STATE OF MICHIGAN

COURT OF APPEALS

SHAYMA HASSOON,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant,

and

NILYA ABDULLAH,

Defendant-Appellee.

UNPUBLISHED
June 25, 2020

No. 349915
Wayne Circuit Court
LC No. 17-014088-NF

Before: TUKEL, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

In this negligence action to recover noneconomic losses suffered as a result of a motor vehicle accident, plaintiff, Shayma Hassoon, appeals as of right from a July 19, 2019 stipulated order of dismissal, challenging a prior order that granted summary disposition to defendant, Nilya Abdullah, pursuant to MCR 2.116(C)(10). The trial court granted defendant's motion for summary disposition after concluding that MCL 500.3135(2)(b)[1] barred plaintiff's recovery based on the court's finding that plaintiff was 51% or more at fault for the accident that caused her alleged injuries. For the reasons stated below, we reverse the trial court's order and remand the matter for further proceedings.

[1] MCL 500.3135(2)(b) provides that in a negligence action for noneconomic loss caused by the ownership, maintenance, or use of a motor vehicle, "[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."

I. RELEVANT FACTS AND PROCEEDINGS

The motor vehicle accident at issue occurred in Detroit, where the Mack Avenue exit ramp from I-75 joins with Chrysler Drive, a service drive that runs adjacent to the highway. The parties disagree about where the accident occurred relative to the juncture of the exit ramp lane and the service drive, and they gave significantly different accounts of the mechanics of the collision at their respective depositions. In her deposition, plaintiff said she was driving in the left lane of Chrysler Drive as she approached the stop sign where the exit ramp lane joins the service drive. She came to a complete stop at the stop sign and looked over her left shoulder to see if any cars were coming down the exit ramp lane. Seeing nothing coming down the exit ramp lane and no cars in front of her, she proceeded to drive forward. Shortly thereafter, defendant's car turned into her car, damaging the fender and driver-side door of plaintiff's car. Plaintiff inferred from the location of the accident that defendant was trying to take a sharp right turn onto Eliot Street by crossing over the solid white lines on the exit ramp lane and into plaintiff's lane. At one point in her deposition, plaintiff said she did not see defendant's vehicle before the collision, but at another, she said she saw it seconds before it hit her and she pumped her brakes.

Defendant testified at her deposition that plaintiff ran the stop sign where Chrysler Drive and the exit ramp lane come together and collided with her car as she was merging onto Chrysler Drive. Defendant said that after running an errand that morning, she had intended to drive to Ann Arbor. Upon realizing that she had accidently gone north on I-75 instead of south, defendant got off at the Mack Avenue exit so she could get onto the freeway heading south. As she exited, she saw a McDonald's and thought she would go through the drive-thru and get a coffee to drink on her drive. Defendant testified that, as she was slowing down to merge onto the service drive, she saw plaintiff's car in her right-side and rearview mirrors. Plaintiff was approaching the stop sign and defendant thought plaintiff would stop. Instead, plaintiff "just rolled right through it." Asked where she was when plaintiff rolled through the stop sign, defendant testified:

> *A.* I was already veering off the exit ramp and across, going across the, um, the first lane going to the service drive to the right lane. That's where I was going. And when I saw that she wasn't stopping, um, I didn't want her to hit me at all. She would have hit me right there – right in the middle of my car, middle of the door is what I envisioned, and with her approaching I'm trying to turn to the left to get out of her way because there was nothing coming, getting off the ramp at the that time that I saw.
>
> *Q.* So –
>
> *A.* So I was trying to get neutral to be in a straight lane and not the service drive because I didn't want her to strike my car.
>
> *Q.* That's –
>
> *A.* So that's why everything happened like right there close to the double line.

Defendant testified that plaintiff's car collided with her car where the white lines separating the exit ramp lane from the service drive come to a point.

