

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS MATZINGER,

Plaintiff-Appellant,

v

THREE R'S FOREST PRODUCTS, CLAY
PHILLIP SPINDLER, THOMAS
KASZUBOWSKI, and ZAREMBA
EQUIPMENT, INC.,

Defendants-Appellees.

UNPUBLISHED

March 1, 2005

No. 249612

Antrim Circuit Court

LC No. 02-007867-NI

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

In this case arising from the collision of an oil truck and a semi tractor-trailer, plaintiff Thomas Matzinger appeals as of right the trial court's order granting defendants' motions for summary disposition. We affirm.

I. Basic Facts

On December 7, 2001, plaintiff took his oil truck to Zaremba Equipment, Inc. for a preventative maintenance inspection. On the morning of the accident, December 19, 2001, Clay Phillip Spindler and Thomas Kaszubowski, employed by Three R's Forest Products, each drove a semi tractor-trailer to a well site at Alba Highway and M-66. Before pulling into the well site, they parked their trucks on the northbound shoulder of M-66 engaging their four-way flashers. At some point, Spindler began to slowly turn left from the shoulder crossing M-66 while Kaszubowski remained on the shoulder. At approximately 6:30 a.m., as plaintiff crested a hill going north on M-66, he noticed the blocked roadway. Plaintiff testified that he slammed on his brakes, but his truck struck Spindler's.

Plaintiff filed a complaint alleging that Zaremba Equipment, Inc. failed to properly inspect the brakes on his truck because after the accident, three of the truck's brakes were found to be out of adjustment. Plaintiff alleged that Spindler and Kaszubowski acted negligently in driving their trucks. The claim against Three R's was based on vehicle ownership and respondeat superior.

Defendants filed motions for summary disposition arguing that there was no genuine issue of fact as to whether any duty had been breached. At oral argument, plaintiff conceded that, with respect to Spindler and Kaszubowski, no statutory duties had been breached. The trial court determined that expert testimony was required to establish the duty of care owed by Zaremba in inspecting the brakes on plaintiff's vehicle and to establish causation. The trial court also determined that, because Spindler and Kaszubowski did not violate any statutes, an expert was required to establish that they acted negligently in driving their trucks. The trial court granted summary disposition in favor of all defendants.

II. Summary Disposition

Plaintiff argues that the trial court erred in granting defendants' motions for summary disposition. We disagree.

A. Standard of Review

A motion pursuant to MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Id.* A motion for summary disposition under MCR 2.116(C)(10) may properly be granted if there is no genuine issue in respect to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

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) causation; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

B. Zaremba Equipment, Inc.

Plaintiff argues that the trial court erred in ruling that expert testimony was required to establish the standard of care for conducting preventative maintenance inspections. Plaintiff argues that, where the negligence claimed is a matter of common knowledge, no expert testimony is required. Plaintiff specifically states, "The negligence, in essence, is that Zaremba failed to properly inspect and repair the subject brakes just ten days before the accident. . . . No expert is needed to assist a jury to understand that bad brakes (or a failure to properly adjust or repair them) can lead to an accident." The trial court ruled, "What is required of an entity that provides preventative maintenance on commercial vehicles is certainly not within the ken of the average lay person, it does require expert testimony to apprise them of that particular standard of care." Plaintiff mischaracterizes the issue as whether bad brakes can cause a collision. But the issue requiring an expert is whether Zaremba properly inspected the brakes. We agree that brake inspections and repairs are not matters within the knowledge of the average person.

Plaintiff also argues that, if expert testimony is required, plaintiff's accident reconstructionist Weldon Greiger meets the expert requirements. MRE 702 provides that a person may be qualified as an expert if he or she possesses the requisite knowledge, skill, experience, training or education in the subject matter of the testimony. "The qualification of a

witness as an expert is within the trial court's discretion and will not be set aside absent an abuse thereof." *Price v Long Realty, Inc*, 199 Mich App 461, 468; 502 NW2d 337 (1993).

Plaintiff argues that Greiger qualified because he:

is a 24[-]year veteran of the Michigan State Police who has investigated over 1400 motor vehicle accidents. He has reconstructed over 1000 accidents. He is certified as a forensic examiner and is an accredited traffic accident reconstructionist. His educational background includes the following courses "Breaking Performance of Heavy Commercial Vehicles", "Mechanics of Heavy Duty Trucks", "Motor Truck and Semi Tractor-Trailer Air Brake System Design and Operation", "Anti-Lock Braking Systems", "Braking Characteristics of Articulated Vehicles" and "Motor Vehicle Tire Examination, Construction, Materials and Physical Changes".

We agree that Greiger does not "possess the requisite knowledge, skill, experience, training or education" in the subject matter of brakes and brake inspections. Although Greiger appears to have taken courses in brake performance and brake systems, he has never taken any course in performing brake inspections nor has he ever performed any brake inspections. Further, his experience is clearly in inspecting accidents after the fact and determining their cause rather than inspecting and repairing brakes so as to prevent accidents. Greiger himself testified that he is not a brake mechanic, but rather, an expert in accident reconstruction. He further testified that he has expertise in air brakes only as they apply to braking and stopping distances. Therefore, the trial court did not err in granting summary disposition in favor of Zaremba.

C. Three R's, Spindler, Kaszubowski

The trial court also granted summary disposition in favor of Three R's, Spindler, and Kaszubowski on the basis that plaintiff required an expert to establish the duty that was allegedly breached when Spindler and Kaszubowski pulled to the shoulder of M-66 and Spindler executed an ordinary left-hand turn. We conclude, however, that regardless of the lack of expert opinion, there is no genuine issue of fact as to whether Spindler and Kaszubowski breached any duty of care to plaintiff. Spindler and Kaszubowski pulled to the shoulder of M-66. Then, Spindler turned on his blinker and turned left, crossing the highway. There is no evidence that Spindler acted negligently in making this left turn. Nor is there any evidence that Kaszubowski acted negligently in stopping his truck on the shoulder. The fact that plaintiff's vehicle struck Spindler's vehicle does not alone establish negligence on the part of either Spindler or Kaszubowski. "A trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason." *Gleason v Michigan Dep't of Transportation*, 256 Mich App 1, 3; 662 NW2d 822 (2003). Therefore, we conclude that the trial court did not err in granting summary disposition in favor of Three R's, Spindler, and Kaszubowski.

III. Order Striking Plaintiff's Amended Witness List

Plaintiff also argues that the trial court erred in granting defendants' motions to strike his amended expert witness listed that he filed five months after witness lists were due. The trial court's order granting defendants' motions to strike plaintiff's amended expert witness list states

that the motions were granted “for the reasons expressed on the record.” Because plaintiff failed to provide a transcript of this hearing, we decline to address this issue. MCR 7.210(B)(1)(a); *Thomas v McGinnis*, 239 Mich App 636, 649; 609 NW2d 222 (2000).

Affirmed.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Kirsten Frank Kelly