STATE OF MICHIGAN

COURT OF APPEALS

MARY DANEK, Plaintiff-Appellant,	UNPUBLISHED January 18, 2018
v	No. 335345 Wayne Circuit Court
TIMOTHY BONNELL and MIKE MUELLER, Defendants-Appellees.	LC No. 15-009384-NI

Before: JANSEN, P.J., and FORT HOOD and RIORDAN, JJ.

PER CURIAM.

Plaintiff Mary Danek appeals as of right the trial court's order granting summary disposition in favor of defendants Timothy Bonnell and Mike Mueller in this negligence action.[1] For the reasons set forth in this opinion, we reverse.

I. BACKGROUND

A. FACTS

This appeal arises from a snowmobile accident that took place in Cadillac, Michigan on January 16, 2015. Plaintiff was riding as a passenger on a Skidoo snowmobile owned by Bonnell and operated by Mueller when Mueller lost control of the snowmobile, causing it to spin out several times and flip, and plaintiff sustained injuries as a result. In her February 23, 2016 deposition, plaintiff testified that the snowmobile accident took place while plaintiff was visiting Bonnell's home in Cadillac with Mueller, who at that time was her boyfriend. She and Mueller arrived up north on Thursday night, and the next day, plaintiff just "hung around[,]" waiting for Mueller and Bonnell to get the snowmobiles ready to ride. Starting at approximately 10:00 a.m., plaintiff had some Bailey's Irish Cream in her coffee, and she also spent the day smoking marijuana while hanging out in the garage at Bonnell's home. Plaintiff could not give specifics about how much marijuana that she smoked, but stated that while hanging out in the garage, "we would smoke and then we would drink. But I didn't drink." According to plaintiff, the marijuana that she smoked was not hers, but it was "[e]ither [Mueller's] or [Bonnell's]." At one

[1] Throughout this opinion Bonnell and Mueller will also be referred to collectively as defendants.

point a neighbor, Craig Skolton, stopped by and suggested that everyone participate in a round of shots of Fireball cinnamon whiskey. After the group took their shots, Bonnell suggested that he, plaintiff and Mueller head out snowmobiling. According to plaintiff, the accident took place sometime between 9:00 p.m. and 11:00 p.m.

When asked to describe Mueller's drinking and smoking of marijuana the day of the accident, the following colloquy took place between plaintiff and defense counsel:

Q. What was [Mueller] drinking?

A. I would see him – I didn't – like he had a beer and then he did, took the shots with us and throughout the day –

Q. Okay.

A. --he was smoking [marijuana] and drinking.

Q. Okay. You said shots. Was there more than one shot?

A. That I saw personally, no.

Q. Okay. You said that you would see him holding a beer?

A. No, I didn't see him – I never saw him holding the beer but it was around.

Q. So you never saw him holding a beer.

A. No.

Q. Okay.

A. No, I never watched him.

Q. The only drink you saw [Mueller] take was the shot of Fireball?

A. Uh-huh.

Q. Yes?

A. Yes. Sorry.

Q. Did you ever – did he – you said that the weed was being passed around. Would that be between the three or four of you?[2]

[2] Counsel was also referring to Bonnell's neighbor, Skolton.

A. The three of us. Not the four of us.

Q. Not the other guy?

A. No, because he was not there for a long time.

Q. And would you smoke whenever [Mueller] smoked?

A. Yes.

Q. Fair to say you probably smoked as much as he did?

A. It's fair to say that, yes.

* * *

Q. Did – before you went out did [Mueller] appear to be intoxicated to you?

A. No, not – I mean, everyone was talking fine.

Q. Before you went out, when was the last time before that that you guys smoked [marijuana]?

A. I feel like we did the shot, the shot was the last thing that we did. So before the shot, sometime before the shot I'm not really too sure probably within the hour or something.

