[Cite as *Springer v. Webb*, 2015-Ohio-3071.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JAMES A. SPRINGER	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellant	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 15CA24
	:	
DOYLE WEBB	:	
	:	
	:	
Defendant-Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, Case No. 15CA24
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	July 27, 2015

APPEARANCES:

For Plaintiff-Appellant:	For Defendant-Appellee:
NEIL A. MCKOWN MCKOWN & MCKOWN CO., L.P.A. 10 Mansfield Ave. Shelby, OH 44875	KENNETH R. BEDDOW DAVIS & YOUNG, LPA 24 W. Third St., Suite 204 Mansfield, OH 44902

Delaney, J.

{¶1} Plaintiff-appellant James A. Springer appeals from the March 10, 2015 Judgment Entry Granting Defendant's Motion for Summary Judgment of the Richland County Court of Common Pleas. Defendant-appellee is Doyle Webb.

FACTS AND PROCEDURAL HISTORY

{¶2} This case arose from a motorcycle crash on June 22, 2012. Appellee drove his vehicle southbound on Belmont and reached the intersection of Belmont and State Route 39, which runs east and west. Appellee stopped at the stop sign and checked both ways for traffic, intending to turn left onto S.R. 39. A van approached from appellee's right and made a left turn onto Belmont.

{¶3} After the van completed its turn, appellee "started to take off" from the intersection but slammed on his brakes when he observed appellant operating a motorcycle northbound in the curbside lane of S.R. 39. Appellee's view of appellant had been blocked by the van before it turned. Appellee did not enter the intersection but thought he possibly scared appellant because he observed appellant's motorcycle wobble and eventually turn over on its side. Appellee was cited for failure to yield the right-of-way by Trooper Kelley of the Ohio State Highway Patrol.

{¶4} Appellant initiated suit against appellee for negligence and property damage on February 6, 2014. Appellant's complaint asserts appellee's failure to yield caused him to swerve and crash his motorcycle. The case proceeded to discovery and appellant, appellee, and Trooper Kelley were deposed. The depositions of appellee and Trooper Kelley were filed in the trial court on February 18, 2015. The exhibits from Kelley's deposition were filed on February 19, 2015.

{¶5} Appellant's deposition was not filed and is not in the appellate record.

{¶6} On January 23, 2015, appellee filed a motion for summary judgment; appellant responded and appellee replied. The motion for summary judgment was premised solely upon appellant's testimony in deposition that he didn't know what caused him to crash his motorcycle; he never applied his brake; he was able to steer into the passing lane to pass appellee's vehicle as it entered S.R. 39; and as he passed appellee, his motorcycle remained upright and under control. Therefore, appellee argued, appellant could not establish any negligence by appellee was the proximate cause of appellant's injury.

{¶7} The trial court agreed and granted appellee's motion for summary judgment. Appellant now appeals from the trial court's judgment entry of March 10, 2015.

{¶8} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶9} "I. THE RICHLAND COUNTY COURT OF COMMON PLEAS ERRED AS A MATTER OF LAW IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT."

ANALYSIS

{¶10} Appellant argues the trial court erred in granting summary judgment for appellee. Because the deposition testimony the parties rely upon is not in the record before us, we disagree.

{¶11} This case comes to us on the accelerated calendar. App.R. 11.1 governs accelerated-calendar cases and states in pertinent part:

> (E) Determination and judgment on appeal.
>
> The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.
>
> The decision may be by judgment entry in which case it will not be published in any form.

{¶12} One of the most important purposes of the accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts, and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983). With these principles in mind, we turn to the parties' arguments.

{¶13} Motions for summary judgment are determined pursuant to Civ.R. 56(C), which states in pertinent part:

> Summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * * A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only from the evidence or

> stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

{¶14} The moving party bears the initial responsibility of informing the trial court of the basis for the motion and identifying those portions of the record before the trial court, which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). The nonmoving party then has a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth "specific facts" by the means listed in Civ.R. 56(C) showing that a "triable issue of fact" exists. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798 (1988).

{¶15} Pursuant to the above rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 674 N.E.2d 1164 (1997), citing *Dresher*, supra, 75 Ohio St.3d at 280.

{¶16} Our standard of review is de novo, and as an appellate court, we must stand in the shoes of the trial court and review summary judgment on the same standard and evidence as the trial court. *Watson v. Chase Home Fin., L.L.C.*, 5th Dist. Richland No.13 CA 100, 2014-Ohio-4018, ¶ 15, citing *Smiddy v. The Wedding Party, Inc.,* 30 Ohio St.3d 35, 506 N.E.2d 212 (1987).

{¶17} To defeat a motion for summary judgment filed by a defendant in a negligence action, a plaintiff must identify a duty owed to him or her by the defendant

that was breached by the defendant and which proximately caused the plaintiff's injury. *Manley v. Wal-Mart Stores, Inc.*, 152 Ohio App.3d 544, 2003-Ohio-1756, 789 N.E.2d 631, ¶ 13 (5th Dist.), citing *Keister v. Park Centre Lanes*, 3 Ohio App.3d 19, 443 N.E.2d 532 (5th Dist.1981), syllabus. The issue in this case is proximate cause, or more exactly, whether the actions of appellee were not the proximate cause of appellant's injury and property damage as a matter of law. *Smith v. Wood*, 5th Dist. Muskingum No. 88-27, 1989 WL 28742, *2 (Mar. 10, 1989).

{¶18} Both here and in the trial court, the parties' arguments rely upon the deposition testimony of appellant. Appellant argues his testimony contrasted with that of the other witnesses creates an issue of fact precluding summary judgment; appellee responds appellant's inability to articulate the reason for the crash demonstrates the lack of proximate cause.

{¶19} Appellant's deposition is not in the record. It is well-settled that “[w]hen portions of the transcript necessary for the resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm.” *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). When deposition testimony relied upon by the trial court in ruling upon a summary judgment motion is not before the appellate court, the appellate court must presume the validity of the trial court's decision. *Dionyssiou v. Proestos*, 6th Dist. Lucas No. L-91-423, 1992 WL 337485, *2 (Nov. 20, 1992).

{¶20} Both parties rely upon appellant's deposition testimony which we are unable to review in context. We are thus unable to review the evidence pursuant to

Civ.R. 56(C) to evaluate the existence of a genuine issue of material fact as to whether any negligence by appellee proximately caused appellant's injury. *Williams v. Parzynski*, 6th Dist. Erie No. E-95-036, 1996 WL 139625, *2 (Mar. 15, 1996). Without a complete record, we must presume that the trial court properly granted summary judgment. Id., citing *State v. Prince*, 71 Ohio App.3d 694, 698, 595 N.E.2d 376 (4th Dist.1991). It is the duty of appellant to show error by reference to matters in the record. *Knapp v. Edwards Laboratories*, supra, 61 Ohio St.2d at 199.

{¶21} We thus presume the trial court properly granted summary judgment for appellee and appellant's sole assignment of error is overruled.

CONCLUSION

{¶22} Appellant's assignment of error is overruled and the judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J. and

Gwin, P.J.

Hoffman, J., concur.