

STATE OF MICHIGAN  
COURT OF APPEALS

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CHRISTY TAYLOR and TERESA TAYLOR,

Plaintiffs-Appellants,

v

COUNTY OF WAYNE,

Defendant-Appellee.

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UNPUBLISHED

April 8, 1997

No. 189064

Wayne Circuit Court

LC No. 94415695 NO

Before: Marilyn Kelly, P.J., and Jansen and M. Warshawsky,\* JJ.

PER CURIAM.

This is an action under the highway exception to the governmental immunity statute. Plaintiffs alleged that they were injured because defendant posted an excessive speed limit on Ecorse Road in the City of Romulus. Defendant concedes jurisdiction over the road. Plaintiffs appeal as of right from an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs contend that summary disposition was improper because defendant owed them a duty to post a reasonably safe speed limit. They assert that defendant was not shielded by governmental immunity based on the highway exception as set forth in MCL 691.1402; MSA 3.996(102). For purposes of this opinion, we assume that plaintiffs are correct in arguing that defendant was not protected by governmental immunity. We assume it had a duty to post a reasonably safe speed limit and that breach of the duty would create an actionable hazard. See *Pick v Szymczak*, 451 Mich 607, 622-623; 548 NW2d 603 (1996).

As defendant's motion was brought and decided under MCR 2.116(C)(10), plaintiffs were required to proffer evidence establishing a genuine issue of material fact with regard to each element of their claim. A party opposing a motion brought under C(10) may not rest on the mere allegations or denials in its pleadings but must by affidavits, depositions, admissions, or other documentary evidence set forth specific facts showing a genuine issue of material fact for trial. *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 168; 550 NW2d 846 (1996). One of the elements plaintiffs were required to address was proximate cause, which includes the concept, called "cause in fact," that a defendant's

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

wrongful conduct was an actual cause of a plaintiff's injuries. *Wechsler v Wayne County Road Comm*, 215 Mich App 579, 596 n 11; 546 NW2d 690 (1996).

The evidence offered by the parties indicated that plaintiffs were injured when a truck struck them from behind while they were pushing their car down Ecorse Road around midnight on a rainy night. The posted speed limit was 50 m.p.h. The driver of the truck stated that he did not know how fast he was driving. When the accident occurred, he was about to shift into overdrive and he normally shifted at 40 m.p.h. Plaintiffs offered no evidence suggesting that a lower speed limit would have caused the truck driver to drive still more slowly and that it would have prevented the collision. Plaintiffs' expert swore in his affidavit that the 50 m.p.h. speed limit was excessive and unsafe and was a proximate cause of the accident. However, he expressly based his opinion on the testimony of the truck driver. There was no testimony from the driver regarding his speed at the time of the accident. Hence, there was no evidence upon which to base a finding that the posted speed limit was a cause in fact of the accident. Accordingly, summary disposition was proper.

Affirmed.

/s/ Marilyn Kelly

/s/ Kathleen Jansen

/s/ Meyer Warshawsky