

STATE OF MICHIGAN
COURT OF APPEALS

NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY,

Plaintiff-Appellant,

v

PARKER'S PROPANE GAS COMPANY and
STALEY PLUMBING AND HEATING, INC.,

Defendants-Appellees.

UNPUBLISHED
September 27, 2011

No. 299068
Genesee Circuit Court
LC No. 08-088902-CZ

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Plaintiff Nationwide Mutual Fire Insurance Company brought this case as the subrogee of its policyholders, Phillip and Margaret Isham, whose home was destroyed in a fire. Plaintiff claimed that defendant Staley Plumbing and Heating (Staley) installed a defective gas line in the Ishams' home, and defendant Parker's Propane Gas (Parker's) failed to detect the resulting gas leak. The trial court granted defendants' motions for summary disposition pursuant to MCR 2.116(C)(10), holding that Nationwide's claims were based on mere speculation. We reverse and remand.

On August 10, 2007, employees of Parker's performed an inspection at the Isham home and discovered two gas leaks, including one in a line running to the stove. The stove had a flex line running from behind it through the floor. The leak in the stove line was not in the flex line itself, but in the flare nut where the flex line hooked into a copper line. A flare nut is a component in a kind of compression fitting to make sealed tubing connections.

The Ishams hired defendant Staley to conduct the necessary repairs. Staley employees testified that they replaced the copper gas lines with iron piping, and they also installed a new flex line. Staley's technicians tested the joints in the lines for leaks, but they did not test the flex line itself. On August 21, 2007, Parker's technicians returned for a follow-up inspection. The technicians performed a pressure test to check for leaks in the system. Because that test was negative, the technicians did not visually inspect the flex line behind the stove. According to one of the technicians, it "seemed pretty straight forward" that the necessary repairs had been made and the system was functioning properly, and the other testified that if a pressure test shows no leaks, additional tests are generally not performed.

Sometime after Staley finished the repairs, Mr. Isham attempted to light what he believed to be the pilot light in the oven. It is undisputed that this oven did not, in fact, have a pilot light. However, he opened the oven door and moved a long lighter around in a bottom corner of the oven, successfully igniting something, which he described as a one to two and a quarter inch flame. Mrs. Isham noticed several days later that the pans she stored in the oven were very hot, a phenomenon she had never encountered before. On September 5, 2007, the Ishams' home burned down.

After compensating the Ishams, Nationwide brought this suit, arguing that defendants were responsible for the fire. Both defendants moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff's theory was based on nothing more than speculation. The trial court granted the motion, holding that plaintiff could not exclude other possible causes of the fire with a reasonable amount of certainty.

"To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A plaintiff may establish causation through circumstantial evidence, but the proofs must establish a reasonable inference of causation, not just speculation. *Skinner v Square D Co*, 445 Mich 153, 163-164; 516 NW2d 475 (1994). A plaintiff need not exclude all other possible theories, but the evidence in support of the plaintiff's theory must indicate "a logical sequence of cause and effect." *Id.* at 164, quoting *Kaminski v Grand Trunk W R Co*, 347 Mich 417, 422; 79 NW2d 899 (1956). A grant of summary disposition pursuant to MCR 2.116(C)(10) is reviewed de novo on the basis of the entire record, and viewed in the light most favorable to the non-moving party, to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118-120; 597 NW2d 817 (1999). Summary disposition is appropriate only where the evidence fails to establish a genuine issue regarding any material fact. *Id.*, 120.

Terry Murray, a mechanical engineer who inspected the accident, opined that Mr. Isham's description of the flame indicated a propane leak. Critically, there was substantial evidence that the replacement flex line was perforated, allowing gas to leak directly behind the stove. Propane gas is heavier than air and would have pooled in the drawer under the oven, but it would have been drawn up into the oven by a flame waved around in the bottom of the oven. The dishes stored in the oven becoming hot supported the conclusion that a flame was continuing to burn inside the oven. Murray explained that the flame could easily have slowly caused the heat to rise enough to ignite the house fire, and indeed, the heat *would* have continued to increase without something to cool or extinguish it.

Murray testified that the flame inside the oven was inconsistent with a grease fire and could only have come from leaking propane. Murray could not rule out the possibility that the propane came from some other leak inside the oven, and he admitted that it was theoretically possible that the flame inside the oven came from a grease fire, as Staley argues. However, Murray explained that a grease flame would have looked different, and a metallurgy expert, Elizabeth Buc, explained that the flex line was visibly compromised and would have been prior to its installation. Murray testified that a proper test by Parker's employees would have discovered the leak in the flex line. Thus, plaintiff presented evidence supporting a logical cause-and-effect process leading from the alleged faulty flex line and negligent inspection to the

fire that destroyed the Ishams' home. A jury could reasonably find it more likely that the propane leak was in the flex line and not the oven's temperature regulator. Although Stanley testified that it had installed a new and uncompromised flex line, that testimony was contradicted by Buc's testimony that the line would have been compromised prior to installation, so there is a genuine question of material fact.

We find that plaintiff's theory is based on more than mere speculation and that the trial court erred in finding no genuine question of material fact. Plaintiff has provided sufficient evidence for a jury to find defendants negligent based on more than speculation.

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

/s/ Amy Ronayne Krause

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen