

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Gary Boyd, et al.

Court of Appeals No. L-10-1223

Appellants

Trial Court No. CI 10-3744

v.

John C. Helman

DECISION AND JUDGMENT

Appellee

Decided: February 11, 2011

* * * * *

Charles E. Boyk, Michael A. Bruno, and Nicholas M. Dodosh,
for appellants.

Timothy C. James and Brad A. Everhardt, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the July 19, 2010 judgment of the Lucas County Court of Common Pleas, which granted summary judgment to appellee, John C. Helman, and dismissed the claims against him. Upon consideration of the assignment of error, we

affirm the decision of the lower court. Appellants, Gary Boyd and Yvette Boyd, assert the following single assignment of error on appeal:

{¶ 2} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF-APPELLANTS WHEN IT GRANTED THE MOTION FOR SUMMARY JUDGMENT OF DEFENDANT-APPELLEE BECAUSE THE EVIDENCE AS SET FORTH IN THE RECORD CREATED A GENUINE ISSUE OF MATERIAL FACT AS TO THE APPLICABILITY OF THE SUDDEN EMERGENCY DEFENSE, SPECIFICALLY WITH RESPECT TO WHETHER DEFENDANT-APPELLEE'S LOSS OF CONSCIOUSNESS WAS FORESEEABLE."

{¶ 3} Appellants, Gary Boyd and Yvette Boyd, filed suit against appellee, John Helman, asserting negligence claims against him relating to an automobile accident which occurred on November 10, 2008. Helman's vehicle crossed the median and struck a vehicle driven by Mitchell Mielcarek. Gary Boyd was a passenger in Mielcarek's vehicle. Gary Boyd asserted that he suffered serious injuries as a result of the accident. Yvette Boyd asserted a loss of consortium claim. Helman answered denying liability and asserting along with other defenses that he had lost consciousness shortly before the accident.

{¶ 4} Helman moved for summary judgment asserting that at the time of the accident, he suffered from an acute myocardial infarction, which caused him to lose consciousness and his vehicle to veer left, crossing the center of the roadway and

colliding with Mielcarek's vehicle. Helman submitted the affidavit of his primary care physician since 2002. He attested to the fact that prior to this day, Helman had neither a history of heart problems nor any symptoms to indicate a problem. Therefore, the physician never had any reason to recommend that Helman should not drive a car. The doctor opined that " * * * Helman's sudden loss of consciousness was the result of an acute myocardial event related to coronary artery disease, which was asymptomatic until that moment." Therefore, Helman argued, he was not liable for the damage and entitled to judgment as a matter of law based upon the defense of sudden medical emergency as set forth in *Lehman v. Haynam* (1956), 164 Ohio St. 595, 599-600, and *Roman v. Estate of Gobbo*, 99 Ohio St.3d 260, 2003-Ohio-3655, ¶ 28-48. Under this doctrine, a sudden loss of consciousness from an unforeseen cause is a complete defense to a claim based on negligence. *Lehman*, supra. Helman was required to prove his defense by a preponderance of the evidence. *Id.* at 600.

{¶ 5} The Boyds opposed the motion asserting that there was a factual issue as to whether Helman suffered from a sudden, unforeseeable emergency. They submitted the affidavit of another physician, Dr. Reithmiller, who reviewed the medical records of Helman. The physician concluded that Helman was 77 years old and had several risk factors for coronary artery disease (his age, high blood pressure, borderline high cholesterol, and weight). The physician opined that Helman's loss of consciousness was a foreseeable consequence of his coronary artery disease and the fact that Helman did not

take the preventative measures necessary to prevent the acute myocardial infarction. While Helman took blood pressure medication, it did not decrease his blood pressure. Helman refused to take Statin drugs suggested by his physician to lower his cholesterol levels. A 2004 EKG revealed that Helman suffered from Premature Ventricular Contractions because every third heartbeat was irregular. A stress test was recommended, but refused by Helman. The physician opined that had Helman taken the necessary preventative measures suggested to him by his physician, he would not have suffered the acute myocardial event that he did.

{¶ 6} The appellate court reviews the grant of summary judgment under a de novo standard of review. *Advanced Analytics Labs., Inc. v. Kegler, Brown, Hill & Ritter*, 148 Ohio App.3d 440, 2002-Ohio-3328, ¶ 33, and *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. Applying the requirements of Civ.R. 56(C), we uphold summary judgment when it is clear "* * * (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) 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, who is entitled to have the evidence construed most strongly in his favor." *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶ 7} The parties do not dispute the law applicable in this case. Rather, they dispute only whether there is a genuine issue of material fact as to whether Helman's

unconsciousness was foreseeable. Helman produced the affidavit of his physician who attested that the unconsciousness was not foreseeable. The Boyds submitted an affidavit of a physician, Dr. Reithmiller, who stated to a reasonable degree of certainty that Helman's loss of consciousness "was not due to a sudden and unforeseen emergency." He surmised from the record that Helman had several leading risk factors for coronary artery disease and if Helman had taken the preventive treatments suggested by his physician, "the myocardial infarction that Mr. Helman suffered would have been prevented."

{¶ 8} The trial court concluded that the two conflicting physician's opinions did not give rise to a material question of fact. The court reviewed the medical records and took issue with some of the factual findings of Dr. Reithmiller. We find, however, that such a review is not permitted on summary judgment because the issue is not the weight of the evidence. The question on summary judgment is only whether conflicting evidence was presented. Nonetheless, we agree with the trial court that Dr. Reithmiller's affidavit did not provide a basis for finding that Helman knew that he had a heart condition that would cause him to lose consciousness. While the loss of consciousness might have been prevented by medical care, that question is not the issue before us. While Helman may have known that he had risk factors for heart disease, neither he nor anyone else could predict that a myocardial infarction was imminent. Therefore, the trial court's conclusion, as a matter of law, that Helman's loss of consciousness was not foreseeable and that he

could not be held liable for the injuries suffered by the Boyds, is affirmed. Appellants' sole assignment of error is found not well-taken.

{¶ 9} Having found that the trial court did not commit error prejudicial to appellants and that substantial justice has been done, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellants are hereby ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