Plaintiff filed a complaint alleging in part that defendant violated several provisions of the Motor Vehicle Code, MCL 257.1 *et seq*, and that such violations proximately caused plaintiff to suffer damages. Defendant filed an answer denying that she had breached any duties she owed plaintiff under Michigan statutory or common-law and denying that her actions had proximately caused plaintiff's injuries. She also filed affirmative defenses, asserting, among other things, that plaintiff's own negligence or comparative negligence caused her injuries.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) (no genuine issue of material fact). Defendant argued that she was entitled to summary disposition because, given the circumstances of the accident, no reasonable juror could conclude that plaintiff was not more than 50% at fault for the accident and, thus, recovery was barred by MCL 500.3135(2)(b). She also contended that she was entitled to summary disposition based on application of the sudden-emergency doctrine because plaintiff's driving through the service drive's stop sign created a dangerous situation in which defendant had only a split second to act and, although defendant took measures to avoid the collision, plaintiff's vehicle struck hers nonetheless. Lastly, defendant contended that plaintiff could not recover in tort for noneconomic losses because she had not presented evidence of the threshold injuries required by MCL 500.3135(1).

In opposition to defendant's motion for summary disposition, plaintiff argued that questions regarding comparative fault were for the jury to decide, not for the court to decide in a summary disposition motion. She asserted that there was no genuine issue of material fact that defendant caused the accident by attempting a sharp right turn immediately after the median separating the Mack Avenue exit ramp lane from Chrysler Drive. And even if the trial court believed that defendant had the right of way, defendant still had a duty to drive with due care for the safety of others. Once it became clear that plaintiff was going to challenge or obstruct defendant's right of way, defendant had the duty to try to avoid a collision. Defendant indicated at her deposition that she could have avoided the accident had she stayed in the exit ramp lane, which illustrates that she did not exercise the due care called for in this situation. Plaintiff further contended that whether defendant experienced a sudden emergency was a question of fact for the jury to decide, and that the material factual dispute regarding the nature and extent of plaintiff's injuries also precluded summary disposition.

At the hearing on defendant's motion, defendant explained at the outset that the issues involved were not matters of credibility because even if the trial court took everything plaintiff said about "the mechanics of the accident" as true, plaintiff was still more than 50% at fault because it was her duty to remain stopped and yield to the traffic coming down the exit ramp lane. Defendant asserted that nothing defendant did after coming down the exit ramp was relevant because pulling forward at a stop sign without properly yielding to oncoming traffic with the right of way is a traffic violation. Defendant implied that, even viewing the facts of the case in the light most favorable to plaintiff, no reasonable juror could find plaintiff less than 51% at fault for the accident. Defendant further argued that even if the court did not think plaintiff more than 50% at fault, summary disposition was still appropriate because, by failing to yield the right-of-way to traffic coming down the exit ramp lane, plaintiff created a sudden emergency for defendant. Plaintiff's response was consistent with her summary disposition brief.

Although the court heard arguments regarding evidence of plaintiff's injuries, it ultimately granted defendant's motion for summary disposition based on its conclusion that plaintiff violated her duty to remain stopped at the stop sign and yield to oncoming traffic from the exit ramp lane. The court did not discuss defendant's duty of reasonable care, but found that no reasonable juror could conclude that plaintiff was less than 51% at fault and, therefore, that MCL 500.3135(2)(b) barred plaintiff's recovery for noneconomic losses. Accordingly, the trial court granted defendant's motion for summary disposition of plaintiff's claim against her. The court did not rule on defendant's sudden-emergency theory or on her claim that plaintiff's injuries did not meet the threshold injuries requirements of MCL 500.3135(1). The court entered a corresponding order the same day. After further proceedings not relevant to this appeal, the trial court entered a final order on July 19, 2019. This appeal followed.

II. DISCUSSION

A. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. See *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

Defendant moved for summary disposition under MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The moving party has the initial burden to identify "the issues as to which the moving party believes there is no genuine issue as to any material fact[,]" MCR 2.116(G)(4), and must support the motion with "[a]ffidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion.[,]" MCR 2.116(G)(3). When deciding a motion for summary disposition, the court must consider the documentary evidence submitted in the light most favorable to the nonmoving party. See MCR 2.116(G)(5); *Joseph*, 491 Mich at 206. It must draw all reasonable inferences in favor of the nonmoving party. See *Dextrom v Wexford* Co, 287 Mich App 406, 415-416; 789 NW2d 211 (2010). The court may not make findings of fact or weigh credibility in deciding a motion for summary disposition. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475(1994). Summary disposition under MCR 2.116(C)(10) is appropriate where there is "no genuine issue as to any material fact" and the movant is "entitled to judgment . . . as a matter of law."

