STATE OF MICHIGAN

COURT OF APPEALS

VINCENT DOA,

Plaintiff,

v

NICHOLAS LOPEZ and LOWER HURON CHEMICAL & SUPPLY COMPANY, INC.,

Defendants-Appellants,

and

COMMFLEET, INC.,

Defendant-Appellee.

UNPUBLISHED
June 24, 2021

No. 352980
Oakland Circuit Court
LC No. 2018-168280-NI

Before: GLEICHER, P.J., and CAVANAGH and LETICA, JJ.

PER CURIAM.

The left front wheel flew off a truck owned by defendant Lower Huron Chemical & Supply Company, Inc., and struck plaintiff Vincent Doa's car. Doa was injured and sued Lower Huron. Lower Huron filed a notice of nonparty at fault against defendant Commfleet, Inc., which had serviced the truck about three months before the accident. Doa then added Commfleet as a party defendant.

The only real dispute is whether Commfleet or Lower Huron (or both) are responsible for the defective wheel. During discovery, several experts addressed that question. Two sets of experts (plaintiff's and CommFleet's) opined that fault rested with Lower Huron. Lower Huron's expert, William Wilson, pinned the blame on CommFleet.

CommFleet sought summary disposition in the circuit court, contending that Wilson's opinions were speculative, untethered to the facts, and otherwise unreliable. The circuit court agreed and granted summary disposition, thereby eliminating CommFleet from the case. Lower Huron applied for leave to appeal that decision in this Court. Shortly after we granted leave, the circuit court issued a thoughtful written opinion granting reconsideration and finding a genuine

issue of material fact regarding CommFleet's potential negligence. The court specifically acknowledged that it had erroneously rejected Wilson's opinions as speculative and legally insufficient. Unfortunately, the circuit court lacked jurisdiction to reconsider its ruling after leave had been granted. We vacated the circuit court's reconsideration opinion and order. *Doa v Lopez*, unpublished order of the Court of Appeals, entered September 30, 2020 (Docket No. 354086).

On appeal, Lower Huron argues that the circuit court improperly weighed the expert evidence and failed to view Wilson's opinions in the light most favorable to Lower Huron. CommFleet continues to insist that the affidavit signed by Lower Huron's expert lacks admissible evidence of negligence and proximate cause. Plaintiff has not filed a brief.

Lower Huron's expert, William Wilson, asserted that CommFleet failed to replace a part called the castle cage nut retainer when it last serviced the wheel seal, contributing to the wheel's ejection from the truck. In Wilson's view, discoloration of the roller bearings within the inner wheel assembly, evident in photographs, meant that the spindle was over-torqued. That lead to heat buildup, Wilson expressed, which in turn caused overheating of the bearings and evaporation of the lube oil. Wilson opined that "[h]ad CommFleet not over torqued the spindle nut during the preload adjustment procedure and checked the hub to determine that there was 1.5 pints of oil in the hub at the time of the Annual DOT Inspection, the wheel bearings would not have failed . . . and caused the wheel to separate from the truck."

As the circuit court recognized on reconsideration, Wilson's opinions were predicated on the photographic evidence; we anticipate that whether he accurately interpretated the photos will be hotly disputed by the other experts. The circuit court got it right on reconsideration: a jury must sort out the conflicting opinions and allocate liability for the flying wheel. As the circuit court recognized, it was not permitted to weigh the expert testimony or to consider Wilson's credibility. See *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 401; 628 NW2d 86 (2001) ("[A]n opposing party's disagreement with an expert's opinion or interpretation of facts, and gaps in expertise, are matters of the weight to be accorded to the testimony, not its admissibility."). "The weight given to the testimony of experts is for the jury to decide." *Phillips v Deihm*, 213 Mich App 389, 401-402; 541 NW2d 566 (1995).

Because Wilson's opinions were grounded in facts including the photographs and the service history of the truck, they were not speculative. While the experts retained by plaintiff and Commfleet believe that routine maintenance surveillance (allegedly overlooked by Lower Huron) would have revealed an oil leak necessitating prompt repair, Wilson asserted that evidence did not support that the oil seal was leaking. He noted that there was no oil on the ABS tone wheel, hub, backing plate, brake shoes, brake shoe springs, and wheel rim. He further averred that the photographs of the left front wheel/tire sidewall showed that the alleged oil was actually water.

Wheel seal mechanics are complicated. Absent expert guidance, the photographs likely are incomprehensible to a lay person. The truck was used for many years and has an extensive maintenance history. The experts have different views on what happened and why the wheel tore free from the truck. This is a case replete with facts and technical data, and features a range of expert opinions. In other words, this is not a case for summary disposition.

We need not spend much time on two additional arguments raised by Commfleet. Comfleet contends that Lower Huron has no standing to challenge the dismissal of *plaintiff*'s claim against Commfleet. This argument borders on frivolous. A party has standing if it has a special interest in a case that might be "detrimentally affected in a manner different from the citizenry at large." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). Lower Huron has an interest in a jury determination of fault for Doa's injuries that includes Commfleet in the mix.

Comfleet also contends that it owed no legal duty to Doa because it had no relationship to him, and the accident was unforeseeable. Our Supreme Court has recognized "the simple idea that is embedded deep within the American common law of torts: if one having assumed to act, does so negligently, then liability exists as to a third party for failure of the defendant to exercise care and skill in the performance itself." *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 170-171; 809 NW2d 553 (2011) (cleaned up). In other words, " '[g]enerally speaking, there is a duty to exercise reasonable care in how one acts to avoid physical harm to persons and tangible things.' " *Rinaldo's Constr Corp v Mich Bell Tel Co*, 454 Mich 65, 84; 559 NW2d 647 (1997), quoting Prosser & Keaton, Torts, § 92, pp 656-657.

CommFleet had a duty to exercise reasonable care in its maintenance of Lower Huron's truck to avoid harm to the public, including Doa. It was reasonably foreseeable that negligent performance of wheel maintenance could result in injury to those travelling on the roadways. CommFleet owed Doa a common-law duty to perform its maintenance and repairs with due care to help prevent outcomes such as this one.

We vacate the circuit court's order granting summary disposition to Commfleet and remand for further proceedings. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Anica Letica