

STATE OF MICHIGAN
COURT OF APPEALS

ANTONIO JOHN BELMAREZ, as Personal
Representative of the Estate of Olivia Belmarez,

UNPUBLISHED
March 30, 2006

Plaintiff-Appellee,

v

WESLEY SCOTT DEVON, SR.,

No. 263279
Kent Circuit Court
LC No. 03-002370-NO

Defendant-Appellant.

Before: Murphy, P.J., and White and Meter, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying his motion for summary disposition. We reverse.

This case arises from the death of plaintiff's mother as a result of injuries sustained during a fire in an apartment owned by defendant and located in a pole barn on defendant's farm. The apartment was constructed in 1995. In October 2000, plaintiff's mother was invited to live in the apartment by defendant's wife; the parties have stipulated that defendant was legally incapacitated at that time. Plaintiff filed suit alleging among other things: that defendant failed to obtain required inspections of, or an occupancy permit for, the apartment; that the apartment did not comply with applicable building and zoning requirements, did not contain basic fire safety items, and was not safe for occupancy; and that defendant failed to warn plaintiff's mother that the structure had not been approved for occupancy and was not in compliance with basic fire safety regulations. Thereafter the parties stipulated to dismiss most of the claims. As a result of this stipulation, the parties further agreed that plaintiff's claims had been narrowed to three allegations of negligence: (1) that defendant violated various ordinances and the BOCA National Building Code by failing to obtain a certificate of occupancy and/or seek zoning approval for the apartment in question; (2) that defendant failed to inspect the apartment in question, as required by local ordinance and MCL 125.1513, which provides that a building constructed or altered after January 1, 1973, shall not be used or occupied until a certificate of use and occupancy has been issued by the appropriate enforcing agency; and (3) that defendant failed to warn plaintiff's mother of zoning violations, that the apartment had not been inspected or authorized for residential use and occupancy, and that no occupancy permit had been issued for the apartment.

Defendant moved for summary disposition, asserting, in part, that plaintiff could not establish that defendant breached any duty to plaintiff's mother, nor that any alleged negligence on his part was either the cause in fact or the proximate cause of her death. The trial court denied defendant's motion, concluding that material questions of fact remained on these issues.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 30; 651 NW2d 188 (2002). To establish a prima facie case of negligence, plaintiff must prove four elements: (1) duty; (2) a breach of that duty; (3) causation; and (4) damages. *Henry v The Dow Chemical Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005).

Proving causation requires proof of both cause in fact and proximate cause. *Case v Consumers Power Co*, 463 Mich 1, 6 n 6; 615 NW2d 17 (2000). "Cause in fact requires that the harmful result would not have come about but for the defendant's negligent conduct." *Haliw v City of Sterling Heights*, 464 Mich 297, 310; 627 NW2d 581 (2001). Cause in fact may be established by circumstantial evidence, but such proof "must facilitate reasonable inferences of causation, not mere speculation." *Skinner v Square D Co*, 445 Mich 153, 163-164; 516 NW2d 475 (1994). Normally, the existence of cause in fact is a question for the jury to decide, but if there is no issue of material fact, the question may be decided by the court. *Holton v A+ Ins Associates, Inc*, 255 Mich App 318, 326; 661 NW2d 248 (2003).

Proximate cause is that which, in a natural and continuous sequence, unbroken by new and independent causes, produces the injury. *McMillian v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985). Proximate cause "normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences." *Skinner, supra* at 163. "A plaintiff must adequately establish cause in fact in order for . . . 'proximate cause' to become a relevant issue." *Id.*

In the instant case, the harmful result about which plaintiff complains is the fire that resulted in his mother's death; the negligence complained of is defendant's alleged failure to obtain a final inspection and an occupancy permit for the apartment. The cause of the fire remains undetermined, and, therefore, plaintiff cannot establish that conducting a final inspection and obtaining an occupancy permit would have resulted in the discovery of some antecedent to the fire that could have been remedied or avoided. Plaintiff's expert has acknowledged that it was impossible to say whether any defects would have been discovered during a final inspection, or whether an occupancy permit would have issued for the apartment in the condition in which it was constructed. Further, and perhaps more importantly, plaintiff has stipulated to dismiss numerous claims, including that the apartment did not comply with building codes or with fire safety standards or codes, that the apartment was defective in design or construction, and that the apartment did not have adequate fire-stopping or draft-stopping. Thus, plaintiff can offer no factual or legal basis for asserting that any alleged negligence in failing to obtain a final inspection and occupancy permit was the cause in fact of the fatal fire. In the absence of cause in fact, proximate cause does not become relevant. *Skinner, supra* at 163.

Further, even if it were relevant, given that there is no way to determine whether the intervening negligence or intentional acts of another actor caused the fire, plaintiff cannot establish that any alleged failure to obtain the final inspection and occupancy permit naturally

and in a continuous sequence, without the intervention of new and independent causes, caused the fire. Thus, plaintiff cannot establish proximate cause. *McMillian, supra* at 576.

Plaintiff argues that a presumption of negligence arises because defendant violated MCL 125.1513 and various local ordinances by failing to procure a final inspection and obtain an occupancy permit for the apartment before allowing his mother to reside there. Violation of a statute creates a rebuttable presumption of negligence, and violation of an ordinance, rule, or regulation is merely evidence of negligence. *Johnson v Bobbie's Party Store*, 189 Mich App 652, 661; 473 NW2d 796 (1991). However, the jury may be instructed on a statutory violation only if the statute is intended to protect against the result of the violation, the plaintiff is within the class intended to be protected by the statute, and the evidence will support a finding that violation of the statute was a proximate cause of the injury. *Williams v Coleman*, 194 Mich App 606, 622; 488 NW2d 464 (1992). In the absence of a showing of proximate cause, no liability arises.

Plaintiff agrees that he cannot establish a causal connection between the complained of conduct and the fire, but rather he argues that “the injuries sustained by Olivia Belmarez were caused in fact, and proximately caused, by her unlawful occupancy of the apartment.” This alleged distinction has no meaning, and the argument lacks merit. Without the fire, there are no injuries. And to the extent that plaintiff is asserting that decedent would not have been living in the apartment and therefore would never have been injured in the fire but for the negligence, such an argument is simply too speculative.

Because plaintiff cannot establish causation, the trial court erred in denying defendant’s motion for summary disposition. In light of this conclusion, we need not address the remainder of defendant’s issues on appeal.

Reversed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Patrick M. Meter