B. ANALYSIS

Plaintiff first argues that, because she presented evidence raising genuine issues of material fact as to whether she was more than 50% at fault for the accident, the question of comparative fault should have been presented to a jury, and the trial court erred by granting defendant's motion for summary disposition. We agree.

The elements of a prima facie case of negligence are (1) a duty, (2) a breach, (3) injury or damages, and (4) causation. *Campbell v Kovich*, 273 Mich App 227, 230; 731 NW2d 112 (2006). At issue here is the element of causation. Proof of causation requires both cause in fact and proximate cause. *Haliw v Sterling Hts*, 464 Mich 297, 310; 627 NW2d 581 (2001). Establishing cause in fact "requires a showing that, but for the negligent conduct, the injury would not have

occurred." *Campbell*, 273 Mich App at 232. Proximate cause "involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences." *Ray v Swagger*, 501 Mich 52, 63; 903 NW2d 266 (2017). There can be more than one proximate cause. *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 496-497; 791 NW2d 853 (2010). "[P]roximate cause is an issue for the jury, provided that there is evidence from which reasonable persons could draw a fair inference that the injury was caused by negligence." *Rodriguez v Solar of Michigan, Inc*, 191 Mich App 483, 488; 478 NW2d 914 (1991),

The no-fault act limits tort liability. Relevant to the issues raised by plaintiff, "[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). "Damages 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).[2] "[C]omparative negligence is an affirmative defense . . . adopted to promulgate a fair system of apportionment of damages." *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 98; 485 NW2d 676 (1992) (quotation marks omitted). "The standards for determining the comparative negligence of a plaintiff are indistinguishable from the standards for determining the negligence of a defendant, and the question of a plaintiff's own negligence for failure to use due care for his own safety is a jury question unless all reasonable minds could not differ or because of some ascertainable public policy consideration." *Rodriguez*, 191 Mich App at 488. Comparative fault involves factual questions to be resolved by the trier of fact. See MCL 600.6304.[3] Where no reasonable juror can find that a defendant was more at fault

[2] This statute was amended in 2019 and the amendments were given immediate effect. See 2019 PA 21 and 2019 PA 22. We use the current language because the changes to the statutory language at issue here are stylistic and not substantive. Of note, the statute only prohibits recovery for noneconomic damages, it is not applicable to any economic losses sustained in excess of what is covered by personal injury protection (PIP) insurance.

[3] MCL 600.6304 states in relevant part:

> (1) In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death involving fault of more than 1 person, including third-party defendants and nonparties, the court, unless otherwise agreed by all parties to the action, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating both of the following:
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> (a) The total amount of each plaintiff's damages.
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> (b) The percentage of the total fault of all persons that contributed to the death or injury, including each plaintiff and each person released from liability under [MCL 600.]2925d, regardless of whether the person was or could have been named as a party to the action.
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> (2) In determining the percentages of fault under subsection (1)(b), the trier of fact shall consider both the nature of the conduct of each person at fault and the extent of the causal relation between the conduct and the damages claimed.

than the plaintiff, summary disposition in favor of the defendant is appropriate. See *Huggins v Scripter*, 469 Mich 898; 669 NW2d 813 (2003).

The trial court granted summary disposition in favor of defendant based on the court's finding that plaintiff was at least 51% at fault for the accident because she failed to yield to defendant, and therefore, MCL 500.3135(2)(b) barred plaintiff's recovery. Plaintiff's attorney argued that plaintiff did not expect defendant to cross over the two white lines separating the exit ramp lane from the other lanes of Chrysler Drive. But the trial court responded, "No, no, no, no, no, you must expect that because your client [plaintiff] has a stop sign[,]" and insisted that this was not a jury issue. Essentially, the trial court found that plaintiff had to wait and see what traffic coming down the exit ramp lane was going to do before she proceeded, even if the lane in front of her was clear. However, given the specific configuration of the exit ramp lane at issue in this matter, and viewing the evidence in the light most favorable to plaintiff, a reasonably minded juror could disagree with what the court thought plaintiff ought to expect under the circumstances. Further, even if plaintiff violated a statute, such violation is not necessarily evidence of negligence; rather "violation of a statute creates a rebuttable presumption of negligence." *Johnson v Bobbie's Party Store*, 189 Mich App 652, 661; 473 NW2d 796 (1991).

