

STATE OF MICHIGAN  
COURT OF APPEALS

---

SHIRLEY BENNETT,

Plaintiff-Appellant,

v

GERALD MICHAEL JOHNSON,

Defendant-Appellee.

---

UNPUBLISHED

July 30, 2002

No. 231146

Manistee Circuit Court

LC No. 99-009697-NI

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

In this automobile negligence action, plaintiff appeals as of right from an order granting summary disposition for defendant under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On the morning of December 1, 1996, Lewis Brunais was driving a minivan on M-55, which was snow-covered and slippery, when he crested a hill, lost control of his vehicle, slid into the oncoming lane of traffic, and collided with a van driven by defendant. Plaintiff, Brunais' passenger, sustained a cervical fracture and broken arm, as well as fractured shoulder blades and ribs.

Plaintiff's sole claim on appeal is that the trial court erred in granting summary disposition for defendant. Specifically, she claims that it was for a jury to decide whether defendant was driving too fast for conditions, leaving him unable to avoid colliding with Brunais' vehicle and therefore causing the accident. We disagree. This Court's review of a decision regarding a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. In deciding a motion brought under this subrule, the trial court considers the documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

To establish proximate cause, plaintiff had to show both cause in fact and legal cause. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Cause in fact requires a showing that the plaintiff's injury would not have occurred but for the defendant's actions. *Id.* at 163. "The plaintiff must introduce evidence which affords a reasonable basis for the conclusion

that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant.” *Id.* at 164-165, quoting Prosser & Keeton, Torts (5th ed), § 41, p 269.

Legal cause involves examining the foreseeability of consequences and whether a defendant should be held legally responsible for those consequences. A plaintiff must establish cause in fact in order for legal cause to become a relevant issue. *Skinner, supra* at 163. The plaintiff must show that it was foreseeable that the defendant’s conduct “may create a risk of harm to the victim, and . . . [that] the result of the conduct and intervening causes were foreseeable.” *Moning v Alfonso*, 400 Mich 425, 439; 254 NW2d 759 (1977).

In this case, it is undisputed that defendant had no connection with the chain of events that placed Brunais’ minivan in defendant’s lane of travel, and we agree with the trial court that plaintiff’s claim that defendant was driving too fast for conditions is belied by the fact that he was able to maintain control of his van. It was undisputed that defendant had only a few seconds to react to Brunais’ loss of control of his minivan. It was also undisputed that he took evasive measures in an attempt to avoid colliding with Brunais’ vehicle. Although those measures proved insufficient, it does not necessarily follow that plaintiff’s injuries were caused by defendant’s negligence. *Gursten v Hoffman*, 18 Mich App 333; 171 NW2d 1 (1969). Under these circumstances, summary disposition was proper.

Affirmed.

/s/ Christopher M. Murray  
/s/ David H. Sawyer  
/s/ Brian K. Zahra