

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN BOYD SMAGA,

Plaintiff-Appellant,

v

C & J TRUCKING, INC., and ROBERT HAYES,

Defendants-Appellees.

UNPUBLISHED

November 20, 1998

No. 199494

Wayne Circuit Court

LC No. 96-602413 NI

Before: Holbrook, Jr., P.J., and Markey and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this negligence action. We affirm.

On October 14, 1995, at approximately 11:40 p.m., plaintiff was driving westbound on West Chicago in Detroit when he collided with the rear end of a flatbed trailer owned by defendant C & J Trucking, Inc (hereinafter "C & J"). Defendant Hayes, who owned the tractor truck pulling the flatbed, was employed by C & J as a driver at the time of the accident. At the point where the accident occurred, the westbound portion of West Chicago is divided into two lanes. The right-hand lane, which is several inches wider than the left-hand lane, was designated as a "Parking Allowed" zone. The loaded flatbed was parked by Hayes on this portion of the roadway.

Plaintiff argues that the trial court erred in granting summary disposition in favor of defendants. We disagree. We review a trial court's grant or denial of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995).

A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

“[A] party opposing a motion brought under MCR 2.116(C)(10) may not rest upon the mere allegations or denials in that party’s pleadings, but must by affidavit, deposition, admission, or other documentary evidence set forth specific facts showing that there is a genuine issue for trial.” *Marlo Beauty Supply, Inc v Farmers Ins Group of Companies*, 227 Mich App 309, 321-322; 575 NW2d 324 (1998). Accord MCR 2.116(G)(4).

In support of their motion for summary disposition, defendants submitted an affidavit by Detroit Police Officer Carl Silvers, the accident investigator assigned to investigate the accident. In his affidavit, Officer Silvers states that: (1) to the best of his recollection, defendants’ trailer was “legally parked in a ‘Parking Allowed’ zone at the time of the accident;” (2) defendants’ “trailer was parked no more than 4 inches from, and parallel to the curb;” (3) “[t]he accident occurred when [plaintiff’s vehicle] . . . failed to avoid [defendant’s trailer] . . . , and struck it from behind;” and (4) he had determined that plaintiff “was entirely at fault for the accident.”

Although plaintiff challenged each of these assertions before the trial court, plaintiff offered no documentary proof in support of his position. Plaintiff asserted that the flatbed trailer might have been illegally parked, but he offered no documentary evidence to support this claim. Thus, Officer Silvers’ statement that the flatbed was legally parked remained uncontradicted by proper evidence. Plaintiff also asserted that the flatbed was “protruding out into the left lane,” but he offered nothing beyond mere suppositions to substantiate this allegation. Thus, Officer Silvers’ statement that the flatbed was parked parallel to the curb at a distance of approximately four inches was also uncontradicted by proper evidence. Further, plaintiff’s deposition testimony that he could not remember whether the area was lighted did not overcome the observations of both Officer Silvers’ in his accident report and Hayes in his deposition that the area was indeed lighted at the time of the accident.

Much of plaintiff’s argument below appears to have been predicated upon the premise that vehicles the width of the flatbed trailer are not allowed to park in this “Parking Allowed” zone because such vehicles would not leave enough room for another vehicle to pass in the right-hand lane. However, plaintiff offered no evidence that such a restriction existed. His failure to do so supports a conclusion that plaintiff’s arithmetic calculations concerning the dimensions of the right-hand lane at the time of the accident are inconsequential.

We conclude, therefore, that the trial court did not err when granting defendant’s motion for summary disposition. Plaintiff failed to produce evidence showing a genuine issue existed as to whether Hayes had breached a duty of care when he parked C & J’s flatbed trailer on West Chicago. MCR 2.116(G)(4).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Jane E. Markey

/s/ William C. Whitbeck