

Order

Michigan Supreme Court
Lansing, Michigan

October 16, 2026

Megan K. Cavanagh,
Chief Justice

SC: 169770
COA: 372692
Wayne CC: 23-015659-NI

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

DARRIN HARPER,
Plaintiff-Appellant,

v

LORENZO REED and GFL ENVIRONMENTAL
SERVICES, USA,
Defendants-Appellees,

and

CWR II, INC.,
Defendant.

On order of the Court, the application for leave to appeal the December 22, 2025 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WELCH, J. (*dissenting*).

Defendant Lorenzo Reed backed a garbage truck out onto Ford Road in Garden City when he was struck from behind by a car driven by plaintiff Darrin Harper. The trial court reviewed surveillance video of the incident and concluded that the determination of who was more than 50% at fault was “a jury call.” The Court of Appeals reversed, concluding that no reasonable juror could find plaintiff less than 50% at fault. See MCL 500.3135(2)(b).

I would have reversed the judgment of the Court of Appeals. Although the determination of fault is an issue for the trier of fact, a party can prevail on a motion for summary disposition when reasonable minds cannot differ as to who was at fault. In this case, the Court of Appeals panel held that defendants were entitled to summary disposition after determining that plaintiff was negligent and without comparing his culpability to that of the defendants. Further, it credited the defendant garbage truck driver’s account of the

collision without considering other facts. In my view, the Court of Appeals incorrectly reversed the trial court; the disputed facts require a jury to determine who was more at fault. Additionally, the Court of Appeals improperly dismissed a claim related to the dumpster placement prior to the matter being properly litigated. I therefore respectfully dissent from the Court's denial order.

I. BACKGROUND

Before dawn on January 18, 2023, Reed was driving a garbage truck for defendant GFL Environmental Services USA while servicing a dumpster. Because the parking lot did not have enough room for Reed to turn around, he backed out of the driveway onto Ford Road. At least one car passed the garbage truck without incident and Reed resumed reversing. A surveillance camera from across the street recorded the incident. It showed that plaintiff was driving in the curb-side lane when he drove into the truck without braking or swerving. A car driving behind plaintiff slowed down and came to a stop.

It is disputed whether plaintiff was distracted. Plaintiff told police officers that he did not see the garbage truck until the collision, and the police report marked plaintiff as "not distracted." But Reed testified that plaintiff was very apologetic after the accident and stated that he was distracted. Reed attributed the distraction to plaintiff's phone, but plaintiff denied this and the officer's report contained no mention of a phone by either party. And Reed admitted and maintains that he never saw plaintiff's vehicle prior to the collision.

There is also conflicting evidence about Reed's culpability. According to Reed, he was using a "safe backing technique" by inching out into the street because of the "blind spot" and he was stationary at the time of the collision. In a same-day incident report to GFL, however, Reed initially wrote that the collision happened as he backed out into "traffic." He later crossed that word out and replaced it with "the street." The police ultimately deemed Reed to be at fault and issued him a traffic citation that was reduced to impeding traffic.

Plaintiff brought this action against Reed for negligence and against GFL on a theory of vicarious liability and owner's liability. Defendants moved for summary disposition, arguing that MCL 500.3135(2)(b) bars recovery because plaintiff was more than 50% at fault. In support of their motion, defendants pointed to the video of the incident and the testimony of their accident reconstruction expert. The expert's testimony assumed that plaintiff was driving at 40 miles per hour and that the truck's flashing lights were visible. Based on those assumptions, the expert opined that plaintiff had ample time to brake normally.

While the motion was pending, the trial court granted plaintiff permission to add a claim for negligence against GFL for servicing an unsafe dumpster and ordered additional

discovery on this new claim. In response to the motion for summary disposition, plaintiff submitted the police report, Reed's deposition testimony, GFL's dumpster placement policy, and photographs.

The trial court denied defendants' motion, expressing doubt that the video showed that plaintiff was more than 50% at fault but characterized the issue as "a question of fact for a jury." The Court of Appeals reversed, reasoning that plaintiff took no evasive action, that Reed's deposition testimony supported finding plaintiff more than 50% at fault, and that defendants' expert "clearly concluded that plaintiff was the cause of the accident and thereby more than 50% at fault." *Harper v Reed*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2025 (Docket No. 372692), p 12. On the question of GFL's alleged negligent placement of the dumpster, the panel held that it was not foreseeable that the placement could cause harm to plaintiff. Plaintiff's application for leave to appeal in this Court followed.

II. DISCUSSION

The question here is not whether plaintiff was negligent. A reasonable juror certainly could find that he was. The question is whether any reasonable juror might assign 50% or less of the fault to him. If so, the case must be decided by a jury.

In vehicle accident tort lawsuits, "damages must not be assessed in favor of a party who is more than 50% at fault." MCL 500.3135(2)(b). Our comparative fault statutes explicitly state that it is the trier of fact who allocates fault and in doing so must "consider both the nature of the conduct of each person at fault and the extent of the causal relation between the conduct and the damages claimed." MCL 600.6304(2); see also MCL 600.2957(1). And the Court of Appeals has explained that "[t]he standards for determining the comparative negligence of a plaintiff are indistinguishable from the standards for determining the negligence of a defendant[.]" *Rodriguez v Solar of Mich, Inc*, 191 Mich App 483, 488 (1991), citing *Lowe v Estate Motors Ltd*, 428 Mich 439, 455-461 (1987).

