STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0869

Jeffrey Paul Hofmann, et al.,
Appellants,

vs.

Enterprise Leasing Company of Minnesota, LLC, et al.,
Respondents,

ABRA Minnesota, Inc., et al.,
Respondents.

Filed April 3, 2017
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CV-13-1995

Kyle W. Farrar, Kaster, Lynch, Farrar & Ball, LLP, Houston, Texas; and

Jeffrey S. Sieben, Sieben Carey, P.A., Minneapolis, Minnesota (for appellant Jeffrey Hofmann)

Eric J. Magnuson, Robins Kaplan LLP, Minneapolis, Minnesota; (for respondent Enterprise Leasing)

Michael S. Kreidler, Kirsten J. Hansen, Stich, Angell, Kreidler, Unke & Scattergood, P.A., Minneapolis, Minnesota (for respondent ABRA)

Considered and decided by Ross, Presiding Judge; Stauber, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Jeffrey Hofmann crashed his rented pickup truck into an interstate highway median wall. He sued the rental company and its contracted collision-repair company for failing to find and repair alleged prior damage to the truck's left-front tire, which he says caused his crash. Hofmann appeals from the district court's summary-judgment order dismissing his negligence claim, arguing that the district court inappropriately resolved fact issues bearing on the rental company's and the repair company's duty to detect tire damage and on causation. We conclude that the rental company and its collision-repair company met any duty they had to inspect the truck for prior damage. We therefore affirm summary judgment without reaching Hofmann's causation arguments.

FACTS

Jeffrey Hofmann rented a Chevrolet Silverado pickup truck from Enterprise Leasing Company of Minnesota, LLC, in April 2012. As Hofmann drove the truck along a right-hand bend on Interstate 494, the truck left the roadway and hit the highway's median wall. Hofmann was injured and said he has no memory of the crash, and recalled only looking down at some paperwork just before it. Another driver saw Hofmann's truck merge into her lane, nearly colliding with her. She watched as Hofmann pulled ahead, weaving through traffic. Then she saw the truck drift to the left into the median wall. It did not appear to her that the driver had lost control.

A state trooper investigated and believed from tire marks that the truck's left-front tire was inflated when the truck struck the wall. He found no evidence of a blowout and

concluded that Hofmann's inattentiveness likely contributed to the crash. The truck's so-called black box indicated that, 2.5 seconds before the impact, the truck was traveling 73 miles per hour (13 miles per hour above the speed limit), Hofmann never applied the brakes, and Hofmann never increased or decreased his pressure on the accelerator.

This was not the truck's first crash. It had been involved in a two-car collision in December 2011, four months before Hofmann's crash. In that prior collision, the truck's left-front quarter panel struck another car's rear corner. The driver of the other car, Wayne Anderson, said the truck then careened into several curbs, "bounc[ing] up in the air."

The truck was inspected between the December 2011 crash and Hofmann's crash. Immediately after the December 2011 crash, Enterprise sent the truck to ABRA Minnesota, Inc., a certified auto-collision repair company, to have it evaluated. Steve Ryan, the ABRA facility's general manager, inspected the truck's tires for damage, looking for any bulges, holes, tears, or other irregularities. He focused mostly on the left-front tire and concluded that he was certain the tire was not damaged. Jason Berry, another ABRA technician experienced in evaluating tire damage, inspected the truck for at least 12 hours. He too found no external damage to the left-front tire. A different ABRA employee drove the truck. He felt no tire-related performance issues. ABRA recommended no tire repair or replacement, and it returned the truck to Enterprise after completing body repairs.

Enterprise returned the truck to its rental fleet. Nineteen Enterprise customers drove the truck more than 4,000 miles in the period between the two collisions. None of those customers complained about the truck's tires or handling. The month before Hofmann's wreck, an Enterprise technician administered preventative maintenance, inspecting each

tire while the truck was raised on a lift. The technician measured each tire's air pressure and inspected the tires for tread wear, blemishes, cuts, bruises, bulges, and rim damage. He discovered no damage to the left-front tire.

Hofmann initiated this negligence suit against Enterprise and later added ABRA as a defendant. (The case had a stint in federal district court. Enterprise removed the suit to federal district court on the basis of diversity-of-citizenship jurisdiction, but the federal court remanded the case to state court after Hofmann amended his complaint to include ABRA, defeating federal jurisdiction.) Hofmann alleged that Enterprise and ABRA failed to meet a duty of care that required them to reasonably inspect the truck tire for potential defects. Hofmann found support for his claim in three expert witnesses: Jay Zembower (a vehicle-repair-standards expert), Micky Gilbert (an accident reconstructionist), and Troy Cottles (a forensic tire analyst). Zembower opined that Enterprise and ABRA should have known that the left-front tire was impacted and that they therefore should have dismounted the tire and conducted an internal inspection. Gilbert and Cottles asserted, respectively, that the left-front tire blew out immediately before Hofmann crashed into the median wall and that this blowout resulted from the tire damage caused by the December 2011 collision.