When plaintiff and Mueller were riding on the snowmobile, she described the experience as "a scary ride[,]" and stated that she "was scared the whole time." According to plaintiff, "[w]e were cutting through houses and I wasn't comfortable with it at all. We were going really fast . . . [.]" Plaintiff described the snowmobile ride as moving in a zig zag fashion, and stated that she and Mueller traversed both streets as well as trails. During the snowmobile ride, she and Mueller were following Bonnell and also spinning around trees. When Bonnell mounted a hill, he lost control of his snowmobile and it fell over. After she and Mueller helped Bonnell with getting his snowmobile upright, Bonnell drove off without waiting for plaintiff and Mueller to get back on their snowmobile, and then she and Mueller had to try and find Bonnell. Plaintiff described the moments leading up to the snowmobile accident as follows:

> So we're driving down the road looking for [Bonnell] and we're going back and forth, [Mueller] made one turn down one random street and we came back, I believe that we were on the same street that we lost [Bonnell] on that we lost control.
>
> But I remember [Mueller] speeding up at one point and then after speeding up like a second later he's doing this quick turn and I remember in my head I said why isn't he slowing down first to turn? I didn't see anything.

So all we did was turn. I remember trees, trees, trees, we spun three times and then on that third spin going to the fourth spin we did the flip.

Plaintiff testified that before the accident, the snowmobile was travelling about 50 miles an hour, and right before the accident was "the fastest point that we were [travelling] on the whole ride[.]" While plaintiff acknowledged that she could not see ahead of her because of Mueller sitting in front of her, she specifically recalled Mueller "speeding up and then turning. . . . When we turned I could see what was – you know, we turned this way so I could see everything that was there. I had my head this way and I remember seeing tree [sic] and trees and trees when we spun." Plaintiff further described the turn as a "hard turn, it wasn't a slight turn like, no. And there was no slowing down like you would to turn. It was just a solid turn." At the time of the accident, plaintiff and Mueller were travelling on a paved road intended for vehicular traffic, the accident took place at the end of a T-shaped intersection, and when she was thrown from the snowmobile during the accident plaintiff landed on pavement. Plaintiff also stated that Mueller told her that the reason the snowmobile spun out was because "[h]e said he was going too fast[,]" "there was no more road[,] [i]t was just trees and he said he had the option of going straight into a tree or turning." When asked if she believed that alcohol caused the accident or contributed to it, plaintiff responded, "I really don't know. I have no idea. I don't know."

During his June 28, 2016 deposition, Bonnell testified that he owns the home where Mueller and plaintiff were visiting on January 16, 2015, as well as two snowmobiles, a Skidoo and a Yamaha. On the date of the accident, Mueller was driving the Skidoo snowmobile. Bonnell and Mueller work together and are friends, and according to Bonnell, Mueller is familiar with snowmobiles because Mueller "had a couple in his garage[.]" Bonnell recalled that on the day of the accident, Bonnell "could have had a couple of beers during the day, but nobody was really drunk or anything, so, you know, I don't know." When questioned if the trio smoked marijuana, Bonnell responded, "Yeah, [plaintiff] had marijuana. [Mueller] had marijuana, I might have had marijuana so." Bonnell later qualified his testimony, stating that he was not certain if Mueller had smoked marijuana, and that Mueller "doesn't normally smoke pot . . . ." When questioned by plaintiff's counsel regarding Mueller's smoking of marijuana, Bonnell testified as follows:

Q. And you do remember that the three of you smoked marijuana before you went on the snowmobiles?

A. I don't know.

* * *

A. If we smoked it before we went snowmobiling? We had smoked it during the day.

Q. But that was before you went on the snowmobiles?

A. Correct, but it might have been six hours before or eight hours, but, yes, correct, anything before that accident I smoked pot before.

Bonnell also stated that in the two hours before the trio went snowmobiling at approximately 8:00 or 8:30 p.m., they watched television and chatted with Skolton, but Bonnell could not recall anyone smoking marijuana or drinking during that time period. The trio planned to ride the snowmobiles to a place called Tower Hill, an old power tower on Lake Missaukee. The trio set out with Bonnell leading the way on his snowmobile, but when he turned on a trail, Mueller and plaintiff did not follow. Consequently, Bonnell did not see the snowmobile accident and it was only when he saw that Mueller and plaintiff's snowmobile was not behind him that he was aware that something was amiss. However, when he pulled up to the scene of the accident, Mueller told Bonnell that he had "hit ice and the [snowmobile] sled spun out." The only damage to the snowmobile following the accident was that a mirror was broken. Bonnell also could not recall how much beer Mueller drank the day of the accident.

