

STATE OF MICHIGAN
COURT OF APPEALS

MARVIN CARTER,

Plaintiff-Appellant,

v

NATIONAL EQUIPMENT SERVICES, INC.,

Defendant-Appellee.

UNPUBLISHED

April 26, 2007

No. 273794

Wayne Circuit Court

LC No. 05-514239-NI

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition in this negligence case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, an employee of Ford Motor Company, filed suit alleging that on March 4, 2004, he was working as a forklift operator for Visteon under a lease arrangement, and was injured when a tire fell off the forklift because the lug nuts that secured the tire were loose. Plaintiff alleged that defendant, the company that leased the forklift to Visteon, breached its duty to maintain the forklift in proper working order, and that as a direct and proximate result of defendant's negligence, he suffered severe and permanent injuries.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no evidence demonstrated that any defect in the forklift was caused by defendant or was known to defendant when the forklift was delivered to Visteon. Defendant's expert, a mechanical engineer, opined that it was impossible that three lug nuts would fall off from one wheel of the forklift at the same time. In addition, he opined that if the lug nuts had been loose when the forklift was delivered to Visteon in January 2004, employees who operated the forklift, including plaintiff, would have noticed that the tire was wobbly and unsteady, and would have observed damage to the tire rim.

In response, plaintiff argued that a question of fact existed as to whether the forklift was defective when it left defendant's custody. Plaintiff noted that an inspection conducted after the accident revealed that the lug nuts on the forklift were torqued to 250 pounds, but that the proper torque setting was 450 to 500 pounds. Plaintiff asserted that at a minimum, a question of fact existed as to whether the lug nuts were loose when the machine was delivered to Visteon.

The trial court granted defendant's motion for summary disposition, holding that a finding that a breach of duty by defendant resulted in plaintiff's injury would be based entirely on speculation.

We review the trial court's decision on a motion for summary disposition de novo. In reviewing the decision on a motion brought pursuant to MCR 2.116(C)(10), we must review the record evidence and all reasonable inferences drawn therefrom in a light most favorable to the nonmoving party, and decide whether a genuine issue of material fact exists. *Trepanier v Nat'l Amusements, Inc*, 250 Mich App 578, 582-583; 649 NW2d 754 (2002).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. Plaintiff asserts that the evidence showed that the forklift arrived at Visteon's plant in a defective condition, i.e., with the lug nuts torqued at 250 pounds rather than at the specified 450 to 500 pounds, and that no evidence supported a finding that the lug nuts had been tampered with prior to the accident. We disagree.

The forklift was delivered to Visteon on January 15, 2004. The undisputed evidence showed that a Visteon employee inspected and drove the forklift before it was put into service, that he did not detect any defect in the machine, and that he would have noticed a loose wheel when he drove the forklift. Thereafter, no problems with the forklift's tires materialized until plaintiff's accident occurred on March 4, 2004. Plaintiff acknowledged that he visually inspected the forklift before he drove it each day, including the day on which the accident occurred. When the accident occurred, several lug nuts came off the wheel virtually simultaneously. An inspection conducted after the accident occurred indicated that vandalism was a possibility, but no substantive evidence of tampering could be found.

Plaintiff presented evidence that the lug nuts were torqued at 250 pounds, but that the proper torque level for the lug nuts on this particular forklift was 450 to 500 pounds. However, plaintiff presented no evidence that established that the forklift would not function properly if the lug nuts were torqued at 250 pounds. Moreover, inspection of the forklift after the accident revealed no damage to the tire rim. Defendant's expert opined that such damage would have been present had the forklift been driven for several weeks with loose lug nuts, and that had the lug nuts been loose before the accident occurred, the forklift operator would have detected wobbling in the tire.

Plaintiff did not present evidence to establish why the accident occurred as it did. Such evidence must be presented to make out a prima facie case of negligence. *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977). To establish causation, a plaintiff must prove that it is more likely than not that but for the defendant's breach of duty, the injury would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 165-166; 516 NW2d 475 (1994). The

possibility that a breach of duty by defendant caused plaintiff to sustain injuries is not sufficient to establish causation. *Ritter, supra*. The trial court properly decided the issue as one of law and granted summary disposition. *Reeves v K-Mart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello