

STATE OF MICHIGAN
COURT OF APPEALS

JULIE ANNA STANLEY,

Plaintiff-Appellant,

v

CHRISTOPHER STEVEN MONROE,

Defendant-Appellee.

UNPUBLISHED

December 23, 2003

No. 242025

Wayne Circuit Court

LC No. 01-125791-NO

Before: Fitzgerald, P.J., and Neff and White, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. 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. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). 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).

Because plaintiff was entering Pardee Road from a private driveway, she was required to "come to a full stop before entering the highway and . . . yield right of way to vehicles approaching on the highway." MCL 257.652(1). Defendant, who had the right of way, had a right to assume that plaintiff would stop and yield as required by law. *Berk v Blaha*, 21 Mich App 83, 87; 174 NW2d 870 (1969). He was not required to anticipate plaintiff's negligence, *Paton v Stealy*, 272 Mich 57, 63; 261 NW 131 (1935), or to have his vehicle under such control as to be able to avoid a collision with a subordinate driver coming illegally into his path. *McGuire v Rabaut*, 354 Mich 230, 236; 92 NW2d 299 (1958). However, that did not absolve him of the duty to exercise due care for the safety of others, *Placek v Sterling Heights*, 405 Mich 638, 670; 275 NW2d 511 (1979), and once it became clear that plaintiff "was going to challenge or obstruct his right-of-way," he had a duty to attempt to avoid a collision. *McGuire, supra*; *Berk, supra* at 86.

The evidence showed that defendant was driving in the outside lane on northbound Pardee. Although he took his eyes from the road to check for traffic before moving to the inside lane, he turned his attention back to the road before the accident. Regardless of whether plaintiff looked for oncoming traffic in the northbound lanes, there is no denying that defendant was there and had the right of way. Once she pulled out in front of defendant, who was approximately thirty feet away, he had mere seconds to react. Such evidence, taken in a light most favorable to plaintiff, fails to establish negligence on the part of defendant. Therefore, the trial court did not err in granting defendant's motion.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White