

STATE OF MICHIGAN
COURT OF APPEALS

LERROY SMITH,

Plaintiff-Appellant,

v

RINNIE NATHAN MCPHERSON,

Defendant-Appellee.

UNPUBLISHED

February 19, 1999

No. 201328

Wayne Circuit Court

LC No. 95-520383 NI

Before: Markman, P.J., and Bandstra and J. F. Kowalski*, JJ.

MEMORANDUM.

In this automobile negligence action, plaintiff appeals as of right from a judgment of no cause of action entered in favor of defendant following a jury's determination that defendant was not negligent. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Viewing the aforementioned testimony in a light most favorable to plaintiff, reasonable persons could disagree as to whether the accident was caused by defendant's negligence, as well as the true extent of any injuries suffered by plaintiff. *Scott v Illinois Tool Works, Inc*, 217 Mich App 35, 41; 550 NW2d 809 (1996). Defendant's testimony indicates that he was not negligent, a sudden emergency not of his own making having presented itself. *Vander Laan v Miedema*, 385 Mich 226, 231-232; 188 NW2d 564 (1971); *Young v Flood*, 182 Mich App 538, 544; 452 NW2d 869 (1990), lv den 436 Mich 867 (1990). The testimony of plaintiff and one of the investigating police officers indicates that defendant was negligent. Additionally, the record indicates that there were credibility issues with regard to each of these witnesses. Plaintiff's credibility was called into question by his admission that he informed the police officers at the scene of the accident that he had no injuries and that he felt fine, such statements being diametrically opposed to his testimony at trial that he had suffered debilitating head, neck, back, leg and hand injuries. In as much as the jury could resolve the credibility issue in favor of defendant, the possibility that the accident occurred in the manner described by defendant creates a factual question with regard to whether defendant was negligent. *Vukich v City of*

*Circuit judge, sitting on the Court of Appeals by assignment

Detroit, 325 Mich App 644, 647-648; 39 NW2d 212 (1949). Accordingly, plaintiff's sufficiency challenge must fail.

We decline to address plaintiff's claim of instructional error because the issue is not set forth in plaintiff's statement of the questions presented. *City of Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995).

Affirmed.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski