STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0756

Yee X. Yang and Blong Vang,
individually and as parent and natural guardian of Ladani Vang, a minor,
Appellants,

vs.

Cooper Tire & Rubber Company,
Respondent,

HVH Auto Parts, Inc., d/b/a John's Auto,
Respondent.

Filed February 10, 2014
Affirmed in part, reversed in part, and remanded
Kalitowski, Judge

Hennepin County District Court
File No. 27-CV-10-13554

Paul E. Godlewski, Schwebel Goetz & Sieben, P.A., Minneapolis, Minnesota; and

Kyle W. Farrar (pro hac vice), Farrar & Ball, LLP, Houston, Texas (for appellants)

Mark A. Solheim, Paula Duggan Vraa, Anthony J. Novak, Larson · King, LLP, St. Paul, Minnesota (for respondent Cooper Tire & Rubber Company)

Robert T. Stich, Louise A. Behrendt, Stich, Angell, Kreidler, Dodge & Unke, P.A., Minneapolis, Minnesota (for respondent HVH Auto Parts)

Considered and decided by Kalitowski, Presiding Judge; Connolly, Judge; and Crippen, Judge.*

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

After suffering personal injuries from a car accident resulting from alleged tire failure, appellants Yee Yang and Blong Vang brought suit against respondent-retailer HVH Auto Parts, Inc., d/b/a John's Auto (John's Auto) and respondent-manufacturer Cooper Tire & Rubber Company (Cooper). On appeal, appellants argue that the district court erred by (1) granting summary judgment, dismissing appellants' claims against John's Auto; (2) granting judgment as a matter of law (JMOL), dismissing appellants' manufacturing-defect claim against Cooper; and (3) committing various evidentiary errors at trial. We affirm the summary judgment, reverse the JMOL, and remand for a new trial.

D E C I S I O N

I.

Appellants argue that because Blong Vang testified at his deposition that John's Auto sold him two tires, including the tire that caused the car accident, a genuine issue of material fact exists, which was improperly resolved when the district court granted summary judgment. We disagree.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Summary judgment is appropriate when there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. "We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). We view the evidence "in the light most favorable to the party against whom summary judgment was granted." *State Farm Fire & Cas. v. Aquila, Inc.*, 718 N.W.2d 879, 883 (Minn. 2006).

Appellants argue that the district court erred by determining that John's Auto did not sell the subject tire as a matter of law. But the record indicates that there is no genuine issue of material fact for trial. Affidavits and deposition testimony indicate that it is John's Auto's practice to mark each tire it sells with the letters "JAP." It is also company practice to enter a customer's name and any services performed for that customer into its computer system. Two invoices were produced, indicating that two tires had been sold to a party named "Vang." These were the only invoices for a party named "Vang" found on John's Auto's computer system.

After the accident, the parties conducted an inspection of appellants' van. The inspection revealed two tires with "JAP" markings on the left side of appellants' van. The tires with the "JAP" markings were still intact. The tire that had allegedly caused the accident, located on the front-right of the van, did not have the "JAP" marking.

To rebut this evidence, appellants relied solely on the deposition testimony of appellant Blong Vang. Vang testified that he bought two tires from John's Auto and watched employees mount the tires to the front of his van. But Vang's deposition testimony is not supported by any physical evidence or corroborating testimony. And "when determining whether a genuine issue of material fact for trial exists, the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). We conclude that appellants' self-serving and uncorroborated allegations are not sufficient to overcome summary judgment. *See Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 783 (Minn. 2004) ("The party opposing summary judgment may not establish genuine issues of material fact by relying upon unverified and conclusory allegations, or postulated evidence that might be developed at trial, or metaphysical doubt about the facts.").

Because reasonable minds could only conclude that John's Auto did not sell the subject tire, we affirm the district court's summary-judgment dismissal of appellants' claims against John's Auto.

II.

Appellants argue that because their expert witness presented sufficient evidence supporting the element of causation, the district court erred by granting Cooper's JMOL motion, dismissing appellants' manufacturing-defect claim before it was presented to the jury. We agree.

> [JMOL] should be granted: only in those unequivocal cases where (1) in the light of the evidence as a whole, it would clearly be the duty of the trial court to set aside a contrary verdict as being manifestly against the entire evidence, or where (2) it would be contrary to the law applicable to the case.

Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd., 711 N.W.2d 811, 816 (Minn. 2006). "Viewing the evidence in a light most favorable to the nonmoving party, this court makes an independent determination of whether there is sufficient evidence to present an issue of fact for the jury." *Id.* If fact questions exist, the district court's grant of JMOL is reversible error. *Baber v. Dill*, 531 N.W.2d 493, 495 (Minn. 1995).

To prove a manufacturing defect, a plaintiff must establish that: (1) the product at issue was in a defective condition; (2) the defect existed when the product left the defendant's control; and (3) the defect was the proximate cause of the plaintiff's injury. *Lee v. Crookston Coca-Cola Bottling Co.*, 290 Minn. 321, 229-30, 188 N.W.2d 426, 432 (1971).

At trial, appellants alleged that the tire failed because of belt-edge separation, which caused the tread of the tire to tear apart. Appellants claimed that the subject tire had both design and manufacturing defects. The alleged design defect resulted when Cooper opted not to install a nylon cap pry overlay or belt-edge gum strips to the tire. The alleged manufacturing defect resulted when the tire's innerliner was stretched too thin. Appellants' expert witness, Dennis Carlson, measured the tire's innerliner, testifying that it was 19-thousandths of an inch thick; that the optimal width of this innerliner was 40-thousandths of an inch; but that an acceptable "spec" range could vary

from 30- to 50- thousandths of an inch. Carlson opined that it was a combination of both the manufacturing defect and design defect that created high stress at the tire's belt edge, which is why appellants' tire was "not a perfect tire."

The district court determined that appellants had not provided sufficient evidence that the manufacturing defect was the proximate cause of the tire's failure. It granted JMOL, leaving only appellants' design-defect claim to be decided by the jury. The district court provided three reasons why JMOL on appellants' manufacturing-defect claim was appropriate. First, appellants' expert witness testified that a tire with a thicker liner would have caused more heat in the tire. The district court reasoned that more heat would have enhanced belt-edge separation, not prevented it. Second, Carlson testified that the purpose of a tire's innerliner is to hold air. Because Carlson also testified that appellants' tire was not underinflated, the innerliner could not have been defective. Third, the district court granted JMOL because it found that Carlson's opinions were based on nothing but a "bald assumption" and Carlson had "no support" for his manufacturing-defect theories.

We reject the district court's reasoning and conclude that appellants' evidence created issues of fact that should have been determined by the jury. With respect to the district court's first basis for granting JMOL, appellants' expert testified that a thicker innerliner would not necessarily cause more heat within the tire. Carlson clarified that if the innerliner's thickness would have measured "way out of bounds," that is, exceeded 50-thousandths of an inch, then an innerliner could have caused more heat in the tire. But here, had the subject tire's innerliner been thicker, it would have been closer to the

acceptable "spec" range, increasing the durability of the tire. Carlson never testified that if the innerliner had been measured to "spec," it would have weakened the tire by creating more heat.

With respect to the district court's second basis, Carlson testified that an innerliner has more purposes than simply holding air. He stated that the innerliner increases the durability of the tire and puts less stress on the tire's belt, avoiding belt separation, which was the alleged cause of the accident here. And although the district court placed great emphasis on Carlson's testimony that the tire was not underinflated, this testimony actually established that a factual issue existed. Appellant Vang testified that he did not put air in the subject tire while he owned it. Carlson responded that the "evidence suggest[ed] different[ly]" and that it was his opinion that the subject tire had been properly maintained by someone because the tire was not underinflated. Carlson explained that the tire showed no heat bands or abrasions on the innerliner, which would have indicated that underinflation occurred. Thus, based on his inspection, Carlson supported his opinion that, contrary to appellant Vang's testimony, air had been added to the tire. Although Carlson's testimony conflicted with appellant Vang's, and may have discredited Vang's testimony, this is a factual dispute to be resolved by the jury.

Finally, we disagree with the district court's rationale that JMOL was appropriate because Carlson based his opinions on nothing but a "bald assumption." Carlson is a mechanical engineer, with 35 years' experience in the tire industry, who specializes in tire failure analysis and has experience in the design and construction of tires. Carlson personally examined and measured the subject tire's innerliner. Moreover, he was

qualified to testify as an expert witness by the district court. And his expertise qualified him to state his opinions. Any lack of support for his assertions should have been presented to the jury, not decided by the district court on a motion for JMOL.

