

STATE OF MICHIGAN
COURT OF APPEALS

ANDRE WILLIAMS,
Plaintiff-Appellant,

UNPUBLISHED
September 1, 2009

v

ANGELA ROBINSON,
Defendant-Appellee.

No. 286107
Wayne Circuit Court
LC No. 07-706920-NI

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

In this suit arising out of an automobile accident, plaintiff Andre Williams appeals as of right the trial court's order granting defendant Angela Robinson's motion for summary disposition. On appeal we must determine whether the trial court properly granted Robinson's motion on the grounds that Williams failed to present any evidence that Robinson's acts or omissions caused Williams' injuries and did not suffer a serious impairment of body function. We conclude that Williams did not present any evidence from which a reasonable trier of fact could conclude that Robinson caused Williams' injuries. For that reason, we affirm the trial court's decision to grant summary disposition in favor of Robinson. We have decided this appeal without oral argument under MCR 7.214(E).

I. Basic Facts and Procedural History

Robinson was driving eastbound on 7 Mile in Detroit at around 3:15 a.m. on the morning of November 27, 2004. At the time, it was lightly raining. Williams, who was apparently acutely intoxicated, staggered into the middle of 7 Mile some distance before the point where 7 Mile intersects with McKay Street.¹ Robinson failed to stop her car in time and struck Williams. Williams sustained injuries in the accident and was taken to the hospital for treatment. The

¹ The parties' do not dispute that Robinson testified at her deposition that Williams staggered into the road. In addition, the parties discussed this testimony at the hearing on Robinson's motion for summary disposition. However, Robinson's deposition does not appear in the lower court record and has not been attached to any of the briefs on appeal.

hospital's staff ordered several tests, which later showed that Williams had a blood alcohol level of .242 and tested positive for both cannabinoids and opiates.

In March 2007, Williams sued Robinson for non-economic damages allegedly caused by Robinson's negligent operation of her car. In April 2008, Robinson moved for summary disposition of Williams' claim. She argued that there was clear evidence that Williams' intoxication was a significant cause of the accident and that there was no evidence that her actions caused the accident. Because there was no evidence from which a jury could conclude that she caused the accident, Robinson further argued that the trial court must dismiss Williams' claim under MCL 600.2955a. Robinson also argued that Williams' injuries did not rise to the level of a serious impairment of body function under MCL 500.3135(7) and, as a result, summary disposition was warranted on that ground as well. In response, Williams argued that Robinson's deposition testimony conflicted with her report to her insurance company and that the differences between these versions establish that Robinson negligently failed to stop. On the basis of this evidence, Williams argued that there was a question of fact as to whether he was sufficiently at fault to preclude recovery. Williams also argued that his injuries met the serious impairment threshold.

The trial court concluded that there was no evidence from which a reasonable jury could conclude that Robinson's acts or omissions caused Williams' injuries. He also determined that, as a matter of law, Williams' injuries did not amount to a serious impairment of body function. For these reasons, the trial court granted Robinson's motion for summary disposition.

This appeal followed.

II. Summary Disposition

A. Standard of Review

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

B. Causation and Fault

A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Id.* at 120. The moving party has the initial burden of supporting his or her motion for summary disposition. *Quinto v Cross & Peters Co*, 451 Mich 358, 361; 547 NW2d 314 (1996). This burden may be satisfied by submitting evidence that negates an essential element of the nonmoving party's claim or by demonstrating to the court that the nonmoving party's evidence is insufficient to establish an essential element of his or her claim. *Id.* at 362.

In her motion for summary disposition, Robinson focused on the evidence that Williams negligently walked into traffic and the absence of evidence that she was negligent. Robinson first noted that it was undisputed that the accident occurred early in the morning while still dark. She also presented significant evidence that Williams was intoxicated at the time of the accident. Further, although her deposition was not attached to her brief, both parties agreed that Robinson testified that Williams staggered into the road just before she struck him. In addition to the evidence of Williams' negligence, Robinson noted that there was absolutely no evidence that she

was speeding or otherwise negligently operating her car. Robinson's motion implicated two areas of law: proof of causation and the fault-bar to claims where the person upon whose injury the action is based was intoxicated.

In order to establish his claim, Williams had to show that Robinson caused his injuries—that is, “but for” Robinson's actions, Williams' injuries would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). However, a causation theory that has a basis in only slight evidence is not sufficient: “the plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred.” *Id.* at 164-165.

