

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PIONEER STATE MUTUAL INSURANCE  
COMPANY,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant,

and

MORAN OLDSMOBILE-CADILLAC-GMC  
TRUCK, INC.,

Defendant-Appellee.

UNPUBLISHED  
April 28, 2005

No. 249713  
St. Clair Circuit Court  
LC No. 01-003434-NP

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PIONEER STATE MUTUAL INSURANCE  
COMPANY,

Plaintiff-Appellee,

v

GENERAL MOTORS CORPORATION,

Defendant,

and

MORAN OLDSMOBILE-CADILLAC-GMC  
TRUCK, INC.,

Defendant-Appellant.

No. 251382  
St. Clair Circuit Court  
LC No. 01-003434-NP

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Before: Saad, P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

In Docket No. 249713, plaintiff Pioneer Mutual Insurance Company (“Pioneer”) appeals the trial court’s order that granted summary disposition in favor of defendant Moran Oldsmobile-Cadillac-GMC Truck, Inc. (“Moran”),<sup>1</sup> pursuant to MCR 2.116(C)(10). In Docket No. 251382, Moran appeals the trial court’s order that denied its motion for sanctions against plaintiff for allegedly filing and maintaining a frivolous lawsuit. We affirm both orders.

## I. FACTUAL BACKGROUND

These consolidated cases arise out of a subrogation action filed by Pioneer as subrogee against Moran that alleges that Moran’s negligent repair of a car (“the car”) owned by Pioneer’s insureds was the proximate cause of a fire that destroyed the car, another vehicle in the insureds’ garage, and the insureds’ home and personal possessions.

Pioneer hired an investigator, Daniel Terski, to investigate the fire. Terski concluded that the fire began in the car’s engine compartment, but could not say what caused the fire. Pioneer then hired electrical engineer Michael McGuire to investigate the accident further. McGuire reviewed Terski’s report and conducted his own examination of the car’s engine compartment, and concluded that an electrical failure in the engine compartment was the cause of the fire. Significantly, neither Terski nor McGuire concluded that the electrical failure was related to repair work performed by Moran. A third investigator, Ray Davis, opined that the fire was caused by a high-resistance short circuit in the battery cable because of what he characterizes as “arcing marks” on the engine mount.<sup>2</sup>

Moran filed a motion for summary disposition on the basis that there was no genuine issue of material fact because Pioneer could not show that Moran’s conduct caused the fire. The trial court granted Moran’s motion on the basis that the opinions of Pioneer’s experts constituted speculation and conjecture.

Moran then filed a postjudgment motion seeking sanctions for frivolous proceedings against Pioneer, which the trial court denied.

## II. DOCKET NO. 249713

Pioneer says that the trial court erred when it granted summary disposition in favor of Moran.<sup>3</sup> Generally, to establish a theory of causation in a civil case, a plaintiff “must present

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<sup>1</sup> Defendant General Motors Corporation is not a party to these appeals.

<sup>2</sup> Moran alleges that these “arcing marks” are actually standard manufacturing marks, and that Davis’s conclusions were erroneous. Additionally, in their brief on appeal, Pioneer concedes that Davis gave “erroneous opinions.”

<sup>3</sup> We review the grant of a motion for summary disposition under MCR 2.116(C)(10) de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In doing so, the facts are considered in the light most favorable to the nonmoving party to determine whether there is a

(continued...)

substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred." *Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994). Accordingly, to establish a genuine issue of factual causation, a plaintiff must "set forth specific facts that would support a reasonable inference of a logical sequence of cause and effect." *Id.* at 174. "[C]ausation theories that are mere possibilities or, at most, equally as probable as other theories" are insufficient. *Id.* at 172-173. Mere conjecture is insufficient to establish a factual issue regarding causation. *Id.* at 174.

Here, Pioneer's experts, at best, could only testify that one *possible* cause of the fire is alleged negligent conduct of Moran. McGuire testified that he had performed no objective scientific or technical testing that would link any conduct of Moran to the fire. McGuire's conclusion is essentially a "hunch," made on the basis of the evidence he found of an electrical failure, combined with the proximity in time of the fire to some significant repair work Moran had completed on the car. The trial court concluded that the evidence presented by Pioneer was simply too speculative, and that, as a result, summary disposition was appropriate.<sup>4</sup> We agree with the trial court, and hold that it properly granted summary disposition in favor of Moran.

### III. DOCKET NO. 251382

Moran argues that the trial court erred when it denied its motion for sanctions against Pioneer for a frivolous action.<sup>5</sup> MCR 2.625(A)(2) provides that if a court finds that an action is frivolous "costs shall be awarded as provided by MCL 600.2591." MCL 600.2591(3) provides as follows regarding the meaning of "frivolous" in this context:

(a) "Frivolous" means that at least 1 of the following conditions is met:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

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genuine issue of material fact for trial. *Id.*

<sup>4</sup> In its written opinion on Moran's motion, the trial court stated:

The opinion of plaintiff's expert in this case fails to rise above mere speculation and conjecture. Perhaps the technician might have been able to see a defect or hazard when the connector was reconnected, or perhaps he might not have been. Perhaps that was the cause of the fire, perhaps it was not. . . . Under these facts, it would be inappropriate to submit this case to a jury. [Unpublished opinion of the St. Clair Circuit Court (Daniel J. Kelly, J.), issued May 1, 2003 (Docket No. 01-003434-NP), p. 3.]

<sup>5</sup> We review a trial court's decision whether to impose a sanction based on an action being frivolous for clear error. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997); see also *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). A decision is clearly erroneous if the reviewing court has a firm and definite conviction that a mistake was made. *Id.* at 661-662.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

As Moran acknowledges, Pioneer's claims against it in Pioneer's initial complaint were based on the opinion of Davis regarding the cause of the fire. While his opinion was eventually discredited, it does not follow that it was clearly unreasonable for Pioneer to rely on the accuracy of that opinion in preparing the complaint that initiated suit against Moran, particularly where the fire occurred within a short timeframe after Moran's work on the car. Indeed, it seems clear that parties and counsel generally need to rely on the views of experts regarding complex matters such as ascertaining the cause of a possible mechanical or electrical malfunction. A plaintiff should not have to second-guess its experts. Accordingly, we hold that the trial court<sup>6</sup> did not clearly err in refusing to categorize Pioneer's suit against Moran as frivolous.

Affirmed.

/s/ Henry William Saad  
/s/ E. Thomas Fitzgerald  
/s/ Michael R. Smolenski

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<sup>6</sup> During the motion hearing on Moran's motion for sanctions, the trial court stated:

I suppose every time a lawsuit is dismissed on summary disposition there is a thought that it was a frivolous action[,] otherwise[,] the Judge would have at least allowed it to go to trial. . . . Obviously, I felt there wasn't sufficient evidence to proceed to trial. But for me to conclude that it was frivolous in its initiation goes a step [further] and a step that I'm not prepared to take today.