

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ERICA LYN RUHIG,

Plaintiff-Appellant,

v

DAVID VINCENT ORBACZEWSKI and  
GUARDIAN ELECTRIC COMPANY,

Defendants-Appellees,

and

FARMERS INSURANCE COMPANY,

Defendant.

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UNPUBLISHED

July 13, 2001

No. 223312

Macomb Circuit Court

LC No. 99-001320-NI

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand.

Plaintiff sought damages for injuries sustained when defendant Orbaczewski, who was driving a van owned by defendant Guardian Electric, struck plaintiff's car. On defendants' motion, the court ruled that plaintiff was more than fifty percent at fault and thus was not entitled to damages.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under subrule (C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

In general, a plaintiff's contributory fault does not bar her right to recover damages. MCL 600.2958. However, if the plaintiff is more than fifty percent at fault, noneconomic damages are barred. MCL 500.3135(2)(b); MCL 600.295. Because plaintiff did not seek economic damages from Orbaczewski and Guardian, she would not be entitled to any damages if she was more than fifty percent at fault.

Generally, the relative fault of the parties is a matter to be decided by the trier of fact. *Poch v Anderson*, 229 Mich App 40, 51; 580 NW2d 456 (1998). However, before comparative negligence can even be considered, the trier of fact must first find that the plaintiff was in fact negligent. *Schmitzer v Misener-Bennett Ford, Inc.*, 135 Mich App 350, 358; 354 NW2d 336 (1984). The fact that plaintiff was ticketed and adjudicated guilty of a civil infraction is not admissible as evidence of negligence in a civil case. *Kirby v Larson*, 400 Mich 585, 599; 256 NW2d 400 (1977); *Wheelock v Eyl*, 393 Mich 74, 79; 223 NW2d 276 (1974). The record contains conflicting evidence whether plaintiff failed to yield to Orbaczewski and whether Orbaczewski had his headlights on. Given these contradictory statements and the fact that the trial court declined to rule on the admissibility of the hearsay statements that Orbaczewski did not have his lights on, there was a question of fact whether plaintiff was negligent. Therefore, the trial court improperly invaded the province of the jury by determining as a matter of law that plaintiff was negligent and that she was more at fault than Orbaczewski.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad  
/s/ Donald E. Holbrook, Jr.  
/s/ William B. Murphy