When deciding a motion brought under MCR 2.116(C)(10), the court views the evidence in the light most favorable to the party opposing the motion. *Buhl v Oak Park*, 507 Mich 236, 242 (2021). Summary disposition is appropriate where there are no genuine issues of material fact. *Id.* " 'A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.' " *Id.*, quoting *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160 (2019).

As a result, defendants were entitled to summary disposition only if, viewing the record in plaintiff's favor, no reasonable juror could assign plaintiff 50% or less of the fault as compared to defendants. See *Rodriguez*, 191 Mich App at 488 ("[T]he question of a plaintiff's own negligence for failure to use due care for his own safety is a jury question unless all reasonable minds could not differ or because of some ascertainable public policy

consideration.”). While a close question, I agree with the trial court that the issue is one for the jury to decide.

Our decision in *McDuffie v Neal*, ___ Mich ___; 21 NW3d 205 (2025), is on point. In that case involving a fatal collision, a video recording of the crash showed the decedent attempting to pass a turning truck on the right, and the Court of Appeals held that no reasonable juror could find him 50% or less at fault. *Id.* at ___; 21 NW3d at 205. We reversed. We explained that other evidence suggested that the truck driver was also at fault and that “[b]ecause reasonable minds could differ on which driver was more at fault for the crash, MCL 500.3135(2)(b) [did] not bar recovery for plaintiff.” *Id.* at ___; 21 NW3d at 208, citing *Huggins v Scripter*, 469 Mich 898, 898 (2003).

The record here contains similar evidence. A driver entering a highway from a private driveway “shall yield right of way to vehicles approaching on the highway.” MCL 257.652. Reed backed a commercial truck into a lane on a 40-mile-per-hour road in the dark. By his own admission, he was supposed to wait for traffic to completely clear, was backing up with a blind spot, and never saw the car that hit him. A reasonable juror could conclude from this evidence that Reed entered the road without making sure he could do so safely, and that his fault therefore equaled or was greater than plaintiff’s.

The panel credited Reed’s testimony and relied on defendants’ expert but failed to weigh Reed’s comparative fault in the accident. Although the panel relied on the police report for plaintiff’s statement that he did not see the truck, it otherwise dismissed the investigating officer’s finding that Reed engaged in improper backing and that plaintiff was not distracted. In short, the Court of Appeals assumed the truth of Reed’s statements that he backed out safely, was stopped at the time of the collision, and that plaintiff admitted to being distracted. It chose to discredit conflicting evidence that was also contained in the police report. “Whether to believe [a party] rests on a credibility determination—and that is for a fact-finder to make, not a trial court in deciding a motion for summary disposition or an appellate court in reviewing that ruling.” *McDuffie*, ___ Mich at ___; 21 NW3d at 206.

I also note that I do not believe that the panel’s conclusion that the video is dispositive is correct. The camera shows a pixelated view of the collision from the side. It does not show what an eastbound driver could see or when he could see it. Defendants’ expert admits that “[t]he video starts with the GFL truck at the edge of Ford Road, and it is unknown how long it had been in that position or at what point it would have become visible to an eastbound driver in the position of [plaintiff].” *Harper*, unpub op at 11 (alteration in original). Even if defendants’ expert is correct that plaintiff could have avoided the collision, this would only establish that plaintiff was *partially* at fault. It does not establish that plaintiff was more at fault. Again, only a jury can decide that question

unless no reasonable juror could conclude otherwise. See MCL 600.2958; MCL 600.2959. The facts here are, in my view, enough to push the issue to a jury.¹

Finally, I question the panel’s decision to rule on whether the dumpster was in fact unsafely placed. The trial court allowed plaintiff to amend his complaint and ordered further discovery on this issue. The Court of Appeals reversed, holding that harm from the company servicing the dumpster was not foreseeable as a matter of law. But that claim was added after the motion for summary disposition, discovery had only just been ordered, and the legal issue was never decided by the trial court.

Generally, a grant of summary disposition is premature before discovery on a disputed issue is complete. However, summary disposition is appropriate if there is no fair chance that further discovery will result in factual support for the party opposing the motion. Thus, the dispositive inquiry is whether further discovery presents a fair likelihood of uncovering factual support for the party’s position. [*Doe v Gen Motors, LLC*, 511 Mich 1038, 1038-1039 (2023) (citation modified).]

In this case, not only was discovery ongoing, but Reed himself testified that the dumpster’s location left him no choice but to back a garbage truck onto a multilane road. Whether a collision with oncoming traffic was foreseeable is a question that should not be answered for the first time on appeal prior to the parties conducting discovery and litigating the issue in the trial court. That is simply not the role of appellate courts.

In summary, I agree with the trial court that the facts in this case require a jury to decide who is most at fault. And I believe the Court of Appeals incorrectly decided a legal issue regarding the dumpster placement based on its own fact-finding despite the fact that the trial court never had a chance to reach the issue. Accordingly, I respectfully dissent.

CAVANAGH, C.J., joins the statement of WELCH, J.

¹ The panel also faulted plaintiff for not submitting his own affidavit or testimony “to explain his actions or rather inaction.” *Id.* at 12. But a nonmoving party’s obligation is merely to show that a genuine issue of material fact exists. In this case, plaintiff raised a genuine issue of material fact through Reed’s deposition testimony, the crash report, and photographs of the scene. See MCR 2.116(G)(2) and (4).



I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 16, 2026

Elizabeth Kingston-Miller
Clerk