The district court's reasoning indicates that it made factual determinations, and in doing so, failed to view the evidence in the light most favorable to appellants. JMOL is a blunt instrument, and we cannot say that this is an unequivocal case where it was the duty of the district court to interject itself and rule as a matter of law. Because the district court erred by granting Cooper's motion for JMOL, we reverse and remand for a new trial. Moreover, given the interrelatedness of appellants' manufacturing- and design-defect claims, we conclude that there must be a retrial of all the issues raised, including the issue of damages. *See Gasoline Prods. Co. v. Champlin Ref. Co.*, 283 U.S. 494, 500-01, 51 S. Ct. 513, 515 (1931) (reasoning that because "the question of damages . . . is so interwoven with that of liability that the former cannot be submitted to the jury independently of the latter without confusion and uncertainty, which would amount to a denial of a fair trial," a new trial on all the issues raised was required).

III.

Appellants argue that the district court erred by admitting and excluding certain exhibits and testimony, including evidence of other similar accidents and consumer complaints involving the same tire design as appellants' tire. Because we have concluded that the district court's error in granting JMOL warrants a new trial, we need not address all of appellants' alleged evidentiary errors. But because the district court applied the

wrong legal standard when determining the admissibility of appellants' similar-incident evidence, and because this issue will likely arise on remand, we address it.

To prove design defect, appellants sought to introduce evidence of 9 lawsuits and 45 consumer complaints involving tires that were manufactured to Cooper's Green Tire Specification (GTS) 2926.[1] Generally, "[e]vidence of other accidents, or verified complaints, is admissible to show notice [of the design defect] *or* [the] defect in design [itself]." *Buzzell v. Bliss*, 358 N.W.2d 695, 700 (Minn. App. 1984), *review denied* (Minn. Mar. 13, 1985) (citing *Indep. Sch. Dist. No. 181 v. Celotex Corp.*, 309 Minn. 310, 244 N.W.2d 264 (1976) (emphasis added)). The party seeking to introduce such evidence must show that the other incidents are "substantially similar" to the incident at issue. *Held v. Mitsubishi Aircraft Int'l, Inc.*, 672 F. Supp. 369, 390 (D. Minn. 1987). "Substantial similarity" means that the incidents occurred under substantially similar circumstances and involved substantially similar components or products. *Id.* (citing *Celotex*, 309 Minn. at 313, 244 N.W.2d at 266). In order to ensure that the substantial similarity test has been satisfied, the district court must conduct a factual inquiry into each of the proffered incidents to determine whether they share a common design, common defect, and common causation with the alleged design defect at issue.

The district court excluded evidence of all nine lawsuits for the purpose of showing defect in the tire's design. The district court explained that because the other lawsuits were not "pretty much the same," they could not be admitted. When advised by

[1] A GTS is the fundamental blueprint to which a tire is manufactured. Every tire is manufactured according to a specific GTS, which states the dimensions, weights, and physical attributes of the components within the tire.

counsel that the appropriate test was whether the other incidents were "substantially similar," the district court responded: "Well, I don't agree. So if you want to – if you want to parse them out and go through this to see if you've got some that meet *my test, as opposed to your test*, I'm willing to do that." And with regard to the consumer complaints, the district court excluded their admission without any consideration as to the similarity of the defects alleged.

The district court's failure to properly apply the "substantial similarity" test was an error of law. Under the district court's restrictive standard, similar-incident evidence would not be admissible so long as there was the slightest difference between the prior incidents and the incident at issue. Moreover, this evidence was critical to appellants' design-defect claim. *See generally* Francis H. Hare, Jr., *Admissibility of Evidence Concerning Other Similar Incidents in a Defective Design Product Case: Courts Should Determine "Similarity" by Reference to the Defect Involved*, 21 Am. J. Trial Advoc. 491, 494 (1998) (stating that "[e]vidence that the defect alleged . . . has manifested itself on other occasions is arguably the single most important category of evidence available to the plaintiff in a defective design product case. Indeed, without other incident evidence, the plaintiff may not be able to carry his burden of proof, nor persuade the jury that the subject design is defective."). By summarily dismissing this critical evidence because it did not meet the "district court's test," the district court abused its discretion.

Importantly, we have not determined, nor do we hold, that appellants' similar-incident evidence is admissible. Rather, on remand, the district court must conduct a

thorough factual inquiry into whether appellants' proffered evidence satisfies the "substantial similarity" test.

Affirmed in part, reversed in part, and remanded.