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2024 IL App (3d) 220484-U

Order filed May 31, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

BRENT TROMPLER and DEANNA)	Appeal from the Circuit Court
TROMPLER,)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois,
Plaintiffs-Appellants,)	
)	Appeal No. 3-22-0484
v.)	Circuit No. 18-L-115
)	
)	Honorable
UNION PACIFIC RAILROAD COMPANY,)	Lindsay Parkhurst,
)	Judge, Presiding.
Defendant-Appellee.)	

JUSTICE PETERSON delivered the judgment of the court.
Presiding Justice McDade and Justice Brennan concurred in the judgment.

ORDER

- ¶ 1 *Held:* The court erred by granting summary judgment.
- ¶ 2 Plaintiffs, Brent and Deanna Trompler, appeal the Kankakee County circuit court's order granting summary judgment in favor of defendant Union Pacific Railroad Company. Plaintiffs argue that the court erred by determining that they failed to present sufficient evidence of proximate cause to create a question of material fact. We reverse and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4

Plaintiffs filed a complaint against defendant, including a claim by Brent for negligence and a claim by Deanna for loss of consortium. The matter arises out of a single vehicle accident that occurred on October 13, 2017, when Brent's vehicle left the road and went into a ditch after travelling over a railroad crossing owned and/or maintained by defendant. Defendant had received notice from the Illinois Department of Transportation that repairs were necessary to the railroad crossing, including an email in August 2017, noting that complaints had been made regarding the crossing and that the asphalt along a rail had broken up and holes had developed. Defendant had scheduled construction on the crossing for October 16, 2017.

¶ 5

Defendant moved for summary judgment, arguing that plaintiffs were unable to establish proximate cause as required to sustain the negligence claim because there was no evidence of the cause of the accident. Defendant further argued that if Brent's negligence claim failed, so did Deanna's loss of consortium claim. Defendant also filed a motion seeking dismissal of plaintiffs' complaint as spoliation sanctions due to the destruction of evidence. Plaintiffs filed a response to both motions. As to summary judgment, they responded that the circumstantial evidence, along with the testimony of plaintiffs' expert, was enough to establish a genuine issue of material fact as to the proximate cause of the accident. Plaintiffs alleged that deterioration in the asphalt causing a large crack or gap within the railroad crossing caused Brent's steering wheel to jerk, resulting in Brent losing control of the vehicle. Plaintiffs relied, in part, on Brent's deposition testimony and their mechanical engineering expert, James Loumiet's opinion as to the cause of the accident. Plaintiffs conceded that the loss of consortium claim failed if the negligence claim failed.

¶ 6 Brent testified at his deposition that when he was driving over the second set of railroad tracks the steering wheel jerked out of his hands. He stated that “it was enough to jerk both my hands. I mean, it came out of both my hands and I was hard to the right.” Brent further described it as “a weird feeling, because it was like something snagged” and “it was like something like solid grabbed it.” He clarified that he was indicating that it felt like something grabbed the left front tire and he noted that “grabbed” was not the best term to describe the feeling. He tried to regain control but went into the ditch.

¶ 7 Loumiet testified in his deposition that based upon video footage of the railroad crossing taken the day after the accident and still photographs from that footage, he determined that there was an approximately eight to nine-inch gap between the railroad track and the asphalt. The gap had some variation in width but ran across the entire travel lane, except maybe a few inches near the fog line. He noted that the areas with the widest gap “is where you would expect the tire paths to be for vehicles going over the crossing ***.” He further testified that Brent’s “explanation of what happened is very consistent with *** my opinion about what happened here is that he came on this crossing, the second set of tracks *** and hit that hole between the asphalt and the rail, and that caused an impact to that tire. That caused it to deflect or pivot a certain number of degrees *** that had the effect of moving his steering wheel the way he described it.” Loumiet continued “that’s what I think probably happened in this case was going over that hole all of a sudden there’s no contact patch directly under the tire, but you have contact with the rail. You have contact with the edge of the pavement. So at some point you may have more than one contact patch, but you’ve changed it, and you’ve changed the contact patch and you’ve changed the forces on the tire. And if there is any eccentricity to it at all, it’s going to cause that tire to pivot or spin, and that’s what I think probably happened in this case. It’s the only plausible

explanation that I can see.” Loumiet summed up his opinion by stating “I think my opinion is most likely it was the gap between the asphalt and the rails that caused this accident ***.”

¶ 8 The court granted summary judgment for defendant, stating that there were various things that could have caused the accident and there was not enough evidence to say that the gap was the only probable cause. The court found that defendant’s spoliation motion was moot and declined to rule on it. Plaintiffs appeal.

