

STATE OF MICHIGAN

IN THE 56-1 DISTRICT COURT, CITY OF HASTINGS, BARRY COUNTY

DONNA VANCE,

Plaintiff,

v.

File No. 94GC-0309

STATE FARM MUTUAL AUTO INSURANCE CO.,  
Defendant.

OPINION

Based upon stipulated facts in this case it appears that three people, two operating motor vehicles and one walking, were lawfully using the traveled and paved portion of a roadway in close proximity to each other. The pedestrian-Plaintiff observed the two vehicles and reasonably concluded that she and the two vehicles could not safely use the available roadway at the same time. Consequently the pedestrian-Plaintiff stepped off the roadway into a depression and twisted her ankle causing a fractures.

The issue is whether the pedestrian-Plaintiff's injuries arose out of the operation or use of a motor vehicle as a motor vehicle.

Review of the stipulated facts reveals the following significant factors.

A. Space

Plaintiff-pedestrian, based upon her observations, concluded that she and the two motor vehicles could not safely use the traveled portion of a two-lane roadway in the same location during the same time, without significant

threat of injury.

B. Focus of Attention

The operator of the motor vehicle approaching pedestrian and the pedestrian had focused their primary attention on each other and were taking evasive action to avoid contact.

C. Time

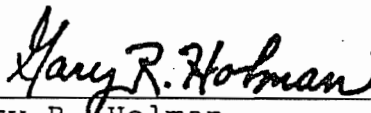
Immediate action by the users of the roadway was necessary to avoid contact between the motor vehicles and/or the pedestrian. The pedestrian's immediate action of stepping from the roadway avoided contact between the pedestrian and the motor vehicle, but resulted in a twisted ankle and fracture. The injury to Plaintiff-pedestrian was immediate.

In Bromley v Citizens Insurance Company of America, 113 Mich. App. 131 (1982), and Bradley v Detroit Automobile Interinsurance Exchange, 130 Mich. App. 34 (1983), the appellate courts of this state have recognized with respect to motorcycles that an injury is foreseeably identifiable when a cyclist alters lawful use of a roadway to accommodate the use of that same roadway by a motor vehicle which is used as a motor vehicle. The Bradley case at page 42, 43 indicates that "causation has been couched in terms of the injury being foreseeably identifiable with normal use of a motor vehicle".

In this case, as in the Bradley case, it appears that the vehicle approaching the Plaintiff-pedestrian was proceeding in a manner foreseeably identifiable with the normal use of a motor vehicle. The normal use of the vehicle caused Plaintiff to react by stepping off the pavement into the depression and suffer immediate injury.

This Court finds no reason to conclude that the means of propulsion, whether it be by motorcycle, automobile, bicycle, or self-propulsion affects the causal nexus. Therefore in this case, when focusing upon the relationship between injury and the use of the motor vehicle as a motor vehicle this Court finds that there is a causal nexus.

Defendant's Motion For Summary Disposition is denied. Plaintiff's Motion For Partial Summary Disposition is granted under MCR 2.116(C)(10). Plaintiff's Counsel is requested to prepare the appropriate order for Court's signature.



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Gary R. Holman  
56-1 District Judge