

STATE OF MICHIGAN
COURT OF APPEALS

DIKEA SARAFPOULOS,

Plaintiff-Appellant,

v

STEVEN DWAYNE ROMP and DENISE
ARLENE GREGORY,

Defendants-Appellees.

UNPUBLISHED

May 24, 2005

No. 253214

Macomb Circuit Court

LC No. 2003-000581-NI

Before: Saad, P.J., and Zahra and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition in this automobile negligence case. We affirm.

I. FACTS

At approximately 4:30 p.m. on November 22, 2000, plaintiff was driving her 1989 Mercury Sable eastbound on Fifteen Mile Road, intending to turn left at the intersection of Fifteen Mile Road and Dodge Park. She was traveling in the second lane from the curb as she approached Dodge Park. A strip mall is located on the south side of Fifteen Mile near the intersection, and because of the heavy traffic, three or four cars were backed up west of the west driveway to the strip mall. Plaintiff entered the left turn lane west of the driveway without stopping behind the traffic stopped in front of her in the eastbound travel lanes. She traveled one or two car lengths in the turn lane at approximately fifteen or twenty miles an hour before she saw Steven Romp's vehicle seven or eight feet in front of her. She was unable to stop before striking the front, driver's side of his car.

Romp was exiting the strip mall parking lot on the south side of Fifteen Mile Road when the car that he was driving was struck by plaintiff's vehicle. The car belonged to defendant Denise Arlene Gregory. Romp intended to turn left in order to travel westbound on Fifteen Mile Road. He stopped the car at the driveway and began crossing the two eastbound travel lanes after a driver in the second lane from the curb waved him across. He stopped again before reaching the left turn lane and proceeded slowly, at approximately five miles an hour, to see if traffic was coming. He was not able to see over the eastbound lanes of traffic to determine whether any cars were traveling in the left turn lane. Plaintiff's vehicle struck the front end of the car that he was driving. He did not intend to use the left turn lane in order to merge into

westbound traffic, but rather, intended to cross over the turn lane as he was turning left. He did not see where plaintiff's vehicle entered the left turn lane because he did not see her vehicle before the impact. Romp testified that the entrance to the left turn lane was east of the driveway from which he turned. Because the damage to Gregory's car was minimal, it was never repaired.

Plaintiff filed a complaint against defendants, alleging that Gregory negligently entrusted her vehicle to Romp and that Romp negligently operated the vehicle, causing plaintiff serious impairment of a body function and permanent serious disfigurement. Defendants asserted as affirmative defenses that plaintiff's claims were barred because she did not sustain a serious impairment of a body function or permanent serious disfigurement and because she was more than fifty percent at fault in causing the accident.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff's claims were barred because MCL 500.3135(2)(b) precludes recovery if the party seeking damages is more than fifty percent at fault. Defendants argued that plaintiff negligently entered the left turn lane before the appropriate entry point and should have still been in the travel lane at the point of impact. MCL 257.647(1)(e) required plaintiff to follow the appropriate pavement markers when making her left turn. The trial court granted defendants' motion.

II. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Willis v Deerfield Twp*, 257 Mich App 541, 548; 669 NW2d 279 (2003). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the nonmoving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id.* at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id.* at 31.

III. ANALYSIS

Plaintiff argues that the trial court erred by relying on its own personal knowledge of the intersection where the accident occurred in deciding the motion for summary disposition. The trial court correctly stated during the hearing on defendants' motion that "the entrance to the left turn lane begins where the entrance/exit is on the west side of the shopping center." It is unclear from the record whether the trial court relied on its own personal knowledge of the intersection or whether its knowledge of the location of the yellow line stemmed from review of the documents attached to the motion and plaintiff's response to the motion. Even if the court relied on its own personal knowledge, however, it was permitted to take judicial notice of the pavement markings because they were "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." MRE 201(b)(2); *Hetrick v Friedman*, 237 Mich App 264, 269; 602 NW2d 603 (1999). The picture attached to defendants' motion depicts the location of the yellow line and entrance to the turn lane in relation to the driveway. At no time in the trial court or on appeal did plaintiff question the accuracy of the picture. Regardless of whether the trial court relied on the picture or on its own personal knowledge, its statements

regarding the location of the yellow line were correct. . Contrary to plaintiff's argument, she did not have a right to cross-examine the court regarding its knowledge of the intersection.

