STATE OF MICHIGAN

COURT OF APPEALS

NICHOLAS TAIT,

Plaintiff-Appellant,

v

JOHN WALKER,

Defendant-Appellee,

and

DTE ELECTRIC COMPANY,

Defendant.

UNPUBLISHED
January 12, 2026
10:53 AM

No. 371199
Tuscola Circuit Court
LC No. 2023-032331-NI

Before: TREBILCOCK, P.J., and PATEL and WALLACE, JJ.

PER CURIAM.

In this negligence action, plaintiff contends that defendant John Walker is liable for injuries that plaintiff sustained from an electrical shock. The incident occurred while plaintiff was coiling up an extension cord that he had unplugged from an outlet inside the residence that he shared with defendant.[1] The trial court granted defendant summary disposition under MCR 2.116(C)(10), concluding that there was no genuine issue of material fact on whether there was an unreasonable risk of harm caused by a dangerous condition on the premises or whether defendant breached any duty. For the reasons discussed in this opinion, we affirm.

[1] Plaintiff resolved his claim against DTE Electric Company, and DTE is not a party to this appeal. Accordingly, "defendant" refers to Walker only.

I. BACKGROUND

Plaintiff and defendant lived together in defendant's home. Defendant owned a recreational vehicle (RV) that he parked in the driveway of his home. Before the subject incident, defendant had connected three extension cords together and ran them from the RV into the home through a window. The extension cords were plugged into an electrical outlet in the utility room to provide electricity to the RV while defendant cleaned and winterized it.[2] Plaintiff testified that the cords were plugged in for at least one day before the incident. On the date of the incident, there was a windstorm. Plaintiff observed flames, sparks, and smoke coming from the outlet where the extension cords were plugged in. Plaintiff turned off the main power to the home,[3] and the flames and sparking stopped. A few minutes later, plaintiff unplugged the extension cords from the outlet and began to wind up the extension cord. As plaintiff was winding the cord, he sustained an electrical shock. An investigation revealed that the windstorm had caused a tree to fall onto an overhead power line. Part of the line fell across the top the RV, and part fell on the ground across the extension cord.

Plaintiff commenced this action alleging negligence claims against defendant and DTE.[4] After resolving his claim against DTE, plaintiff amended his complaint to allege that defendant was responsible for plaintiff's injuries under a theory of premises liability and res ipsa loquitur. Plaintiff claimed that defendant created a dangerous condition on the premises when he left the RV connected to the home electrical service during the windstorm while it was parked near the location where an energized power line had previously fallen.

The parties presented electrical engineering experts to support their positions. Plaintiff's expert, Brent McKinney testified, "If the RV wasn't there, there would be nothing for the line to fall on[,]" and "[i]f the extension cords were not there, there would not have been a path to bring electricity into the house." He further stated, "If [plaintiff] would have not picked up the cord, he would not have been shocked in the manner that he was. . . . It would not have happened in the way that it did." However, McKinney described the setup—the multiple extension cords connecting the RV to the home electrical system—as "[a] safe electrical condition" before the power line fell onto the RV. And he did not find evidence of a short in the extension cords. Although McKinney explained that heating issues can occur when extension cords are connected in a series and that, normally, a ground fault interrupter outlet is used with an outside cord, he stated that neither of these conditions contributed to the incident. He also testified that the location where the RV was parked—under a power line—did not violate any known DTE rules or other safety code requirements. Ultimately, McKinney opined that "[t]he high voltage would not have been available" if the power line had not fallen.

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[2] There were no electrical outlets on the exterior of the home.

[3] The power shut off was in the same room as the subject outlet.

[4] Plaintiff also asserted a vicarious liability claim against DTE for the alleged negligent actions of tree trimmers that DTE hired to clear the trees and vegetation from the area around the power lines.

Defendant's expert, James Heyl, agreed that a "safe electrical condition" existed before the power line fell onto the RV. He also agreed that there were no known DTE rules or other safety code requirements violated by parking the RV under the power line. He further agreed that the high voltage would not have been conducted through the extension cords if the power line had not fallen.

Defendant moved for summary disposition under MCR 2.116(C)(10) arguing that he bore no duty to plaintiff because the risk was unforeseeable. He maintained that he did not create an unreasonable risk of harm by plugging in the RV. Defendant asserted that the cause of plaintiff's injury was a downed powerline caused by a wind storm. He further argued that the res ipsa loquitor doctrine was inapplicable. Plaintiff responded that defendant had notice of the dangerous condition because he created the condition when he connected the RV to the outlet through an extension cord and defendant was aware that a power line came down during a windstorm previously. He further argued that defendant breached his duty to plaintiff by not moving the RV when the wind storm started or by not unplugging the RV. Plaintiff asserted that liability was established by defendant's admission in his deposition that it was "a hundred percent [his] fault" that plaintiff was injured "because [defendant] left [the RV] plugged in." Plaintiff also contended that defendant failed to support his motion with an affidavit and that plaintiff was entitled to summary disposition on the issue of liability under MCR 2.116(I)(2).

The trial court concluded that there was no genuine issue of material fact concerning whether there was an unreasonable risk of harm caused by a dangerous condition on the premises or whether defendant breached any duty and thus granted summary disposition to defendant. Plaintiff now appeals.

II. STANDARDS OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Summary disposition under MCR 2.116(C)(10) is warranted when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *El-Khalil*, 504 Mich at 160 (cleaned up). When reviewing a motion for summary disposition under MCR 2.116(C)(10), a court must consider the evidence submitted by the parties in the light most favorable to the nonmoving party. *Id*.

Additionally, whether the doctrine of res ipsa loquitur is applicable to a particular case is a question of law. *Pugno v Blue Harvest Farms, LLC*, 326 Mich App 1, 19; 930 NW2d 393 (2018).

III. PREMISES LIABILITY

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition because defendant had a duty to prevent plaintiff's injury and had notice that such injury was possible. We disagree.

"All negligence actions, including those based on premises liability, require a plaintiff to prove four essential elements: duty, breach, causation, and harm." *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 110; 1 NW3d 44 (2023). "The first element, duty, is essentially a question whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor's part for the benefit of the injured person." *Id*. (cleaned up). Factors used to determine whether duty exists include "(1) foreseeability of the harm, (2) degree of certainty of injury, (3) closeness of connection between the conduct and injury, (4) moral blame attached to the conduct, (5) policy of preventing future harm, and (6) the burdens and consequences of imposing a duty and the resulting liability for breach." *Id.* "[B]efore a duty can be imposed, there must be a relationship between the parties and the harm must have been foreseeable. If either of these two factors is lacking, then it is unnecessary to consider any of the remaining factors." *Hill v Sears, Roebuck and Co*, 492 Mich 651, 660; 822 NW2d 190 (2012) (cleaned up). A defendant has no duty to protect from unforeseeable harm. *In re Certified Question from Fourteenth Dist Court of Appeals of Texas*, 479 Mich 498, 508; 740 NW2d 206 (2007). "Under Michigan common law, foreseeability depends on whether a reasonable person could anticipate that a given event might occur under certain conditions." *Iliades v Dieffenbacher North America Inc*, 501 Mich 326, 338; 915 NW2d 338 (2018) (cleaned up). When there are no facts in dispute as to duty, the analysis is a matter of law. See *In re Certified Question*, 479 Mich at 504 ("Whether a defendant owes a duty to a plaintiff to avoid negligent conduct is a question of law . . . .").

In this case, the parties presume that plaintiff was an invitee as a purported tenant[5] and thus defendant owed plaintiff a duty "to exercise reasonable care to protect [him] from an unreasonable risk of harm caused by a dangerous condition of the land." *Kandil-Elsayed*, 512 Mich at 112, quoting *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). As our Supreme Court explained in *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012):

> The law of premises liability in Michigan has its foundation in two general precepts. First, landowners must act in a reasonable manner to guard against harms that threaten the safety and security of those who enter their land. Second, and as a corollary, landowners are not insurers; that is, they are not charged with guaranteeing the safety of every person who comes onto their land. These principles have been used to establish well-recognized rules governing the rights and responsibilities of both landowners and those who enter their land. Underlying all these principles and rules is the requirement that both the possessors of land and those who come onto it exercise common sense and prudent judgment when confronting hazards on the land.

