Order

Michigan Supreme Court
Lansing, Michigan

June 11, 2025

166865-6

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

CHANDRA McDUFFIE, Personal Representative of the ESTATE OF WILLIAM HOWARD McDUFFIE-CONNOR,
Plaintiff-Appellant,

v

SC: 166865
COA: 358987
Wayne CC: 20-007497-NF
20-012305-NF

SCOTT M. NEAL and MEMBERSELECT INSURANCE COMPANY,
Defendants,
and

NSS CONSTRUCTION, INC.,
Defendant-Appellee.

_____/

CHANDRA McDUFFIE, Personal Representative of the ESTATE OF WILLIAM HOWARD McDUFFIE-CONNOR,
Plaintiff-Appellant,

v

SC: 166866
COA: 360585
Wayne CC: 20-007497-NF

SCOTT M. NEAL and MEMBERSELECT, INSURANCE COMPANY,
Defendants,
and

NSS CONSTRUCTION, INC.,
Defendant-Appellee.

_____/

On March 12, 2025, the Court heard oral argument on the application for leave to appeal the February 8, 2024 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we VACATE in part and REVERSE in part the judgment of the Court of Appeals, VACATE

the August 4, 2021 order of the Wayne Circuit Court, and REMAND this case to the trial court for further proceedings not inconsistent with this order.

Plaintiff's lawsuit arises from a fatal collision between the car driven by the decedent, William Howard McDuffie-Connor, and the truck operated by Scott Neal in the course of his employment with defendant, NSS Construction.[1] Video footage of the crash shows that the truck began to turn right when it collided with the decedent's vehicle, which was in a parking lane and attempting to pass the truck on the right. At issue on appeal are two decisions by the trial court: an order denying defendant's motion for summary disposition under MCR 2.116(C)(10) and an order granting plaintiff's motion for sanctions against defendant for the spoliation of evidence. In a split decision, the Court of Appeals vacated these rulings and remanded to the trial court for entry of summary disposition in defendant's favor. *Estate of McDuffie-Connor v Neal*, unpublished per curiam opinion of the Court of Appeals, issued February 8, 2024 (Docket Nos. 358870, 358987, and 360585). Plaintiff now appeals from that judgment.

We begin with the trial court's decision to deny summary disposition, which we review de novo. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159 (2019). When reviewing a motion brought under MCR 2.116(C)(10), a trial court considers affidavits, depositions, and other substantively admissible evidence in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120-121 (1999). Summary disposition must be denied when there is a genuine issue of material fact, meaning that reasonable minds might differ on the issue. *El-Khalil*, 504 Mich at 160.

The Court of Appeals erroneously vacated the trial court's order denying defendant's motion for summary disposition under MCR 2.116(C)(10). Genuine issues of material fact exist that must be resolved by a fact-finder. At the outset, reasonable minds could differ on whether the truck's turn signals were functioning properly at the time of the incident. By holding that there was "no evidence that the truck's turn signal was not operating properly before the collision," *Estate of McDuffie-Connor*, unpub op at 15, the Court of Appeals majority improperly disregarded the findings of a post-collision investigation and, as a result, failed to view the evidence in the light most favorable to plaintiff as the nonmoving party.

The evidence shows that, after the crash, police secured the truck for investigation, and Michigan State Police Officer Ryan Wilson inspected the vehicle six days later. Relevant here, Officer Wilson's inspection report stated that five of the truck's brakes were out of adjustment and all four turn signals were lighting up but not blinking. On the basis

---

[1] Neal and MemberSelect Insurance Company have been dismissed from this litigation and are not parties to this appeal, so we use "defendant" throughout this order to refer solely to NSS Construction.

of his training and experience as a post-crash investigator and his observations of the condition of the truck, Officer Wilson believed that these maintenance defects existed before the crash. Plaintiff also obtained opinions from Timothy Abbo, a collision reconstructionist, and Larry Baareman, a licensed mechanic and certified Commercial Driver's License Examiner, who both agreed that the turn signals were not functioning properly before the crash.

