STATE OF MICHIGAN

COURT OF APPEALS

SUSAN SCANNELL,

Plaintiff-Appellant,

v

MILLAR ELEVATOR SERVICE COMPANY, an assumed name for SCHINDLER ELEVATOR CORP, a Michigan corporation,

Defendant-Appellee.

UNPUBLISHED
February 18, 1997

No. 189095

Wayne Circuit Court
LC No. 93-322689 NP

Before: Griffin, P.J., and T.G. Kavanagh,* and D.B. Leiber,** JJ.

PER CURIAM.

Plaintiff appeals the trial court's grant of a directed verdict in defendant's favor in this negligence action. We affirm.

Plaintiff argues that the jury could have found that defendant was negligent in failing to remove a malfunctioning elevator from service and that the malfunction caused plaintiff's injury. We disagree.

Directed verdicts are not favored in negligence cases. *Lamson v Martin (After Remand)*, 216 Mich App 452, 455; 549 NW2d 878 (1996). When deciding a motion for a directed verdict, the trial court must view the testimony and all legitimate inferences therefrom in the light most favorable to the nonmoving party to determine whether a prima facie case was established. *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994). When the evidence could lead reasonable jurors to disagree, the court may not substitute its judgment for that of the jury. *Lamson, supra,* at 455. However, if no

* Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.
** Circuit judge, sitting on the Court of Appeals by assignment.

factual question exists, the trial court is justified in directing a verdict. *Michigan Mutual Ins Co v CNA Ins Cos*, 181 Mich App 376, 380; 448 NW2d 854 (1989).

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. *Shultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). Proving proximate cause entails proof of two separate elements, cause in fact and legal cause, also known as proximate cause. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994).

Plaintiff established the first two elements of negligence. We accept as true plaintiff's expert witness' testimony that defendant had a duty to shut down the elevator and breached that duty by not doing so. *Locke, supra*, 446 Mich at 223. However, plaintiff failed to establish that defendant's failure to shut down the elevator caused plaintiff's injuries. We agree with the trial court that the record is devoid of evidence of what caused the elevator to malfunction. While a plaintiff may show causation circumstantially, the mere happening of an unwitnessed mishap neither eliminates nor reduces a plaintiff's duty to effectively demonstrate causation. *Skinner*, *supra*, 445 Mich at 163. To be adequate, a plaintiff's circumstantial proof must facilitate reasonable inferences of causation, not mere speculation. *Id.* at 164. A causation theory must have some basis in established fact. *Id.* The mere possibility that a defendant's negligence may have been the cause, either theoretical or conjectural, of an accident is not sufficient to establish a causal link between the two. *Id.* at 166; 516 NW2d 475 (1994), citing *Jordan v Whiting Corp*, 396 Mich 145, 151; 240 NW2d 468 (1976). By failing to produce evidence of causation, plaintiff failed to establish a prima facie case of negligence. The trial court was thus justified in directing a verdict for defendant.

Affirmed.

/s/ Richard Allen Griffin
/s/ Thomas G. Kavanagh
/s/ Dennis B. Leiber