2019 IL App (2d) 180119-U
No. 2-18-0119
Order filed May 8, 2019



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| NICHOLAS A, SKRIDLA, Administrator of the Estate of MARGARET E. SKRIDLA, deceased, NICHOLAS A. SKRIDLA, as Personal Representative of MARGARET E. SKRIDLA, deceased, NICHOLAS A. SKRIDLA, as Father and Next Friend of MAXAMILLIAN J. A. SKRIDLA, a minor, and NICHOLAS A. SKRIDLA, Individually,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>GENERAL MOTORS COMPANY, a Delaware corporation, f/k/a GENERAL MOTORS CORPORATION, a Delaware corporation, GENERAL MOTORS, LLC, a foreign corporation, and DANA J. FANARA,<br><br>Defendants-Appellees,<br><br>(DANA J. FANARA, Individually and mother and Next Friend of PHILIP FANARA, a minor, Counter-Plaintiffs v. NICHOLAS A. SKRIDLA, Administrator of the Estate of MARGARET E. SKRIDLA, a deceased person, Counter-Defendant). | ) | Appeal from the Circuit Court of Winnebago County.<br><br>No. 10-L-364<br><br>Honorable Eugene G. Doherty, Judge, Presiding. |

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JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held*: Summary judgment in favor of defendant driver and defendant automobile manufacturer affirmed where plaintiffs failed to establish issue of fact as to alleged negligence of driver and forfeited any strict liability argument as to manufacturer.

¶ 2 Plaintiffs, Nicholas A. Skridla, as administrator of the estate of Margaret E. Skridla, deceased, as personal representative of Margaret E. Skridla, deceased, as father and next friend of Maxamillian J.A. Skridla, a minor, and individually, appeal from an order of the circuit court granting summary judgment against plaintiffs and in favor of defendants, Dana J. Fanara and General Motors Company. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The case arises from an automobile accident that occurred on the Bauer Parkway's bridge spanning the Rock River in Winnebago County. The parkway bridge consists of two eastbound and two westbound lanes, bordered on both sides with concrete walls, topped by guardrails. On the afternoon of December 3, 2009, Margaret Skridla was driving a 2001 Chevrolet Malibu in the inside, or left, eastbound lane. Maxamillian Skridla, two years old at the time, was a passenger in the rear seat of the Malibu. At approximately the same time, Dana Fanara was driving a 2008 Audi A7 westbound on the parkway bridge, in the outside, or right, westbound lane.

¶ 5 As the Malibu crossed the bridge, it slid on black ice and veered across the westbound lanes of traffic, striking the wall on the north side of the bridge and rebounding into the westbound lanes of traffic, where it was struck by the Audi driven by Dana Fanara. The impact of the collision projected Ms. Skridla into the rear seat of the Malibu, fracturing her spine. She died from her injuries approximately two years later. Maxamillian was injured but survived.

¶ 6 On October 15, 2010, plaintiffs filed a law suit naming defendants and alleging negligence against Fanara and strict liability and negligence against General Motors. Defendants' summary judgment motions were granted on February 6, 2018, and this appeal ensued

¶ 7 II. ANALYSIS

¶ 8 Summary judgment should be granted "if the pleadings, depositions, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016)). Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt. *Yarbrough v. Northwestern Memorial Hospital*, 2017 IL 121367, ¶ 79. The movant has the burden of production on a summary judgment motion. *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49.

¶ 9 At the same time, the use of the summary judgment procedure is encouraged as an aid to the expeditious disposition of a lawsuit. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). "[L]iability may not be based on speculation, imagination, or mere conjecture." *Nowak v. Coghill*, 296 Ill. App. 3d 886, 895 (1998). To avoid summary judgment, a plaintiff must "present sufficient evidentiary facts to support the elements of his cause of action." *Id*. We review *de novo*, a trial court's decision to grant or deny summary judgment. See *Cohen v. Chicago Pak District*, 2017 IL 121800, ¶ 17.

¶ 10 Preliminarily, defendants have asked us to address plaintiffs' numerous violations of the supreme court's rules pertaining to appellate briefs. Fanara requests that we disregard plaintiffs' statement of facts and argument, and General Motors asserts that plaintiffs have forfeited their

claims against it. We find that that the merits of plaintiffs' appeal cannot be addressed separately from the multiple rules violations.

¶ 11 This court recently enunciated the significance of the supreme court's briefing rules:

> "Illinois Supreme Court Rule 341(h) (eff. [Jan. 1, 2016]) governs the contents of an appellant's brief. "The rules of procedure concerning appellate briefs are rules and not mere suggestions." [Internal quotation marks and citation omitted.] Failure to comply with the rules regarding appellate briefs is not an inconsequential matter. [Citation.] The purpose of the rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. [Citation.] A brief that lacks any substantial conformity to the pertinent supreme court rules may justifiably be stricken. [Citation.]" *Hall v. Naper Gold Hosp. LLC*, 2012 IL App (2d) 111151, ¶ 7.

