

STATE OF MICHIGAN
COURT OF APPEALS

RONALD LONDON, as Next Friend of RENADA
LONDON, a Minor,

UNPUBLISHED
January 24, 1997

Plaintiff-Appellant,

v

No. 191224
St. Joseph Circuit Court
LC No. 94-000441

SHELLY MONROE, a Minor,

Defendant-Appellee.

Before: Bandstra, P.J., and Hoekstra and S.F. Cox,* JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10)(no genuine issue of material fact). We affirm.

Plaintiff argues that the trial court erred in granting summary disposition to defendant. We disagree. A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. *Barr v Mt Brighton, Inc*, 215 Mich App 512, 515; 546 NW2d 273 (1996). Summary disposition should be granted under MCR 2.116(C)(10) when, except with regard to the amount of damages, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.* The Court reviews the trial court's decision on a motion for summary disposition de novo. *Id.*

Regarding plaintiff's claim that defendant was negligent, we conclude that summary disposition was properly granted in favor of defendant because all reasonable minds would agree that defendant acted as a reasonably prudent person would have acted under the same or similar circumstances. *Thomas v Eppinga*, 179 Mich App 366, 372; 445 NW2d 234 (1989). At the time that defendant made her golf swing, she was located at the place where she should have been positioned. Furthermore, prior to swinging the golf club, defendant warned plaintiff to move away from the swinging area, and plaintiff did move. Defendant looked for the plaintiff prior to making her swing and did not

* Circuit judge, sitting on the Court of Appeals by assignment.

see plaintiff. Although this is an unfortunate accident, we conclude that defendant acted reasonably under the circumstances. There is no genuine issue of material fact, and the trial court properly granted summary disposition in favor of defendant. See *Schmidt v Youngs*, 215 Mich App 222, 225-226; 544 NW2d 743 (1996).

We affirm.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Sean F. Cox