Plaintiff also argues that the trial court made improper factual findings by determining that her testimony was "physically impossible." When deciding a motion for summary disposition, courts do not make factual findings or resolve issues of credibility. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994); *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004). A court must draw all inferences in favor of the nonmoving party, and the motion should be denied unless it is impossible that the claim can be supported by evidence admissible at trial. *Ardt v Titan Ins Co*, 233 Mich App 685, 693; 593 NW2d 215 (1999).

The trial court determined at the hearing that plaintiff's assertion that she entered the turn lane at the proper entrance point was impossible in light of other undisputed facts. Plaintiff's own deposition testimony supports the trial court's conclusion. Plaintiff testified that traffic was backed up three or four car lengths west of the driveway to the strip mall and that she entered the turn lane west of the driveway without first stopping behind the cars in front of her in the eastbound travel lanes. She testified that her car was fully in the turn lane, traveling fifteen or twenty miles an hour when she saw defendant Romp, who was in defendant Gregory's car, seven or eight feet in front of her. After entering the turn lane, she traveled one or two car lengths before she saw Romp in front of her. She admitted that she knew that she was not supposed to cross the yellow line and that she was required to wait until the appropriate entrance point to move into the turn lane.

Considering the above testimony in conjunction with the other documentary evidence in the light most favorable to plaintiff, it is apparent that plaintiff could not have entered the turn lane at the appropriate point as indicated by the yellow line on the pavement. Plaintiff admittedly entered the turn lane three or four car lengths west of the driveway. The picture attached to defendants' motion shows that the entrance to the turn lane is east of the point where plaintiff admitted that she entered the turn lane. Plaintiff has not disputed the accuracy of the picture. Moreover, the police report and the picture attached to plaintiff's response show that the accident occurred west of the entrance to the turn lane. Therefore, the trial court properly determined that plaintiff entered the turn lane early as plaintiff's own documentary evidence showed.

MCL 257.647 prohibited plaintiff from entering the turn lane contrary to the pavement markers. That statute provides, in relevant part:

(1) The driver of a vehicle intending to turn at an intersection shall do so as follows:

* * *

(e) Local authorities in their respective jurisdictions may cause pavement markers, signs, or signals to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. *When markers, signs, or signals*

are so placed, a driver of a vehicle shall not turn a vehicle at an intersection other than as directed and required by those markers, signs, or signals.

(2) A person who violates this section is responsible for a civil infraction.
[Emphasis added.]

Based on the documentary evidence submitted, the trial court properly found that “it was physically impossible for [plaintiff] to enter [the turn lane] without violating the entrance requirements for the left-hand turn lane” in contravention of MCL 257.647, and that plaintiff was improperly using the turn lane as a travel lane.

Plaintiff also contends that even if she entered the turn lane early, there still remain questions of proximate cause and contributory or comparative negligence to be decided by the trier of fact. MCL 500.3135(2)(b) provides:

Damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault.

Plaintiff argued in her response to defendants’ motion that Romp violated MCL 257.652 by failing to stop before entering Fifteen Mile Road. MCL 257.652(1) provides:

The driver of a vehicle about to enter or cross a highway from an alley, private road, or driveway shall come to a full stop before entering the highway and shall yield the right of way to vehicles approaching on the highway.

Romp testified at his deposition that he came to a complete stop at the driveway to Fifteen Mile Road before crossing the two eastbound lanes of traffic and that he came to a complete stop before entering the turn lane. Plaintiff testified that she did not see Romp until he was seven or eight feet in front of her in the turn lane. Therefore, plaintiff had no knowledge whether Romp stopped before entering Fifteen Mile Road. A party opposing a motion for summary disposition must present documentary evidence showing a genuine issue of material fact for trial. MCR 2.116(G)(4); *Rice, supra* at 31. The nonmoving party cannot rely on mere allegations in order to demonstrate a genuine issue of material fact. MCR 2.116(G)(4); *Rice, supra* at 31. Plaintiff failed to present any evidence of Romp’s negligence; thus, she failed to establish a genuine issue of material fact for trial. Thus, because plaintiff was more than fifty percent at fault for the accident, the trial court properly granted summary disposition for defendants. MCL 500.3135(2)(b).

Affirmed.

/s/ Henry William Saad
/s/ Brian K. Zahra
/s/ Bill Schuette