Although Neal testified that he confirmed the truck's turn signals were properly functioning during a pre-trip inspection on the day of the crash, and witness Matthew Pace testified that the truck's right rear turn signal was blinking before the crash, their testimony merely highlights that a factual dispute exists. Whether to believe Neal and Pace rests on a credibility determination—and that is for a fact-finder to make, not a trial court in deciding a motion for summary disposition or an appellate court in reviewing that ruling. See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 122-123 (1991) (opinion by LEVIN, J.).

Further, the factual dispute over the operability of the truck's turn signals is material to plaintiff's claims of negligence, statutory owner liability, and wrongful death. To establish a prima facie case of negligence, a plaintiff must show that "(1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the legal duty, (3) the plaintiff suffered damages, and (4) the defendant's breach was a proximate cause of the plaintiff's damages." *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162 (2011). Absent a statutory requirement, a driver has a duty to operate a vehicle with "ordinary and reasonable care and caution." *Zarzecki v Hatch*, 347 Mich 138, 141 (1956). But the violation of a penal statute may create a rebuttable presumption of negligence. *Zeni v Anderson*, 397 Mich 117, 128-133 (1976); *Klanseck v Anderson Sales & Serv, Inc*, 426 Mich 78, 86-87 (1986). Under the Michigan Vehicle Code's owner-liability provision, "[t]he owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle," provided the vehicle was being driven with the owner's knowledge or consent. MCL 257.401(1). A wrongful-death action similarly requires a showing that a person's death was caused by a "wrongful act, neglect, or fault of another." MCL 600.2922(1).

Drawing reasonable inferences from the record evidence, a reasonable juror could determine that Neal failed to conduct a pre-trip inspection that would have revealed the inoperable turn signals or, instead, knowingly operated a vehicle with these defects. In turn, a reasonable juror could conclude that Neal and defendant committed a wrongful act and breached their legal duty to ensure that the truck was properly maintained and safe to operate. This evidence also supports plaintiff's theory of causation because, if the truck's turn signals lit up but did not blink, the decedent may have reasonably believed that the truck was about to stop rather than turn, and thus, it was safe to pass on the right. Contrary to defendant's assertion, this conclusion is not speculative but follows a "logical sequence of cause and effect" when viewed in the light most favorable to plaintiff. *Skinner v Square*

D Co, 445 Mich 153, 174 (1994). Similarly, evidence of an inoperable turn signal supports plaintiff's position that Neal violated applicable statutes, which contributed to the crash. See MCL 257.648(1) ("The operator of a vehicle . . . , before stopping or turning from a direct line, shall first determine that the stopping or turning can be made in safety and shall give a signal . . . ."); MCL 257.642(1)(a) ("A vehicle . . . must not be moved from the lane until the operator has first ascertained that the movement can be safely made."). A reasonable juror could conclude that Neal failed to ensure that he could safely execute a right turn and that the harm to the decedent was a foreseeable consequence of that conduct. See *Ray v Swager*, 501 Mich 52, 65 (2017) (explaining that proximate cause "requires a determination of whether it was foreseeable that the defendant's conduct could result in harm to the victim"). Thus, genuine issues of material fact exist as to breach and causation.

The trial court likewise correctly denied summary disposition on the issue of comparative fault. Under Michigan's no-fault act, MCL 500.3101 *et seq*., "[a] person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). In these cases, "[d]amages must be assessed on the basis of comparative fault, except that *damages must not be assessed in favor of a party who is more than 50% at fault*." MCL 500.3135(2)(b) (emphasis added). In a comparative fault system, "the liability of each person shall be allocated . . . by the trier of fact and . . . in direct proportion to the person's percentage of fault." MCL 600.2957(1). As correctly noted by dissenting Judge HOOD, "the body of evidence supports a variety of reasonable conclusions for jurors." *Estate of McDuffie-Connor* (HOOD, J., dissenting), unpub op at 7. Although defendant contends that the decedent caused the crash by unlawfully passing the truck on the right, reasonable minds could conclude from the video footage of the crash and other evidence that both drivers bear some fault. One could believe that the decedent's maneuver—passing the truck on the right from the parking lane of the roadway—was not made "under conditions permitting the overtaking and passing in safety." MCL 257.637(2). But the evidence also supports the conclusion that Neal acted without ensuring that the turn could be safely made and without using functional turn signals to notify surrounding drivers. See MCL 257.642(1)(a); MCL 257.648(1). Because reasonable minds could differ on which driver was more at fault for the crash, MCL 500.3135(2)(b) does not bar recovery for plaintiff. See *Huggins v Scripter*, 469 Mich 898, 898 (2003).

