

Court of Appeals, State of Michigan

ORDER

Shirley Banks v St John Hospital and Medical Center

Docket No. 338482

LC No. 16-002369-NO

Michael J. Talbot
Presiding Judge

Kirsten Frank Kelly

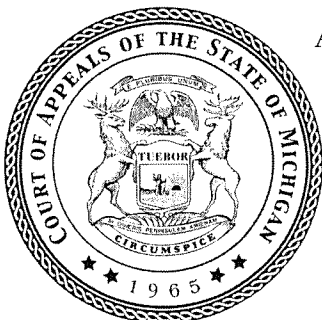
Thomas C. Cameron
Judges

Pursuant to MCR 7.205(E)(2), the Court orders that the circuit court's May 1, 2017 order is REVERSED. Plaintiff's theory that she was injured when the left door opened into her is inconsistent with her testimony that the left door was already opened. This cannot create a genuine issue of material fact precluding summary disposition. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). But even if we were to disregard plaintiff's testimony on this point, *Scott v Harris*, 550 US 372, 380; 127 S Ct 1769; 167 L Ed 2d 686 (2007), summary disposition remains appropriate because plaintiff's theory of causation is as likely as any other theory. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). Indeed, because plaintiff never actually saw the left door (she only "felt cold steel"), it is unclear whether the door was moving (as plaintiff theorizes) or stationary (as defendant theorizes) when plaintiff was injured. Thus, where there are at least two plausible theories of causation, and the latter involves the open and obvious condition of a closed door, *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001), plaintiff's theory is nothing more than conjecture, *Skinner*, 445 Mich 153 at 163. Because this cannot create a genuine issue of material fact, summary disposition should have been entered in defendant's favor.

The motion for leave to file a late reply is GRANTED. The brief that was received on August 3, 2017 is accepted for filing.

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

SEP 14 2017

Date


Chief Clerk