It is undisputed that plaintiff had a duty to come to a complete stop at the stop sign, and she testified that she did come to a complete stop. However, as the images of the exit ramp lane plaintiff attached to her brief to this Court show (Ex 8a and Ex 34a), the exit ramp lane does not disappear by merging into one of the existing lanes of Chrysler Drive. Instead, it continues as an independent lane that drivers can remain on at least until they reach Mack Avenue. Although Chrysler Drive appears to be two (or three) lanes before the stop sign, the exit ramp lane becomes the fourth lane of Chrysler Drive beyond where the two white lines separating the exit ramp lane from the other Chrysler Drive lanes come to a point. From that point forward, dotted lines separate the four lanes. Given that cars coming down the exit ramp can stay in their lane without moving right into another of Chrysler Drive's lanes, the question is, if plaintiff came to a complete stop at the stop sign and saw that the way in front of her was clear, was it not reasonable for her then to proceed in her lane? This question goes to the nature of plaintiff's duty to yield and defendant's purported right of way. Given the configuration of the road, reasonable jurors could disagree with the court's finding that plaintiff had to expect defendant to cut across the solid white lines separating the exit ramp lane from the other Chrysler Drive lanes.[4]

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* * *

> (8) As used in this section, "fault" includes an act, an omission, conduct, including intentional conduct, a breach of warranty, or a breach of a legal duty, or any conduct that could give rise to the imposition of strict liability, that is a proximate cause of damage sustained by a party.

[4] The essence of defendant's brief to this Court is that she offered the only credible account of the accident. Defendant mischaracterizes plaintiff's deposition testimony as indicating that she did not look, or gave contradictory accounts about looking, to see if traffic was coming down the exit

In addition, because the trial court did not expressly address defendant's fault, it is difficult to tell whether the court considered any of defendant's acts negligent. Defendant denied crossing the two white lines at the location plaintiff indicated on Ex. 8a, saying that it would have been "illegal" to do so. Although we have found no express statutory prohibition against crossing the lines indicated, the fact that defendant thought doing so was "illegal" suggests that a reasonably minded juror could find that defendant's action was at least negligent under the circumstances and that her negligence significantly contributed to the accident.

Further, the trial court appears to have been swayed by defendant's argument that nothing she did after she came down the exit ramp lane was relevant because pulling forward at a stop sign without properly yielding to oncoming traffic with the right of way is a traffic violation. This argument erroneously assumes that defendant did not have a duty to act as a reasonably prudent person under the circumstances. In *McGuire v Rabaut*, 354 Mich 230, 234-235; 92 NW2d 299 (1958), a case arising from an accident at the intersection of an arterial highway and a subordinate street, the Michigan Supreme Court discussed the responsibility of a driver who has the right of way at an intersection, i.e., the "favored driver." *McGuire* involved responsibilities governed in part by MCL 257.649,[5] which plaintiff's complaint alleges defendant violated. The *McGuire* Court explained that a favored driver is subject to two apparently conflicting but "equally sound and equally applicable principles of law." *McGuire*, 354 Mich at 234. On one hand, she may

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ramp lane and calls "absurd" and "contrary to the factual record and common sense" plaintiff's testimony that defendant appeared to be trying to "turn right" off of the exit ramp. The trial court may not weigh credibility in deciding a motion for summary disposition. *Skinner*, 445 Mich at 161. Accordingly, defendant's credibility arguments do nothing to support the trial court's order granting her motion for summary disposition.

[5] MCL 257.649(8) provides:

> Except when directed to proceed by a police officer, the driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection, or if there is not a crosswalk shall stop at a clearly marked stop line; or if there is not a crosswalk or a clearly marked stop line, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After having stopped, the driver shall yield the right of way to a vehicle that has entered the intersection from another highway or that is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver would be moving across or within the intersection.

MCL 257.649 was amended by 2018 PA 109, eff. July 23, 2018. Two subsections were inserted to address the responsibility of drivers approaching intersections controlled by traffic signals (subsections 4 and 5), and the subsections following these insertions were renumbered. Thus, what was subsection (6) at the time of plaintiff's accident is now subsection (8) in consequence of the amendment. In addition, two stylistic changes were made. This opinion uses the current language of the subsection because the stylistic changes did not affect the substantive content.

assume that the subordinate driver will yield the right of way to her. She is "not bound to anticipate unlawful or negligent acts" on the part of the subordinate driver. *Id*. On the other hand, this does not mean that the favored driver may "lower [her] head, close [her] eyes, and charge blindly through intersections on the theory that such is [her] 'right' . . . It remains [her] duty to exercise reasonable care under the circumstance. " *Id*. at 234-235.

Defendant was entitled to assume that plaintiff was going to stop at the stop sign. Viewing the evidence in the light most favorable to plaintiff, plaintiff did stop at the stop sign. Even if plaintiff negligently proceeded to drive forward, a reasonable juror could conclude from defendant's testimony that she saw plaintiff's car in her side and rearview mirrors, and that she could have avoided the accident had she simply stayed in the exit ramp lane rather than merging into plaintiff's lane, but she negligently failed to do so.

Lastly, the facts of this case are unlike those of other cases where trial courts have resolved comparative fault as a matter of law. A trial court may decide comparative negligence as a matter of law where no reasonable juror could find that the party for whom summary judgment was entered was more than 50% at fault. See *Huggins*, 469 Mich 898-899 (holding that summary disposition for the defendant was appropriate where a police accident reconstructionist showed that it would have been impossible for any driver to have seen the decedent before hitting him).[6] Considering the evidence in the light most favorable to plaintiff, MCR 2.116(G)(5), and drawing all reasonable inferences in favor of plaintiff, *Dextrom*, 287 Mich App at 415-416, the trial court erred by concluding as a matter of law that no reasonable juror could conclude that plaintiff was less than 51% negligent. This is not a case like *Huggins*, where summary disposition was appropriate because evidence showed that it was impossible for the defendant to avoid the accident, or like *McGuire*, where any reasonable actions the favored driver could have taken would not have avoided the accident. Instead, the evidence in the present cases raises genuine issues of material fact as to the mechanics of the accident, i.e., who hit whom and where the impact occurred, whether defendant's actions were negligent under the circumstances, and the parties' comparative percentage of fault.

Because there is evidence from which reasonable persons could conclude that defendant's negligence was a cause of the accident, proximate cause is an issue for the trier of fact, *Rodriguez*, 191 Mich App at 488, as is comparative negligence, MCL 600.6304(1)(b) and (2). Accordingly, we conclude that the trial court erred in granting defendant's motion for summary disposition

[6] See also *McGuire*. At issue in *McGuire* was whether the trial court reversibly erred by instructing the jury that, when approaching the intersection where the subject accident occurred, the favored driver defendant was not required to look in the direction from which the subordinate driver plaintiff approached the intersection. The *McGuire* Court concluded that even if the jury had relied on the erroneous instruction to reach its verdict in favor of defendant, the outcome would not have been different because, given the factual circumstances of the case and the fact that the defendant was driving at a lawful speed and in a lawful manner, by the time the defendant saw the plaintiff's car in the intersection, there simply was not enough braking distance for the defendant to avoid the collision. *McGuire*, 354 Mich at 239-240.

based on its finding that plaintiff was at least 51% at fault, reverse the November 8, 2018 order granting defendant summary disposition, and remand the matter for further proceedings.

The trial court did not rule on defendant's arguments that she was entitled to summary disposition based on an application of the sudden-emergency doctrine or plaintiff's alleged failure to present evidence of the threshold injuries required by MCL 500.3135(1); therefore, these issues are not preserved for appellate review. See *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010). In civil cases, we "may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006). Because none of these conditions are met here, we decline to address these unpreserved issues.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jonathan Tukel
/s/ Deborah A. Servitto
/s/ Jane M. Beckering