Plaintiff alleges that defendant created a dangerous condition by leaving the RV plugged into the home's electrical system during the windstorm while the RV was parked near the location where an energized power line had previously fallen. But plaintiff's and defendant's experts

[5] "An 'invitee' is a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make it safe for the invitee's reception." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000) (cleaned up).

testified that connection of the RV to the home electrical system was safe. And neither expert took issue with the location where the RV was parked. Although both experts agreed that the extension cords were the pathway that brought the electricity into the house, they both opined that the voltage would not have passed through the cords if the power line had not come down. Thus, the issue whether defendant owed plaintiff a duty rests upon whether plaintiff's injury was reasonably foreseeable. Neither expert testified that it was foreseeable that the power line would fall on the RV, energize the RV and the extension cords, and back feed the high voltage power into the home. Nor is there evidence that it was foreseeable that plaintiff would disconnect the energized extension cord from the outlet and be harmed in the process. Plaintiff testified that he was aware that the RV was connected to the home's electrical system for at least a day before the incident. He also knew about the previous downed-wire incident, and testified that he did not have any concerns about the RV being connected to the home's electrical system. Although defendant took blame for leaving the RV connected to the home and providing the pathway for the current, there is no evidence that leaving the RV connected to the home was dangerous or that an injury to plaintiff was foreseeable. Plaintiff has failed to show that the RV's connection to the home's electrical system constituted an unreasonably dangerous condition that posed an unreasonable risk of harm to plaintiff and thus defendant did not owe a duty to plaintiff.

We also find no merit in plaintiff's argument that MCR 2.116(G)(3) required defendant to support his motion for summary disposition with an affidavit. The plain language of the court rule states that a party must submit "[a]ffidavits, depositions, admissions, *or* other documentary evidence in support of" a dispositive motion. MCR 2.116(G)(3) (emphasis added). "[W]hen the language of the rule is unambiguous, it must be enforced as written." *Micheli v Mich Auto Ins Placement Facility*, 340 Mich App 360, 367; 986 NW2d 451 (2022) (cleaned up). " '[O]r' is . . . a disjunctive [term], used to indicate a disunion, a separation, an alternative." *Dine Brands Global, Inc v Eubanks*, __ Mich __, __; __ NW3d __ (2025) (Docket No. 165392); slip op at 23 (cleaned up). Defendant's motion was properly supported by depositions and other documentary evidence. Defendant was not required to submit affidavits in addition to the other evidence.

Viewing the evidence in the light most favorable to plaintiff as the nonmoving party, the trial court did not err by concluding that there was no material factual dispute concerning whether there was an unreasonable risk of harm caused by a dangerous condition on the premises and thus defendant did not owe a duty to plaintiff.

IV. RES IPSA LOQUITUR

Plaintiff also argues that the trial court erred by failing to address his claim of res ipsa loquitur. We disagree.

The doctrine of res ipsa loquitur "[i]s not an independent cause of action." *Pugno v Blue Harvest Farms LLC*, 326 Mich App 1, 19; 930 NW2d 393 (2018). Rather, it is a rebuttable presumption or inference that a defendant was negligent that arises upon proof that the instrumentality causing a plaintiff's injuries was in the defendant's exclusive control, and that the accident was one which ordinarily does not happen in absence of negligence. *Woodard v Custer*, 473 Mich 1, 6 n 2; 702 NW2d 522 (2005), quoting Black's Law Dictionary (6th ed); see also, *Jones v Porretta*, 428 Mich 132, 150-151; 405 NW2d 863 (1987). Our Supreme Court has

provided the following conditions that must be met in order for a plaintiff to avail herself of the doctrine of res ipsa loquitor:

> (1) the event must be of a kind which ordinarily does not occur in the absence of someone's negligence;
>
> (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant;
>
> (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff; and
>
> (4) evidence of the true explanation of the event must be more readily accessible to the defendant than to the plaintiff. [*Woodard*, 473 Mich at 7 (cleaned up).]

But "before this inference of negligence can be drawn, something more must be shown than the mere happening of the accident." *Fuller v Wurzburg Dry Goods Co*, 192 Mich 447, 448; 158 NW 1026 (1916).

Plaintiff has not presented any evidence to establish that defendant was negligent. Plaintiff must produce *some* evidence of wrongdoing beyond the mere happening of the event. *Id*. There was no evidence that the extension cord was negligently used or that the RV was negligently parked. Accordingly, the doctrine of res ipsa loquitur is not applicable to plaintiff's claim.

Affirmed. Defendant, having prevailed, may tax costs under MCR 7.219(A).

/s/ Christopher M. Trebilcock
/s/ Sima G. Patel
/s/ Randy J. Wallace