During his June 28, 2016 deposition, Mueller denied smoking any marijuana on the day of the accident, or seeing Bonnell do so, but stated that plaintiff "[p]robably[ ]" did. Mueller also did not know if plaintiff brought marijuana up north for the snowmobiling trip. According to Mueller, during the day of the accident, the trio went into town and had lunch, and also purchased new batteries for the snowmobiles. After returning from town, while Mueller worked on the snowmobiles for an hour and a half, plaintiff and Bonnell were in the house but Mueller was not sure what they were doing. After he worked on the snowmobiles, Mueller shoveled some snow and had a cigarette in the pole barn. Mueller was unaware if plaintiff and Bonnell were smoking marijuana, and when questioned about plaintiff's deposition testimony that all three of them smoked marijuana on January 16, 2015, Mueller again denied doing so. According to Mueller, he had not smoked marijuana since high school. While working on the snowmobiles, Mueller had one beer. However, throughout the whole day, Mueller had two beers.[3] After finishing his cigarette, Mueller ate the rest of his lunch from earlier in the day, and the trio set out on the snowmobiles. During the snowmobile ride Mueller travelled over trails as well as roads.

At some point during the trip the two snowmobiles became separated, as Mueller and Bonnell went different directions, and as Mueller attempted to find Bonnell, he came upon a T-shaped intersection travelling 35 miles an hour. When Mueller saw a stop sign at the intersection he used the brakes on the snowmobile, but as he applied the brakes he lost control and the snowmobile started to spin out. The road that Mueller was travelling on was a gravel road intended for vehicular traffic, and was covered with hard packed snow. Mueller had been riding the snowmobile for 45 minutes before the accident, and attributed the accident to the hard-packed snow on the road. Mueller had to stop when he did or else he would have driven into trees, and the snowmobile did three 360 degree turns and flipped on its side and both he and plaintiff were thrown from the snowmobile. Before the incident giving rise to this appeal, Mueller had been snowmobiling a "handful[,]" of times, perhaps five, throughout his lifetime, but he was involved in motor-cross racing.

B. PROCEDURAL HISTORY

[3] It is unclear from the record whether Mueller drank both beers before the accident.

On July 20, 2015, plaintiff filed her first amended complaint against Bonnell and Mueller. Plaintiff alleged that Mueller had operated the snowmobile in a "careless and negligent manner" in contravention of MCL 324.82126(1)(a), "in willful and wanton disregard of the safety of others," that he had failed to keep the snowmobile "under control[,]" and operated it at a higher rate of speed than was reasonable and proper given the conditions that existed at the time of the accident. Plaintiff also alleged that Mueller breached a duty of care "to not operate the snowmobile under the influence of alcohol." Plaintiff alleged negligence against Bonnell pursuant to MCL 257.401(1),[4] asserting that he "authorized or knowingly permitted [d]efendant Mike Mueller to operate said snowmobile under the influence of alcohol in violation of MCL 324.82127." Plaintiff further alleged that she suffered injuries following the snowmobile accident of "3 fractures in [her] left shoulder and 2 pelvis fractures[.]"

Defendants filed answers and affirmative defenses and the parties engaged in discovery. On July 25, 2016, defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). In their motion, defendants argued that plaintiff, on the basis of her own deposition testimony, "is unable to determine how the [snowmobile] accident occurred and is likewise unable to determine how [d]efendant Mueller was negligent." According to defendants, plaintiff could only speculate that the accident occurred when the snowmobile spun out on snow, and such conjecture was not sufficient to establish a question of fact for trial. Defendants also contended that, even if plaintiff's assumptions concerning the cause of the accident were true, she had assumed the risk of engaging in inherently risky snowmobiling activity with Mueller, and defendants could not be held liable pursuant to MCL 324.82126(8). In their brief in support of their motion, defendants asserted that the record evidence did not support a conclusion that Mueller was "over the legal limit for alcohol consumption at the time of the accident and [there was] likewise no evidence that alcohol played a role in the accident in any way." Defendants pointed out that while plaintiff, during her deposition, testified that she and defendants were drinking and smoking marijuana in the hours leading up to the snowmobile accident, she had conceded that the two men did not seem intoxicated, and that she did not see Mueller actually holding a beer. Defendants also asserted that "there is no evidence that [d]efendant Mueller was operating the snowmobile in a careless or negligent manner or that the negligent operation by

[4] MCL 257.401(1) provides, in pertinent part, as follows:

> This section shall not be construed to limit the right of a person to bring a civil action for damages for injuries to either person or property resulting from a violation of this act by the owner or operator of a motor vehicle or his or her agent or servant. The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. It is presumed that the motor vehicle is being driven with the knowledge and consent of the owner if it is driven at the time of the injury by his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the family.

[d]efendant Mueller was the cause of the accident." According to defendants, the record was also devoid of "evidence that [d]efendant [Mueller] was in violation of Michigan law as it pertains to the use of alcohol or marijuana on a snowmobile." Specifically, defendants noted that Michigan law prohibits the operation of a snowmobile "while under the influence of alcohol or any controlled substance[,]" or with a "blood alcohol content of .08."[5]

In her response to defendants' motion for summary disposition, plaintiff asserted that her deposition testimony clearly established the cause of the snowmobile crash, specifically that Mueller was operating the snowmobile at an excessive rate of speed, and that he had to "violent[ly] turn his snowmobile because he 'ran out of road' and was about to slam into a grove of trees." While plaintiff conceded that the record did not contain evidence that Mueller was over the legal limit with regard to alcohol or drug intoxication, she contended that "there is plenty of evidence to show that [Mueller] had been drinking and stoning during the day," creating factual disputes for the jury with regard to Mueller's level of intoxication, as well as whether it impacted his judgment with regard to his speed and operating the snowmobile in the existing weather conditions. In her brief in support of her response, plaintiff reiterated that Mueller's partaking of drugs and alcohol in the hours leading up to the accident, particularly a shot of Fireball cinnamon whiskey before heading out on a dark night on the snowmobile, together with his inexperience driving a snowmobile and his speed, led to the circumstances where Mueller could not stop in time, and had to turn at the last minute to avoid hitting a group of trees. Plaintiff also contended that MCL 324.82126(8) was not applicable under the facts of this case, where she did not assume the risk of Mueller driving "the snowmobile recklessly, carelessly, too fast for conditions, arguably hopped up on booze and drugs, and unable to stop in assured clear distances at intersections and with trees, and [where Mueller] amateurishly operated the snowmobile as an inexperienced driver." Plaintiff also pointed out that MCL 324.82127(1)(a) prohibits individuals from operating snowmobiles in Michigan while under the influence of alcohol or marijuana. Likewise, MCL 324.82127(2)(a) and (b) prohibit the owner of a snowmobile from allowing the snowmobile to be operated by someone under the influence of alcohol or a controlled substance. According to plaintiff, "[t]he jury should be allowed to assess the credibility of [plaintiff, Bonnell, and Mueller] as to how much was consumed, what was consumed, and the extent to which Mueller and Bonnell were under the influence of alcohol and marijuana at the time of the crash."

The trial court held a hearing on defendants' motion for summary disposition on October 4, 2016. During the motion hearing, defense counsel argued that because plaintiff had not put forth an expert witness to testify concerning the cause of the accident, "there is no way to show [the accident] was the result of anybody's negligence." Defense counsel also asserted that plaintiff assumed the risk of riding the snowmobile. According to defense counsel, "[p]laintiff herself testified that nobody – nobody was intoxicated. That they didn't have anything to do with the accident." Defense counsel stated that the only evidence of alcohol consumption by Mueller was "one beer" during the day leading up to the accident, and "[t]here is no evidence

[5] Defendants reiterated these same arguments in their brief in reply to plaintiff's response to their motion for summary disposition.

that anybody was under the influence of drugs or alcohol; that the accident occurred, as a result of the use of drugs or alcohol or that that was connected in any way." In response, plaintiff's counsel pointed out that in her deposition, plaintiff had stated that the trio had "all sat around all day[,] [t]hey were smoking pot[,] [t]hey were drinking Fireball[,]" and that Mueller, an inexperienced snowmobile driver, was driving at night in an unfamiliar area. According to plaintiff's counsel, MCL 324.82126(8) did not apply where the operator of the snowmobile was negligent, and "negligence is clearly a question for the jury to decide."