We disagree, too, with defendant's alternative argument for affirming the Court of Appeals—that Neal had no legal duty to anticipate that the decedent would attempt to pass on the right. "[U]ntil a hazard is perceived, or until a hazard would have been apparent to a reasonable man, considering pertinent surrounding circumstances of traffic and terrain, a driver has no duty to guard against or anticipate an unknown hazard." *Briggs v Knapp*, 513 Mich 857, 857 (2023) (quotation marks and citations omitted). In *Briggs*, we agreed that the driver had no duty to anticipate a pedestrian who walked into the lane of highway traffic during dark, nighttime conditions. *Id*.; see *Briggs v Knapp*, unpublished per curiam

opinion of the Court of Appeals, issued March 9, 2023 (Docket No. 358641) (K. F. KELLY, J., dissenting), p 5. Unlike that case, reasonable minds could differ here on whether Neal should have perceived the decedent's vehicle. As discussed, whether the decedent's vehicle should have been apparent to Neal as it approached on the right, and after Neal had passed the vehicle on the left seconds earlier, is a determination properly left to a fact-finder. For these reasons, the trial court did not err by denying defendant's motion for summary disposition under MCR 2.116(C)(10). We therefore reverse the Court of Appeals judgment to the contrary.[2]

Finally, plaintiff argues that the Court of Appeals erred by vacating the trial court's award of sanctions against defendant for the spoliation of employment and maintenance records.[3] "When a party destroys or loses *material* evidence, whether intentionally or unintentionally, and the other party is unfairly prejudiced because it is unable to challenge or respond to the evidence, a trial court has the inherent authority to sanction the culpable party to preserve the fairness and integrity of the judicial system." *Teel v Meredith*, 284 Mich App 660, 666-667 (2009) (emphasis added). As the Court of Appeals majority acknowledged, the trial court abused its discretion by failing to make any findings as to whether the records discarded by defendant were material to plaintiff's claims. Nor did the trial court address the related issue of whether defendant had a duty to preserve this evidence before plaintiff filed suit. See *Brenner v Kolk*, 226 Mich App 149, 162 (1997) ("Even when an action has not been commenced and there is only a potential for litigation, the litigant is under a duty to preserve evidence that it knows or reasonably should know is relevant to the action."). Because the trial court did not make the necessary findings to impose sanctions for the spoliation of employment and maintenance records, it was unnecessary for the Court of Appeals to resolve the merits of this issue. We therefore vacate Parts II(A)(1), (2), and (3) of the Court of Appeals judgment, and we remand to the trial court to reconsider its ruling.

Accordingly, we vacate in part and reverse in part the judgment of the Court of Appeals, vacate the order of the Wayne Circuit Court granting plaintiff's motion for sanctions against defendant for the spoliation of evidence, and remand this case to the trial court for further proceedings not inconsistent with this order.

---

[2] We express no opinion on arguments made by defendant in its motion for summary disposition that were not addressed by the trial court or the Court of Appeals, such as whether the wrongful conduct rule applies or whether summary disposition is warranted on any claims under MCR 2.116(C)(8).

[3] Plaintiff does not challenge the Court of Appeals' conclusion that defendant did not spoliate evidence by failing to preserve the dump truck itself, so we do not disturb that ruling.

We do not retain jurisdiction.

ZAHRA, J., would deny the application for leave to appeal.

BERNSTEIN, J., did not participate.

HOOD, J., did not participate because he was on the Court of Appeals panel.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 11, 2025

Clerk

t0604