Both Enterprise and ABRA moved for summary judgment and to exclude Hofmann's expert witnesses. Hofmann opposed the motions, arguing that he had presented sufficient evidence to raise genuine issues of material fact. The district court granted Enterprise's and ABRA's motions for summary judgment but denied their motions to exclude expert testimony. Hofmann appeals.

D E C I S I O N

Hofmann contends that the district court wrongly entered summary judgment. A district court may grant summary judgment only if the pleadings and submitted evidence leave no genuine issues of material fact and any party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). The district court considering summary judgment may not weigh evidence or decide disputed facts but must determine whether material fact issues exist. *DLH, Inc.*, 566 N.W.2d at 70.

Hofmann asks us to review the district court's summary-judgment decision. We review de novo whether a genuine issue of material fact exists and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002). In doing so, we consider any disputed facts in the light that most favors the party against whom the district court granted summary judgment. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Hofmann believes that the district court inappropriately rejected his negligence claim. He argues that the district court weighed his experts' opinions unfavorably and resolved fact disputes against him when it concluded that Enterprise and ABRA satisfied their duty to detect tire damage and that tire damage did not cause his crash. Hofmann's negligence claim requires him to prove that Enterprise or ABRA owed him a duty of care, that it breached that duty, and that the breach proximately caused his injury. *State Farm Fire and Cas. v. Aquila Inc.*, 718 N.W.2d 879, 887 (Minn. 2006).

We must first consider whether Enterprise or ABRA owed a legal duty of care and whether either failed to satisfy this duty. *See Doe 169 v. Brandon*, 845 N.W.2d 174, 177

(Minn. 2014) ("The existence of a duty of care is a threshold question because a defendant cannot breach a nonexistent duty."). Whether a duty exists is a legal question that we review de novo. *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 581 (Minn. 2012). The scope of that duty also is a question of law. *Zacharias v. Minnesota Dept. of Natural Resources*, 506 N.W.2d 313, 319 (Minn. App. 1993), *review denied* (Minn. Nov. 16, 1993).

Hofmann is correct that Enterprise owed him a duty of care, and established law defines the duty. It is well settled that "a lessor in a lease of a vehicle intended to be used upon the public highways owes a duty to the public . . . to exercise reasonable care in supplying . . . the lessee with a vehicle that will not constitute a menace or source of danger." *Kothe v. Tysdale*, 233 Minn. 163, 168, 46 N.W.2d 233, 236 (1951); *see also McLeod v. Holt Motor Co.*, 208 Minn. 473, 477, 294 N.W. 479, 481 (1940). It is likewise settled "that liability attaches to such . . . lessor for injuries which are the result of patent defects in the vehicle thus provided, or of defects therein which could have been discovered by the exercise of ordinary care." *Id.* Enterprise was therefore obligated to take reasonable care to discover both obvious and discoverable defects in order to protect Hofmann from injury while he drove the truck.

No evidence establishes that an entirely external check of the tire, like the one ABRA and Enterprise employees engaged in, would have revealed any defect. But Hofmann contends that Enterprise had a duty to dismount the tire to look for hidden defects because it knew of the prior December 2011 collision. His argument relies primarily on the opinion of his standard-of-care expert, Jay Zembower. Zembower examined photographs from the December 2011 accident and testified that they revealed substantial body damage

near the tire. Zembower also read Wayne Anderson's recounting that the truck had struck multiple curbs during the December 2011 collision. Zembower inferred from the body-damage photographs and Anderson's crash description that Enterprise and ABRA should have known of a "high probability" that the tire was impacted. He reasoned that Enterprise and ABRA should have surmised that their visual inspection could not rule out the existence of serious damage.

Hofmann is correct that summary judgment cannot stand if Zembower's conclusion is credited. But although the court may not weigh evidence at summary judgment, "the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value" to reasonable persons. *DLH, Inc.*, 566 N.W.2d at 70. Zembower did not express the opinion (nor did the nature of his expertise suggest that he could reliably express the opinion) that the photographs would necessarily have led a reasonable professional to conclude that the car that collided with the truck in December 2011 actually struck the tire, likely causing only internally discoverable damage. Nor did he opine that every reasonable tire-repair professional would insist on the internal inspection of every tire that forcefully struck one curb, or multiple curbs. And in the land where striking potholes forcefully or sliding into curbs is as routine as winter but internal tire inspection is not, a professional opinion of that sort is, presumably, unlikely.