¶ 9 II. ANALYSIS

¶ 10 Plaintiffs argue that the court erred by granting summary judgment, as they presented sufficient evidence of proximate cause to create a genuine issue of material fact as to the negligence claim. They further argue that as summary judgment was improperly granted on the negligence claim, it was likewise improperly granted on the loss of consortium claim. Defendant argues that summary judgment was properly granted because it is logically impossible for anyone to determine the only probable conclusion as to the cause of the accident and any conclusion regarding the cause of the accident would be speculation. Defendant further argues that since summary judgment as to the negligence claim was proper, it was also proper as to the loss of consortium claim.

¶ 11 “Summary judgment should be granted only where the pleadings and supporting documents, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law.” *Sandlin v. Harrah’s Illinois Corp.*, 2016 IL App (3d) 150018, ¶ 10. “Summary judgment should not be granted if the material facts are in dispute or if the material facts are not in dispute but reasonable persons might draw different inferences from the undisputed facts.” *Id.* “Although summary judgment is to be encouraged as an expeditious

manner of disposing of a lawsuit, it is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt.” *Id.* Orders granting summary judgment are reviewed *de novo*. *Olson v. Williams All Seasons Co.*, 2012 IL App (2d) 110818, ¶ 23.

¶ 12 To establish negligence, a plaintiff must prove that defendant’s breach of a duty of care owed to the plaintiff was the proximate cause of the plaintiff’s injuries. *Nowak v. Coghill*, 296 Ill. App. 3d 886, 892 (1998). “What constitutes the proximate cause of an injury in a particular case is ordinarily a question of fact to be determined from all the attending circumstances, and it can only be a question of law when the facts are not only undisputed but are also such that there can be no difference in the judgment of reasonable men as to the inferences to be drawn from them.” *Merlo v. Public Service Co. of Northern Illinois*, 381 Ill. 300, 318 (1942). Negligence may be established by direct or circumstantial evidence. *Nowak*, 296 Ill. App. 3d at 896. “Circumstantial evidence is the proof of facts and circumstances from which a fact finder may infer other connected facts that usually and reasonably follow, according to the common experience of mankind.” *Id.* “[T]he use of circumstantial evidence is not limited to those instances in which the circumstances support only one logical conclusion. Instead, circumstantial evidence will suffice whenever an inference may reasonably be drawn therefrom ***.” *Mort v. Walter*, 98 Ill. 2d 391, 396 (1983).

¶ 13 After reviewing the record, we conclude that plaintiffs presented sufficient evidence to raise a genuine issue of material fact as to whether the condition of the railroad crossing caused Brent’s accident. Unlike cases cited by defendant, such as *Kellman v. Twin Orchard Country Club*, 202 Ill. App. 3d 968 (1990), *Berke v. Manilow*, 2016 IL App (1st) 150397, and *Barclay v. Yoakum*, 2019 IL App (2d) 170962, this matter does not solely involve circumstantial evidence but also direct evidence as to the defect and what occurred. Specifically, there is video footage of

the railroad crossing from the day after the accident which shows a gap between the railroad track and the asphalt. Loumiet was able to calculate that the gap was between eight and nine inches wide. Brent provided direct evidence by describing what happened as he travelled over the railroad track where the gap existed, indicating that the steering wheel jerked from his hands. Based in part on this evidence, Loumiet opined that Brent's vehicle hit the gap between the railroad track and the asphalt, which caused an impact to the tire and made it pivot, resulting in the steering wheel moving as Brent had described. Loumiet's expert opinion as to the cause of the accident constitutes a reasonable inference from the evidence. For purposes of summary judgment, Brent's testimony regarding the significant and unusual movement of his steering wheel was unrebutted and the existence of the defect or "gap" at the railroad crossing was uncontested. Even if we considered the evidence to be solely circumstantial, Loumiet's opinion is not mere speculation or conjecture as argued by defendant but instead a reasonable inference based upon the evidence developed in discovery, including the defect in the railroad crossing and Brent's testimony as to what physically happened when he drove over that defect. See *Nowak*, 296 Ill. App. 3d at 895-96 (providing that liability may not be based on speculation or conjecture but that "circumstantial evidence is sufficient to establish proximate cause to overcome a motion for summary judgment as long as the inference in question may reasonably be drawn from the evidence"). Therefore, the court erred by granting summary judgment to defendant. Judgment in favor of defendant is reversed and the matter remanded for further proceedings. In remanding this matter, we note that in the circuit court, defendant filed a motion regarding spoliation of evidence and, on appeal, raises some arguments with respect to the alleged spoliation. However, as the circuit court did not rule on the spoliation motion, we decline to consider any such issues on appeal as they should be addressed by the circuit court in the first instance.

¶ 14

III. CONCLUSION

¶ 15 The judgment of the circuit court of Kankakee County is reversed and the matter remanded.

¶ 16 Reversed and remanded.