

STATE OF MICHIGAN
COURT OF APPEALS

KELLY P. ERHART and CARLA ERHART,
Plaintiffs-Appellants,

UNPUBLISHED
March 25, 2014

v

No. 314208
Kent Circuit Court
LC No. 11-003620-NI

AMY MCLEAN and ANDREW MCLEAN,
Defendants,
and

FRUIT RIDGE HAYRIDES, L.L.C.,
Defendant-Appellee.

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order dismissing their negligence claim against defendant Fruit Ridge Hayrides, L.L.C. Because we conclude that defendant was entitled to summary disposition, we affirm.

Fruit Ridge Hayrides is a working farm that holds special events for the public on its premises. Fruit Ridge Avenue, a public roadway, abuts Fruit Ridge Hayrides' northern driveway. After 4:00 p.m. on October 25, 2009, Kelly Erhart was traveling north on Fruit Ridge Avenue, and Amy McLean was exiting Fruit Ridge Hayrides' premises. As Amy pulled out of Fruit Ridge Hayrides' driveway and onto Fruit Ridge Avenue's southbound lane, Kelly moved into the southbound lane to allegedly provide the vehicle in front of him with "courtesy room" to turn into Fruit Ridge Hayrides' driveway. Amy and Kelly's vehicles collided, and Kelly was injured.

On November 22, 2011, plaintiffs filed their first-amended complaint. In relevant part, they alleged that Fruit Ridge Hayrides was negligent in constructing the driveway, which

plaintiffs alleged was a proximate cause of the motor vehicle accident.¹ After the close of discovery, Fruit Ridge Hayrides moved for summary disposition pursuant to MCR 2.116(C)(10). After hearing the parties' arguments at the motion hearing, the trial court granted dismissal in favor of Fruit Ridge Hayrides on plaintiffs' negligence claim. Plaintiffs now appeal.

"This Court reviews a trial court's order on a motion for summary disposition de novo." *Bennett v Detroit Police Chief*, 274 Mich App 307, 316; 732 NW2d 164 (2006). A motion for summary disposition pursuant to MCR 2.116(C)(10) is reviewed "by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Bennett*, 274 Mich App at 317, quoting *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

"To establish a prima facie case of negligence, a plaintiff must prove (1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the defendant's breach caused the plaintiff's injuries; and (4) the plaintiff suffered damages." *Kosmalski ex rel Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 60; 680 NW2d 50 (2004). A duty exists where the relationship between the parties gives rise to a legal obligation on the part of one party for the benefit of the injured party. *Hill v Sears, Roebuck and Co*, 492 Mich 651, 661; 822 NW2d 190 (2012). "A negligence action may only be maintained if a legal duty exists." *Maiden*, 461 Mich at 131. "Only after finding that a duty exists may the factfinder determine whether, in light of the particular facts of the case, there was a breach of the duty." *Murdock v Higgins*, 454 Mich 46, 53; 559 NW2d 639 (1997).

Plaintiffs first argue that the trial court improperly determined that Fruit Ridge Hayrides did not breach the duty established in *Berman v LaRose*, 16 Mich App 55, 57; 167 NW2d 471 (1969). In *Berman*, this Court held that an owner of property abutting a "public way" has a duty not to physically intrude on the public way, act in a way that increases an existent hazard on the public way, or act in a way that creates new hazards on the public way. *Id.* at 57-59. Plaintiffs argue that Fruit Ridge Hayrides' driveway created a hazard because it was too narrow to accommodate two-way traffic; and, thus, it caused traffic backups and increased the likelihood of accidents occurring on Fruit Ridge Avenue. The undisputed evidence establishes, however, that the driveway was nearly 50 feet wide where it met Fruit Ridge Avenue and that it was wide enough to accommodate two vehicles. Because the undisputed evidence does not support the claim that the driveway's width created a hazard on Fruit Ridge Avenue, we find that the trial court properly determined that plaintiffs failed to establish a genuine issue of material fact as to whether Fruit Ridge Hayrides breached the duty established in *Berman*. *Id.*

¹ The original complaint was filed on April 21, 2011. It was later amended to include Fruit Ridge Hayrides as a defendant and Carla Erhart, Kelly's wife, as a plaintiff. Carla raised a loss of consortium claim as a result of Kelly's injuries. Amy and Andrew McLean were also named as defendants in the original and first-amended complaint, but the parties later stipulated to their dismissal. Amy and Andrew are not parties to this appeal.