¶ 12 Rule 341(h)(6) requires a statement of facts that "contains the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S.Ct. R. 341(h)(6) (eff. Jan. 1, 2016). Plaintiffs' statement of facts is argumentative and contains only two citations to the record, both of which reference the same cover page of a deposition. Additionally, plaintiffs incorporate inaccurate and contradictory "facts" and include alleged facts that are not necessary to the disposition of the appeal. "Accordingly, we shall not consider those facts that we deem violative of Rule 341([h])(6)." *Aboufariss v. City of De Kalb*, 305 Ill. App. 3d 1054, 1058 (1999).

¶ 13 Plaintiffs' argument section fares no better than their statement of facts. Rule 341(h)(7) requires an argument that contains "the contentions of the appellant and the reasons therefor,

with citation of the authorities and the pages of the record relied on. *** Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S.Ct. R. 341(h)(7) (eff. May 25, 2018). Plaintiffs supply only four record citations in their argument. All are to cover pages of depositions (three of them the same deposition cover page referenced in their statement of facts) and, accordingly, are unhelpful. In addition, plaintiffs confuse crucial facts relating to the collision (as they also did in their statement of facts), twice misstating that *Fanara* lost control of her vehicle and veered across the westbound traffic lanes, striking the north wall of the bridge before continuing in the westbound lanes and striking the rear end of Ms. Skridla's vehicle. The evidence establishes that *Skridla*, not Fanara, lost control of her vehicle, veered into the westbound traffic lanes, and struck the north wall of the bridge. Such lapses do not assist our understanding of the case.

¶ 14 Plaintiffs assert that this case presents "numerous questions of fact." Plaintiffs identify only two potential issues of material fact. First they maintain Fanara was driving at an improper speed for the road conditions and failing to keep a proper lookout, thus endangering the safety of others. The only authorities plaintiffs rely on are cases stating summary judgment boilerplate, two factually unrelated cases addressing the duties of drivers at intersections involving preferential roadways, and a provision of the Illinois Vehicle Code discussing a driver's duty to use reasonable care.

¶ 15 Plaintiffs suggest that ice on the road creates an issue of fact as to whether Fanara was driving too fast for conditions. Fanara, however, testified that she did not encounter ice as she drove that day until she was required to attempt to avoid Skridla's vehicle. Plaintiffs failed to submit any contradictory evidence. Thus, while it is undisputed that at the time of the accident the portion of the Bauer Parkway's bridge that spans the river was covered in black ice, all of the

evidence indicates that Fanara had no knowledge of any ice on the bridge, nor any reason to believe the bridge was icy, until Skridla's vehicle started to slide.

¶ 16 Plaintiffs also contend that Fanara failed to keep a proper lookout for other vehicles because Skridla's Malibu came to a full stop in Fanara's lane for approximately ten seconds before it was struck by Fanara's Audi. Plaintiffs rely on the deposition testimony of the only eyewitness to the collision. However, when asked "once and for all" whether Skridla's vehicle came to a stop after hitting the north wall of the bridge and rebounding into the westbound lanes of traffic, the eyewitness testified: "I don't have an active memory of that. I don't know." The only unrebutted evidence, Fanara's testimony, shows that Fanara saw the Skridla vehicle as soon as it veered across from the eastbound to the westbound lanes.

¶ 17 Plaintiffs posited a separate issue in their Issue Presented for Review at the beginning of their brief: "whether the trial court erred in granting summary judgment for all defendants and against all plaintiffs because there was insufficient evidence that neither defendant, Dana J. Fanara nor General Motors Company, *** was the proximate cause of this occurrence." Plaintiffs, however, fail to address this issue and have, therefore, forfeited it. See *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56 ("Both argument and citation to relevant authority are required [under Rule 341(h)(7) (Ill. S.Ct. R. 341(h)(7) (eff. May 25, 2018))]. Failure to comply with the rule's requirements results in forfeiture.").

¶ 18 Also forfeited by plaintiffs are any claims of error in the entry of summary judgment in favor of General Motors. Apart from the above issue statement, General Motors is mentioned only in the final paragraph of plaintiffs' argument, in the context of whether Skridla's seatbelt was fastened at the time of the accident. Plaintiffs assert in the final paragraph (as they did, argumentatively, in their statement of facts) that the collision caused Skridla's "seatbelt buckle to

break and release her, which is not what the seatbelt was supposed to do." Plaintiffs do not, however, directly implicate General Motors in this occurrence, nor do they provide any citation to the record or to authority that might support a product liability claim against General Motors. Because plaintiffs have forfeited any such claims, we affirm the trial court's order entering summary judgment in favor of General Motors.

¶ 19 Finally, we note that plaintiffs' brief also violates Rule 342(a) (Ill. S.Ct. R. 342(a) (eff. Jan. 1, 2005)) in that it fails to include the required appendix. (Fortunately, General Motor's brief provides an appendix.) "The [appellate court's] docket is full and noncompliance with Rules 341 and 342 does not help us resolve appeals expeditiously. Reviewing courts will not search the record for purposes of finding error in order to reverse the judgment when an appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs." *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 47. Accordingly, the trial court is affirmed.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, the judgment of the circuit court of Winnebago County is affirmed.

¶ 22 Affirmed.