Before ruling on defendants' motion from the bench, the trial court noted that MCL 324.82126(8) clearly provided that those who participate in the sport of snowmobiling accept the risks associated with the sport, and that of the risks assumed are injuries that "result from variations in [the] terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, or other forms of natural growth or debris[,] and collision with signs, fences, or [other] snowmobiles, or snow grooming equipment[.]" While acknowledging that individuals do not assume the risk of negligent snowmobile operation, the trial court further stated, "all [Mueller] was doing was driving – he was driving – they drive fast. You don't drive snowmobiles at 25, 30 miles an hour." The trial court went on to state, in pertinent part, as follows:

> People drive snowmobiles fast and that's why, you know, the statute is here, because you can't just say, oh, I was on a snowmobile and we were driving fast, it's dark. You know, that's why I say, even if you hit a rock, even if you ran into a tree, even if you ran into a stop sign, you wouldn't be able to recover and this is a situation where he hit – he just chose not to blow the stop sign, in terms of trying to be prudent, and then that's when the incident occurred. He swerved and that – there's – there's nothing that would take this case out of operation in the ordinary course of business, operation of a snowmobile that is. I don't see anything that, you know, in terms of the negligence and the operation. You swerve, you know, to avoid stuff, to – you know, there is [sic] high rates of speed. You don't drive – you know, that's why they say it's inherently dangerous. It's in – there is an inherent danger involved in --. . . snowmobiling.
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> * * *
>
> All right. Taking the evidence in a light most favorable to the nonmoving party, the Court finds that there is not a question of fact. That, based on the law presented, that this Court will grant summary disposition, based upon the law and the facts as presented.

II. STANDARD OF REVIEW

Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). This Court reviews de novo the trial court's decision granting defendants' motion for summary disposition. *Citizens Ins Co of America v Univ Physician Group*, 319 Mich App 642, 647; 902 NW2d 896 (2017). Where the trial court considered evidence beyond the pleadings, and concluded that questions of fact did not exist to warrant trial, we review its decision as having been granted pursuant to MCR 2.116(C)(10). *Cuddington v United Health Servs, Inc*, 298 Mich App 264, 270; 826 NW2d 519 (2012).

> In reviewing a motion brought under MCR 2.116(C)(10), we review the evidence submitted by the parties in a light most favorable to the nonmoving party to determine whether there is a genuine issue regarding any material fact. A genuine issue of material fact exists when the record leaves open an issue on which reasonable minds could differ. [*Cuddington*, 298 Mich App at 270-271 (quotation marks and citations omitted).]

III. ANALYSIS

On appeal, plaintiff contends that the trial court erred in concluding that MCL 324.82126(8) operates to bar her claims where genuine issues of material fact exist with regard to whether Mueller operated the snowmobile in a negligent and careless manner. We agree.

> As relevant to this appeal, MCL 324.82126 provides, in pertinent part, as follows:
>
> (1) A person shall not operate a snowmobile under any of the following circumstances:
>
> (a) At a rate of speed greater than is reasonable and proper having due regard for conditions then existing.
>
> * * *
>
> (8) Each person who participates in the sport of snowmobiling accepts the risks associated with that sport insofar as the dangers are obvious and inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with signs, fences, or other snowmobiles or snow-grooming equipment. *Those risks do not include injuries to persons or property that can result from the use of a snowmobile by another person in a careless or negligent manner likely to endanger person or property*. . . . [Emphasis added.]

Where the record evidence is replete with evidence yielding genuine issues of material fact with respect to whether Mueller operated the snowmobile in a careless and negligent manner on January 16, 2015, the trial court erred in concluding that MCL 324.82126(8) barred plaintiff's claims. For example, plaintiff's deposition testimony establishes that Mueller was drinking beer in the hours leading up to the snowmobile ride, as well as smoking marijuana, and that immediately before the trio set out on their snowmobile trip in the late evening hours of January 16, 2015, Mueller took a shot of Fireball cinnamon whiskey.[6] Notably, plaintiff's testimony is

[6] As plaintiff pointed out in the trial court and in her brief on appeal, at the time of the subject accident, MCL 324.82127(1)(a) prohibited the operation of a snowmobile "under the influence of alcoholic liquor or a controlled substance, or both." As amended by 2014 PA 404, effective March 31, 2015, the statute also now prohibits the operation of a snowmobile when "the person has in his or her body any amount of a controlled substance[.]" MCL 324.82127(1)(c).

supported by Bonnell's, who testified that Mueller smoked marijuana in the hours leading up to the accident. Additionally, plaintiff testified that Mueller was driving erratically, at a very high rate of speed, in residential areas near Bonnell's home with which Mueller was unfamiliar. Specifically, plaintiff described Mueller as at one point driving in a zig zag fashion between residential homes. Moreover, plaintiff testified that in the moments before the accident, right before Mueller made the turn that led to the snowmobile spinning out and flipping, Mueller had in fact increased his speed. We recognize that Mueller's version of the day's events leading up to the accident, as well as the cause of the accident itself, are contrary to what plaintiff testified. Bonnell's deposition testimony was also contradictory to plaintiff's in several respects. However, in our view, these inconsistencies and contradictions on the key issue of whether Mueller operated the snowmobile in a careful and reasonable manner create genuine issues of material fact for the jury's consideration on the issue of Mueller's negligence, and the trial court therefore erred in granting judgment in favor of defendants as a matter of law.

We also reject defendants' contention that the record evidence does not contain genuine issues of material fact with regard to whether any alleged negligence on the part of Mueller caused the accident in this case. In *Ray v Swager*, 501 Mich 52, 63 n 13; 903 NW2d 366 (2017), the Michigan Supreme Court, quoting *Moning v Alfono*, 400 Mich 425, 437; 254 NW2d 759 (1977) recently articulated that " '[t]he elements of an action for negligence are (i) duty, (ii) general standard of care, (iii) specific standard of care, (iv) cause in fact, (v) legal or proximate cause, and (vi) damage.' "

> Proximate cause, also known as legal causation, is a legal term of art with a long pedigree in our caselaw. Proximate cause is an essential element of a negligence claim. It involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences. Proximate cause is distinct from cause in fact, also known as factual causation, which requires showing that but for the defendant's actions, the plaintiff's injury would not have occurred. [*Ray*, 501 Mich at 63 (footnotes, citations and quotation marks omitted).]

In the instant case, plaintiff testified that Mueller consumed Fireball cinnamon whiskey shortly before he boarded the snowmobile with her as a passenger, after having been drinking beer throughout the day and smoking marijuana. The record also reflects that Mueller was operating the snowmobile at a high rate of speed and driving it in such a way that plaintiff was frightened and concerned for her safety. Right before making a hard and abrupt turn to avoid crashing into trees, Mueller increased his speed, according to plaintiff's testimony. Mueller then lost control of the snowmobile, and it spun 360 degrees multiple times before flipping and ejecting both passengers, with plaintiff landing on cement. We acknowledge, as defendants point out, that plaintiff testified that she could not see ahead of her on the snowmobile because Mueller obscured her view, and she was not certain of his speed because she could not see the speedometer on the snowmobile, or whether ice caused the snowmobile to spin out. However, the record nonetheless contains ample circumstantial evidence from which the reasonable inference can be drawn that Mueller's alleged negligent conduct in operating the snowmobile led to the accident causing plaintiff's injuries. See *Ray*, 501 Mich at 70 (recognizing that factual causation may be established by circumstantial evidence, so long as it "go[es] beyond mere

speculation.")[7] Thus, we are satisfied that genuine issues of material fact for the jury's consideration on the element of causation exist.

IV. CONCLUSION

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Michael J. Riordan

[7] The instant case is thus distinguishable from *McCune v Meijer, Inc*, 156 Mich App 561; 402 NW2d 6 (1986). In *McCune*, the plaintiff alleged that he was injured on an oil spill on the defendant's premises, that an oil stain on the floor established that the oil spill "must have been of a long-standing duration," and that the defendant ought to have been aware of it. *Id*. at 562. This Court affirmed the trial court's granting of summary disposition in favor of the defendant, where the plaintiff's evaporation theory was "completely unsupported by any expert testimony" and amounted to "no more than sheer speculation and conjecture." *Id*. at 563. Unlike the facts of *McCune*, in this case the record contains ample evidence from which the factfinder could infer that Mueller's alleged negligent operation of the snowmobile caused the subject accident.