence of a defect from circumstantial evidence alone. *Id.* at 558.

Relying on *Kenkel*, plaintiff argues that she was not required to identify the specific defect in the tire, because the occurrence of a blow-out without an external cause was sufficient proof that the tire was defective. However, the Court in *Kenkel* stated that a plaintiff pursuing a claim of breach of implied warranty is not required to identify the precise defect in the product “*unless there are multiple actors to whom a malfunction could be attributed.*” *Id.* at 557 (emphasis added). Furthermore, the Court stated that when a failure is caused by a defect “in a relatively inaccessible part integral to the structure of the [product] not generally required to be repaired, replaced, or maintained, it may be reasonable, absent misuse, to infer that the defect is attributable to the manufacturer.” *Id.* at 559, quoting *Holloway v Gen Motors Corp (On Rehearing)*, 403 Mich 614, 624; 271 NW2d 777 (1978).

In *Kenkel*, this Court held that there was sufficient circumstantial evidence of a manufacturing defect where the circuitry operating automatic sliding doors failed, and the plaintiff became trapped when the doors closed on her. *Id.* at 550-551, 559. The Court noted that there was no evidence that anyone altered the door system after the manufacturer installed it, and that the electrical components of the sensor systems were contained in closed compartments. *Id.* at 559. In the instant case, the tire was not contained in a closed part of the vehicle, and there was evidence that the tire failure could be attributable to plaintiff's failure to maintain proper inflation. Woodington testified that a tire can fail if it is not properly maintained, and he acknowledged that he did not know all the indicators of under-inflation. Woodington thus failed to identify the specific defect, and also failed to rule out a defect attributable to someone other than the manufacturer. Furthermore, plaintiff admitted that she never checked the air pressure in the tires after they were installed on the vehicle.

---

<sup>1</sup> Plaintiff's complaint also stated a claim for negligence, but she does not challenge the dismissal of that claim.

Accordingly, plaintiff failed to show, through direct or circumstantial evidence, that the failure of the tire was attributable to a manufacturer's defect. Because plaintiff failed to show a genuine question of fact with respect to this element of her breach of warranty claim, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ Kurtis T. Wilder