Hofmann asks us to consider the industry standard of care, pointing us again to Zembower. Zembower opined that the best practices in the collision industry suggest that the truck tire should have been dismounted for comprehensive internal inspection. He based this opinion on publications by the Rubber Manufacturers Association and the Tire

Industry Association. Both cited publications do recommend internal tire inspection. But Hofmann never establishes that the recommendation rises any higher than best practices, or that they reach anywhere near setting the industry standard. Indeed, Zembower did not assert that either these publications or their recommendations are relied on or followed in the rental-car or tire-repair industry. The closest he came was mentioning his consulting experience assisting a single Florida rental-car company to develop maintenance policies. This falls far short of proving the industry standard. And when Enterprise's deposing attorney asked Zembower to identify the companies that always dismount a vehicle's tire to inspect in similar circumstances, he referred to *his own* company, an auto-service center. This is not evidence of an industry standard of care.

We are aware of no appellate court that has determined that the duty to identify obvious and discoverable defects can be satisfied only by internal inspection after a tire has impacted a curb. Zembower's opinion, which makes a reasonable case for best practices, does not create a triable fact issue on whether Enterprise's or ABRA's external inspection was insufficient to meet their legal duty.

Hofmann implies that Enterprise's and ABRA's external inspections were inadequate even if they had no duty to inspect internally. Here we ask whether the evidence exposes the factual question of "whether the defect in the [vehicle] was a patent defect which would have been discovered by ordinary care." *Crothers by Crothers v. Cohen*, 384 N.W.2d 562, 564 (Minn. App. 1986), *review denied* (Minn. June 13, 1986). Hofmann again points us to Zembower, who asserted that an adequate external inspection requires examining both the outboard and inboard sidewalls. But Hofmann directs us to no evidence

that the inboard sidewall had any damage that would have revealed any obvious or discoverable defect. And the undisputed evidence indicates that the tire's sidewalls were in fact inspected. Steve Ryan's inspection for any irregularities focused on the left-front tire and revealed no damage. Jason Berry spent about 12 hours examining the truck and, because its damaged fender was removed, he said he could clearly see the tire's inboard and outboard sidewalls. Berry found no external damage. The Enterprise technician who performed preventative maintenance in March 2012 raised the truck and, according to undisputed testimony, he checked "the inside part of the tire," which in context can mean only the tire's inboard sidewall. He too found no damage. Although Zembower opined that while there was "some kind of exterior inspection, there's been testimony that there was no inspection of the exterior inboard side," his assessment of the evidence fails on this record.

We conclude, as did the district court, that Hofmann presented no genuine issue of material fact over whether the Enterprise and ABRA employees adequately inspected the truck, including particularly its left-front tire, for any patent or discoverable defects.

We are not persuaded otherwise by Hofmann's contention that Enterprise and ABRA had unqualified individuals inspect the tire. His contention that only a "tire professional" could have cleared the tire for service after the December 2011 collision hits a few curbs. First, the argument tends to expand the legal duty. Second, he identifies no evidence in the record establishing the qualifications necessary to distinguish a supposedly reliable tire professional from a mere auto-repair specialist who frequently works on tires. Hofmann's own tire expert, Troy Cottles, acknowledged that he is unaware of what defines

a "tire service professional" or even whether there exists any certification that could qualify a person as one. And third, Berry, one of two ABRA technicians who examined the tire, considered himself to be a tire-service professional based on his experience. And Zembower generically testified that a tire professional is someone able to inspect a tire's exterior and interior to determine whether the tire has a defect or damage that would render it useable or not. All of the Enterprise and ABRA technicians who examined the tire seem to qualify, but at the least, given Hofmann's failure to identify any standard that would call Berry's self-assessment into doubt, Berry meets Hofmann's undefined tire-professional requirement. Hofmann cannot avoid summary judgment by speculatively questioning the qualifications of the tire inspectors who found no tire damage.

We hold that the duty to look for obvious or discoverable defects did not include the duty for Enterprise or ABRA to dismount the tire to inspect it internally.

Hofmann also challenges the district court's conclusion that summary judgment alternatively rests on Hofmann's failure to present a fact question as to whether any prior damage to the tire actually caused his crash. Hofmann identifies what he believes are flaws in the district court's reasoning. But we need not consider causation, based on our holding that Enterprise and ABRA fulfilled their duty of care.

Affirmed.