Plaintiffs next argue that the trial court improperly determined that Fruit Ridge Hayrides did not have a duty to construct “a proper turn lane” or shoulder on Fruit Ridge Avenue to allow vehicles to more easily enter and exit the driveway. Plaintiffs argue that such a duty existed because it was foreseeable that the driveway’s narrow width would cause traffic accidents. When determining whether a duty exists, trial courts can “look to different variables,” including “foreseeability of the harm.” *Krass v Tri-Co Security, Inc*, 233 Mich App 661, 668; 593 NW2d 578 (1999). While duty is a question of law for the trial court, *Maiden*, 461 Mich at 131, a jury question can exist where reasonable minds could differ as to whether the plaintiff’s injuries were foreseeable to the defendant, *MacDonald v PKT, Inc*, 464 Mich 322, 339; 628 NW2d 33 (2001). However, plaintiffs in this case did not present any evidence to support that it was foreseeable to Fruit Ridge Hayrides that Kelly would be injured as a result of the driveway. Therefore, no question of fact existed as to whether a motor vehicle accident was foreseeable to Fruit Ridge Hayrides. Moreover, we note that the law establishes that the governmental authority that has jurisdiction over Fruit Ridge Avenue, not Fruit Ridge Hayrides, had a legal duty to make the public roadway safe for motorists. See MCL 691.1402(1).²

Plaintiffs next argue that the trial court improperly dismissed their negligence claim after finding that Fruit Ridge Hayrides had not breached the duty established in *Langen v Rushton*, 138 Mich App 672, 678; 360 NW2d 270 (1984). In *Langen*, this Court held that the defendant, who owned a shopping center and a parking lot that abutted a public highway, had a duty to “design, develop and maintain [the] parking area so as to prevent an unreasonable risk of harm to motorists traveling on adjacent highways.” *Id.* This Court further held the defendant could be held liable for a tree on her premises obstructing the view of traffic such that it caused a traffic accident. *Id.* at 682.

In this case, plaintiffs alleged that the driveway was not “level” with Fruit Ridge Avenue and the lower elevation of the driveway obstructed motorists’ view of oncoming traffic, thus causing an unreasonable risk of harm to motorists passing on Fruit Ridge Avenue. However, there is no evidence in the trial court record to support that the driveway was not level. Moreover, the record supports that neither Kelly nor Amy’s views were obstructed before the accident occurred. Because the undisputed evidence does not support plaintiffs’ allegation that Fruit Ridge Hayrides’ “design” or “maintenance” of the driveway obstructed Kelly or Amy’s vision such that it created an unreasonable risk of harm, the trial court properly found that plaintiffs failed to establish a genuine issue of material fact as to whether Fruit Ridge Hayrides breached the duty established in *Langen*. *Id.* at 678.

Because plaintiffs failed to establish a material question of fact for trial, we find that the trial court properly granted summary disposition in favor of Fruit Ridge Hayrides on plaintiffs’ negligence claim. *Bennett*, 274 Mich App at 317.

² MCL 691.1402(1) provides in relevant part: “Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel.”

Finally, we decline Fruit Ridge Hayrides' invitation to "reprimand" plaintiffs by granting sanctions on our own initiative pursuant to MCR 7.216(C)(1)(b) because we cannot conclude that plaintiffs' complaint was "grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court." *Id.*

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell