

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND D. HILL,

Plaintiff-Appellant,

v

JON JONS, INC.,

Defendant-Appellee.

UNPUBLISHED

January 24, 2003

No. 238352

Macomb Circuit Court

LC No. 99-004007-NO

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court judgment for defendant entered on a jury verdict of no cause of action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, who is paraplegic, uses a wheelchair and a service dog. He claimed that defendant denied him access to its facility because of the dog in violation of MCL 37.1302(a) and MCL 750.502c(1). He contends that the trial court erred in denying his motion for a directed verdict on the issue of liability.

The trial court's ruling on a directed verdict motion is reviewed de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). In reviewing the trial court's ruling, "this Court views the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor to decide whether a question of fact existed." *Hatfield v St Mary's Medical Center*, 211 Mich App 321, 325; 535 NW2d 272 (1995). A directed verdict is appropriate "only when no factual question exists upon which reasonable minds may differ." *Meagher, supra*.

Plaintiff contends on appeal that he established a prima facie case of negligence per se based on defendant's violation of MCL 750.502c(1). Apart from the fact that violation of a penal statute that does not provide for civil liability only creates a rebuttable presumption of negligence and not negligence per se, *Gould v Atwell*, 205 Mich App 154, 158; 517 NW2d 283 (1994), plaintiff did not sue defendant for negligence. His only claim was for violation of his civil rights pursuant to MCL 37.1606. "When a cause of action is presented for appellate review, a party is bound to the theory on which the cause was prosecuted or defended in the court below." *Gross v General Motors Corp*, 448 Mich 147, 161-162, n 8; 528 NW2d 707 (1995). He

“may not shift ground on appeal and come up with new theories here after being unsuccessful on the one presented in the trial court.” *Three Lakes Ass’n v Whiting*, 75 Mich App 564, 581; 255 NW2d 686 (1977).

We affirm.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Michael J. Talbot