

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS CAMPBELL and KIMBERLY
CAMPBELL,

UNPUBLISHED
March 3, 1998

Plaintiffs-Appellants,

v

No. 193579
Kent Circuit Court
LC No. 93-084504 NO

JK MASONRY, INC., and THE HERB RITSEMA
COMPANY,

Defendants-Appellees.

Before: Griffin, P.J., and Holbrook and Neff, JJ.

PER CURIAM.

In this negligence action, plaintiffs appeal as of right from the trial court's decision to grant summary disposition in favor of defendants on the issue of causation. We affirm.

Plaintiff Thomas Campbell, a steel worker for Pioneer Construction Company, alleged that he was injured while working on a building site when his ladder slipped on debris left by defendant JK Masonry or defendant Ritsema, subcontractors on the project. He alleged that defendant JK Masonry negligently failed to clean up the mortar it was installing and that defendant Ritsema was negligent for failing to clean up its fireproofing materials. Plaintiff Kimberly Campbell, Thomas' wife, pleaded a claim for loss of consortium that was derivative of her husband's negligence claim. The trial court granted summary disposition to defendants, concluding that the evidence of their negligence was speculative and that plaintiffs had failed to establish a genuine issue of material fact on the element of causation. MCR 2.116(C)(10).

In reviewing the evidence de novo, *Donajkowski v Alpena Power Co*, 219 Mich App 441, 446; 556 NW2d 876 (1996), we hold that the trial court properly determined that the evidence of causation was inadequate to create a genuine issue of material fact. No definite evidence was presented regarding what actually caused the ladder to slip. The only witness on the scene of the accident was plaintiff. However, his deposition testimony on the key point of causation was equivocal: "I don't know if it [the floor condition] was loose or if it was half frozen." Although he also testified that he placed the

ladder on top of mortar, Campbell's testimony does not include facts regarding the cause of the fall. Nothing in plaintiff's testimony demonstrates that the mortar or fireproofing materials were the cause in fact of plaintiff's injuries. Because Campbell was only speculating that defendants' materials caused the ladder to slip, his testimony is inadequate to create a genuine issue of fact.

Moreover, plaintiff's explanation suggests a different plausible reason for the fall -- the ladder may have slipped on ice. There was ice, mud, and other debris on the fourth floor of the building site in addition to the mortar and fireproofing materials. Plaintiff admitted that there was no investigation of the site to determine the reason that the ladder slipped. Consequently, there is no way to determine if the materials allegedly left by defendants caused the accident. Hence, the evidence was conjectural and there was no reasonable basis on which to conclude that defendants' alleged negligence caused the accident. See *Skinner v Square D Co*, 445 Mich 153, 162-165; 516 NW2d 475 (1994).

Contrary to plaintiffs' argument, the doctrine of the alternative theory does not apply to these circumstances. Plaintiffs have failed to prove that Campbell was harmed by the conduct of one of the defendants. See *Abel v Eli Lilly & Co*, 418 Mich 311, 331-332; 343 NW2d 164 (1984).

Finally, the trial court's grant of summary disposition was not premature. Because there were no witnesses to the accident and because there was no investigation to determine what caused the ladder to slip, further discovery would not have assisted plaintiffs in proving that either the mortar or fireproofing insulation caused the accident. See *Prysak v R L Polk & Co*, 193 Mich App 1, 11; 483 NW2d 629 (1992).

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff