

STATE OF MICHIGAN  
COURT OF APPEALS

---

WAYNE SCHUMACHER,

Plaintiff-Appellant,

v

JOHN KWIATKOWSKI and GALE  
KWIATKOWSKI,

Defendants-Appellees.

---

UNPUBLISHED

September 21, 2001

No. 224376

Oakland Circuit Court

LC No. 98-006669-NO

Before: Fitzgerald, P.J., and Gage and C.H. Miel\*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a trial court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

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 MCR 2.116(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).

The plaintiff has the burden of producing evidence sufficient to make out a prima facie case. *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 712; 202 NW2d 727 (1972). The happening of an accident is not, in and of itself, evidence of negligence. The plaintiff must present some facts that either directly or circumstantially establish negligence. *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 9; 279 NW2d 318 (1979). "Where the circumstances are such as to take the case out of the realm of conjecture and bring it within the field of legitimate inference from established facts, the plaintiff makes at least a prima facie case." *Clark v Kmart Corp*, 242 Mich App 137, 140-141; 617 NW2d 729 (2000). If the plaintiff fails to establish a causal link between the accident and any negligence on the part of the defendant, summary disposition is proper. *Pete v Iron Co*, 192 Mich App 687, 689; 481 NW2d 731 (1992).

More than once, plaintiff stated unequivocally at his deposition that he did not know what caused him to fall. After he fell, he examined the steps and determined that the edges of the treads were worn and that the angle of the steps was possibly inaccurate, but could not say if those defects caused or contributed to his fall and gave no details about the accident that would permit a rational inference that they were causally related to the accident. Therefore, the trial court did not err in granting defendants' motion.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel