

STATE OF MICHIGAN
COURT OF APPEALS

LUKE ARNTZ and PAULA ARNTZ,

Plaintiffs-Appellants,

v

MARK KEITH LAPER, d/b/a LAPER DAIRY
FARM, and DENISE LYNN HOVINGA,

Defendants-Appellees.

UNPUBLISHED
September 30, 2010

No. 292506
Montcalm Circuit Court
LC No. 07-009570-NI

Before: MURPHY, C.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Plaintiffs appeal by delayed leave granted from the trial court's order granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(10), and dismissing this negligence action because plaintiffs failed to show that plaintiff Luke Arntz's injuries were causally related to an April 2005 collision between his vehicle and two cows that had wandered onto the roadway.¹ Defendant Mark Laper owned the cows. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Id.* at 120. A reviewing court must consider the affidavits, depositions, admissions, and other documentary evidence submitted by the parties and, viewing that evidence in the light most favorable to the nonmoving party, determine whether there is a genuine issue of material fact for trial. *Id.*

The trial court granted defendants' motions for summary disposition on the ground that plaintiffs failed to show that the April 2005 collision was a cause of Luke Arntz's injuries. The trial court relied on a physician's report in which plaintiff reported that he was doing well, walking eight miles a day, and had stopped taking his medications to conclude that there was no genuine issue of material fact that plaintiff's present complaints were causally related to the

¹ Because plaintiff Paula Arntz's claims are derivative in nature, the singular term "plaintiff" is used to refer to Luke Arntz.

April 2005 accident. However, the trial court inaccurately noted that the physician's report was dated two months after the accident. The report was actually prepared in October 2007, more than two years after the accident. At a minimum, even if the report could be considered evidence of plaintiff's complete recovery two years after the accident, it would not preclude plaintiff from recovering for any injuries related to the accident before that recovery.

Furthermore, the evidence of plaintiff's history of preexisting conditions before the accident and additional injuries after the accident did not preclude recovery for any injuries or exasperation of symptoms that could be attributable to the April 2005 accident. "Regardless of [a] preexisting condition, recovery is allowed if the trauma caused by the accident triggered symptoms from that condition." *Wilkinson v Lee*, 463 Mich 388, 395; 617 NW2d 305 (2000). In this case, plaintiff submitted an affidavit from his treating doctor, Dr. Palmitier, who averred, "I believe to a reasonable degree of medical certainty that the collision of April of 2005 caused the injuries and/or aggravation of existing conditions for which Mr. Arntz is receiving treatment." This evidence established a genuine issue of material fact with regard to whether plaintiff's injuries were causally related to the April 2005 accident. Although defendants attempt to discredit the validity of Dr. Palmitier's opinion, contending that it is based on mistaken assumptions and does not recognize all of plaintiff's other injuries before and after the accident, defendants did not present any basis for concluding that Dr. Palmitier's opinion would change if he had been aware of additional information. Regardless, for purposes of summary disposition, we must view the evidence in the light most favorable to plaintiffs, as the non-moving parties. *Maiden*, 461 Mich at 120.

The mere fact that a trier of fact might have difficulty apportioning damages attributable to the April 2005 accident and plaintiff's other preexisting conditions also is not a basis for granting summary disposition to defendants. This matter is addressed in the standard jury instructions, which provide:

If an injury suffered by plaintiff is a combined product of both a preexisting [disease / injury / state of health] and the effects of defendant's negligent conduct, it is your duty to determine and award damages caused by defendant's conduct alone. You must separate the damages caused by defendant's conduct from the condition which was preexisting if it is possible to do so.

However, if after careful consideration, you are unable to separate the damages caused by defendant's conduct from those which were preexisting, then the entire amount of plaintiff's damages must be assessed against the defendant. [M Civ JI 50.11.]

See also *Stahl v Southern Mich R Co*, 211 Mich 350, 355; 178 NW 710 (1920).

Because the trial court's decision was based on its mistaken understanding of the facts and the evidence presented below established a question of fact concerning whether plaintiff's injuries were causally related to the April 2005 accident, we reverse the trial court's order granting summary disposition to defendants and remand for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Joel P. Hoekstra

/s/ Cynthia Diane Stephens