Our Legislature has also determined that, under certain circumstances, a plaintiff who is partly at fault for his or her own injuries may not recover for those injuries even if the plaintiff can demonstrate that someone else was also a cause of the injuries:

It is an absolute defense in an action for the death of an individual or for injury to a person or property that the individual upon whose death or injury the action is based had an impaired ability to function due to the influence of intoxicating liquor or a controlled substance, and as a result of that impaired ability, the individual was 50% or more the cause of the accident or event that resulted in the death or injury. [MCL 600.2955a(1).]

As already noted, Robinson argued in part that she was entitled to summary disposition because there was no evidence that her acts or omissions caused Williams' injuries and because there was substantial evidence that Williams was intoxicated and, due to the influence of his intoxication, Williams was 50% or more at fault for his own injuries. Once Robinson made her properly supported motion, Williams had to respond by presenting evidence that Robinson was negligently operating her car and that this negligence was a substantial cause of Williams' injuries. *Quinto*, 451 Mich at 362. In addition, he also had to present evidence that created a question of fact as to whether he was intoxicated or had to present evidence from which a reasonable trier of fact could conclude that his intoxication did not result in him being 50% or more at fault for his own injuries. Williams failed to meet either burden.

Williams did not dispute that he was intoxicated at the time in question.² Williams only argued that Robinson's own statements permit an inference that she was not driving with the requisite care. He further argued that, because Robinson's statements permit an inference of negligence, a jury must determine the amount of negligence attributable to each party. We do not agree that these statements support an inference of negligence.

² We note that the lower court record does not contain Williams' brief in response to Robinson's motion for summary disposition. Williams apparently did not file the brief until shortly before the hearing on the motion. Hence, our discussion of the evidence proffered by Williams is based on his arguments at the motion hearing and on his summary of the evidence provided in his brief on appeal.

The parties both stated that Robinson testified at her deposition that Williams “staggered” into the road just before she hit him. Thus, Robinson’s statement, along with the other evidence, permits an inference that—through no fault of her own—Robinson was unable to prevent the accident at issue. However, before the trial court and on appeal, Williams argues that this statement is contradicted by Robinson’s statement to her insurer. Robinson’s insurer took notes of several telephone conversations with Robinson. One note indicated that Robinson said she was headed to her aunt’s home when the accident occurred: “[Insured] [was] e[ast]b[ound] on 7 Mile w[ith] wipers set on intermittent due to rain/drizzle. Pedestrian . . . attempted to cross 7 Mile from south to north. She saw him just as her wipers cleared windshield. She braked/swerved to right but struck him w[ith] left side of veh[icle].” Even assuming that the insurer’s notes are substantively admissible evidence, *Maiden*, 461 Mich at 123, this note does not permit an inference that Robinson was negligently operating her car. Williams argues that Robinson’s statement that she only saw him “just as her wipers cleared the windshield” is evidence that Robinson was driving too fast for the conditions. We cannot agree. The only inference that naturally proceeds from this statement is that Williams’ entry into the road was sudden—that is, in less than the time that it takes the wipers to clear her windshield, Williams stepped in front of her car. Thus, this statement actually supports an inference that Robinson had inadequate time to take any steps to avoid the accident. Further, in a note taken more than two weeks before the note cited by Williams, the insurer recorded that Robinson stated that “[the] pedestrian darted out in front of her” and that she “was unable to stop/swerve before striking him.” Consequently, the notes are consistent with Robinson’s deposition testimony and are not evidence that she was negligent.

Williams failed to present any evidence that, but for Robinson’s acts or omissions, he would not have been struck and injured in the accident at issue. Therefore, Robinson was entitled to summary disposition. *Skinner*, 445 Mich at 174 (noting that a causation theory premised on mere conjecture and possibility is insufficient to survive summary disposition). Further, because there was no evidence that Robinson was at fault in the accident, no reasonable jury could conclude that Williams was not 50% or more at fault for his own injury. Therefore, he was absolutely barred from recovering under MCL 600.2955a. The trial court properly dismissed Williams’ claims for these reasons.

Because of our resolution of this issue, we need not consider whether Williams suffered a serious impairment of body function within the meaning of MCL 500.3135(7).

Affirmed. As the prevailing party, Robinson may tax costs under MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro