IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROCKY STAYTON,	§	
	§	No. 468, 2013
Plaintiff Below-Appellant,	§	
	§	Court Below: Superior Court of the State of Delaware in and for Kent County
v.	§	
	§	
CLARIANT CORPORATION,	§	C.A. No.05C-05-042
	§	
Defendant Below-Appellee.	§	
	§	

Submitted: December 5, 2013
Decided: January 2, 2014

Before **BERGER**, **JACOBS,** and **RIDGELY**, Justices.

O R D E R

On this 2nd day of January 2014, it appears to the Court that:

(1) Plaintiff-Below/Appellant Rocky Stayton appeals from a grant of a Motion for Summary Judgment by the Superior Court dismissing his negligence suit against Defendant-Below/Appellee Clariant Corporation ("Clariant"). The claim followed a workplace accident involving a faulty piece of machinery. Stayton raises one claim on appeal. He contends that the Superior Court erred in granting summary judgment when it found that Stayton proffered insufficient evidence to create a genuine issue of material fact. We find no merit to Stayton's claim. As a result, we affirm.

(2) In 2003 while working for Clariant, Stayton was injured when a four-wheeled pelletizer machine ("Pelletizer No. 10") fell over on him. Stayton suffered a number of injuries requiring surgery and additional medical treatment. It is undisputed that a modification to the wheels of Pelletizer No. 10 caused it tip over. Further, both parties agree that this modification occurred after it was manufactured. One of the original owners of Pelletizer No. 10 was Plastic Materials Co., Inc. ("Plastic Materials"), who used the machine in the same manufacturing facility where Stayton was injured. In May 1996, PMC Acquisition ("PMC") purchased the business assets of Plastic Materials. In December 1996, PMC merged with Polymer Color. Pursuant to the merger agreement, Polymer Color was the surviving corporation. On December 31, 1997, Polymer Color, a Delaware corporation, merged with Clariant, a New York corporation. Clariant was the surviving corporation.

(3) In his Amended Complaint, Stayton alleged that Plastic Materials, PMC, or Polymer Color altered or modified Pelletizer No. 10, causing it to tip over. The Superior Court originally dismissed the claim as barred by Delaware's Workers' Compensation Act. Stayton appealed that decision to this Court.[1] We reversed and remanded, holding that Stayton's claim was not barred under the dual persona doctrine of the Workers' Compensation Act's exclusivity provision.[2] On remand,

[1] Stayton did not appeal his claim against Plastic Materials.
[2] *Stayton v. Clariant Corp.*, 10 A.3d 597, 603 (Del. 2010).

Clariant filed a Motion for Summary Judgment after the parties conducted additional discovery. The trial court granted Clariant's motion, finding that Stayton could not present any sufficient evidence for a reasonable juror to conclude that either PMC or Polymer Color negligently modified or maintained the Pelletizer No. 10. This appeal followed.

(4) Stayton contends that the Superior Court erroneously granted Clariant's Motion for Summary Judgment on his negligence claim because he provided circumstantial evidence to create a genuine issue of fact to support either a negligent modification or negligent maintenance theory.[3] We review *de novo* a trial court's decision to grant summary judgment as to both the facts and the law.[4] A grant of summary judgment under Rule 56(c) of the Superior Court Rules of Civil Procedure "cannot be sustained unless there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law."[5] In our review of a summary judgment record, "we are free to draw our own inferences in making factual determinations and in evaluating the legal significance of the evidence."[6]

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[3] Stayton also notes in his brief that the trial court found as a matter of law that Stayton was allowed to amend his complaint and that he is a foreseeable plaintiff. Because these issues are not in dispute and do not affect the disposition of Stayton's appeal, we do not need to consider them further.

[4] *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191 (Del. 2009).

[5] *Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 744–45 (Del. 1997) (citing Super. Ct. Civ. R. 56(c); *Playtex FP, Inc. v. Columbia Cas. Co.*, 622 A.2d 1074, 1076 (Del. Super. Ct. 1992)).

[6] *Williams v. Geier*, 671 A.2d 1368, 1375 (Del. 1996).

But "we will not draw 'unreasonable inferences' in the nonmoving party's favor."[7] Nevertheless, the factual record, "including any reasonable inferences to be drawn therefrom, must be viewed in the light most favorable to the nonmoving party."[8]

(5) "Generally speaking, issues of negligence are not susceptible of summary adjudication. It is only when the moving party establishes the absence of a genuine issue of any material fact respecting negligence that summary judgment may be entered."[9] But where the non-moving party has had adequate discovery and cannot show sufficient facts for a judgment as a matter of law, our analysis changes. As we explained in *Burkhart v. Davies*:

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.[10]

We further explained that "[t]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that

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[7] *Health Solutions Network, LLC v. Grigorov*, 12 A.3d 1154, 2011 WL 443996, at *2 (Del. 2011) (quoting *Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1160 (Del. 2010)).
[8] *LaPoint*, 970 A.2d at 191 (citing *Williams*, 671 A.2d at 1375–76).
[9] *Ebersole v. Lowengrub*, 180 A.2d 467, 469 (Del. 1962) (citing *Lightburn v. Del. Power & Light Co.*, 167 A.2d 64, 65 (Del. Super. Ct. 1960)).
[10] *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991) (quoting Super. Ct. Civ. R. 56(c)).

party."[11] But where "the evidence is *merely colorable*, or *is not significantly probative*, summary judgment may be granted."[12]

(6) The key issue on summary judgment was whether Stayton could show that Clariant, as a successor in interest, caused Stayton's damages because either PMC or Polymer Color had altered the Pelletizer No. 10. Stayton points to circumstantial evidence to establish the existence of the essential element of causation. According to Stayton, Joseph Warnell, the former president of Plastic Materials, "unequivocally stated" that the Pelletizer No. 10 must have been modified under the ownership of either PMC or Polymer Color.[13] But Warnell's deposition does not unequivocally state or otherwise suggest that PMC or Polymer Color altered the Pelletizer No. 10. In relevant part, the deposition testimony identified by Stayton provides:

> Q. Some of the photographs that I have seen of this particular pelletizer -- and it could simply be the photograph - - but there seemed to be different wheels on it. Were wheels ever changed, sizewise, as far as you know?
>
> [Warnell]. Not to my knowledge that we would ever have changed the wheels. What reason would we have had to do it? I don't know of any reason why we would have been concerned about that.
>
> . . . .

[11] *Health Solutions Network*, 2011 WL 443996, at *2 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).
[12] *Id.* (quoting *Anderson*, 477 U.S. at 250).
[13] Appellant's Op. Br. at 21.

> Q. . . . Some -- as I -- as a layman, nonengineer, looking at this pelletizer, I look at some of these wheels and it appears that some of the wheels can turn freely and others are locked in place.
>
> [Warnell]. The two would be probably straight and two would be swiveled.
>
> Q. Do you know of any reason to change -- were the straights, so to speak, the ones locked in place, were they ever changed or modified so that they were made to swivel, so that all four could swivel?
>
> [Warnell]. It's possible but I have no knowledge.[14]

Warnell also explained that the machinery used by Plastic Materials "would have been used equipment."[15]

(7) Despite Stayton's claim to the contrary, Warnell's testimony does not provide sufficient evidence that either PMC or Polymer Color altered the Pelletizer No. 10 by modifying its casters. Warnell's lack of knowledge regarding the alteration of the Pelletizer before 1996 does not demonstrate that PMC or Polymer Color must have made the alterations that caused Stayton's injury. At best, Warnell's testimony provides a mere possibility that PMC or Polymer Color may have altered the Pelletizer No. 10. But Stayton's claim that either PMC or Polymer Color was the only party to defectively modify the Pelletizer No. 10 is an unreasonable inference, which we will not draw. Because such evidence is not sufficient to support the essential element of causation, Clariant has sufficiently

[14] Appellant's Opening Br. Appendix at A194.
[15] *Id.*

established the absence of a genuine issue of any material fact to support a negligent modification claim.

(8) Stayton next contends that this Court should find that there is a genuine issue of a material fact because he is entitled to a favorable instruction under the spoliation doctrine. Clariant claims that this issue is waived because Stayton did not sufficiently raise it in the proceeding below. Under Supreme Court Rule 8, "[o]nly questions fairly presented to the trial court may be presented for review."[16] Stayton does not dispute that the issue of spoliation was not raised in his opposition to Clariant's summary judgment motion. But Stayton contends that the issue was fairly raised below because he stated in a pretrial stipulation that he intended to seek a spoliation jury instruction.[17] The intention to seek a jury instruction in a stipulation does not fairly present an issue to the *trial court*. To fairly present a spoliation argument, Stayton should have raised the issue to the trial court in his opposition to Clariant's summary judgment motion. As a result, Stayton has failed to preserve his spoliation argument on appeal. Therefore, the trial court did not err in granting summary judgment in favor of Clariant for Stayton's negligent modification claim.

(9) Stayton's final contention on appeal argues that the trial court erred when it ruled in favor of Clariant on the issue of negligent maintenance of the

[16] Sup. Ct. R. 8.
[17] Pretrial Stipulations and Order at 22, Apr. 4, 2013, Super. Ct. Dkt. No. 51540596.

Pelletizer No. 10. The trial court found that Stayton did not provide an expert to establish the requisite standard of care for his failure-to-inspect claim. "It is settled law in Delaware that the standard of care applicable to a professional can be established only through expert testimony."[18]

(10) On appeal, Stayton explains that he identified Craig Clauser, a professional engineer, to opine on the appropriate standard of care. But in its summary judgment opinion, the trial court explained that it had previously disqualified Clauser as an occupational safety expert.[19] Stayton counters that the trial court's decision on Clauser as an expert witness only related to the narrow subject of occupational safety, not the duty of care for inspecting industrial machinery. Rather, Stayton argues that Clauser's report and testimony would have sufficiently shown the appropriate standard of care required by Delaware law. As Stayton explains, the following testimony establishes PMC's and Polymer Color's standard of care:

> Q. [I]f the pelletizer wheels had been changed from two-track, two-swivel to four swivel by . . . some intervening user before the pelletizer got to the Milford site . . . there would be no way for the Milford site to know if there was any particular problem with the unit. Correct? . . . .
>
> [Clauser]. I would say that's not correct. . . . [I]f somebody has a company there's a pelletizer in your company -- actually, you

[18] *Robinson v. J.C. Penney Co., Inc.*, 977 A.2d 899, 2009 WL 2158106, at *1 (Del. 2009) (citing *Seiler v. Levitz Furniture Co.*, 367 A.2d 999, 1008 (Del. 1976)).
[19] *Stayton v. Cumberland Engineering Co., Inc.*, C.A. No. 05C-05-042, slip op. at 10–11 (Del. Super. Ct. Aug. 9, 2009).

> have a bunch of pelletizers, and all the rest of them are flat, level, and here's one that's cocked at a one-inch offset, unless you close your eyes to things, any reasonable site assessment safety analysis that you did of the plant would identify that problem. You deal with [the manufacturer], you get on the phone, find out what it's supposed to look like and fix it. So, yes, the person who owns the plant should have been able to see that.[20]

(11) Assuming that Clauser is found to be an expert in the area of industrial machinery inspection, this testimony does not supply the requisite duty of care for PMC or Polymer Color. At best, this statement suggests that the owners of the Pelletizer No. 10 should have been aware of the modification to it. It does not establish the standard of care for a manufacturing company's inspection procedures. Because such evidence is not sufficient to support the essential element of a duty of care or a breach thereof, Clariant has sufficiently established the absence of a genuine issue of a material fact concerning Stayton's negligent inspection claim. Therefore, the trial court properly granted Clariant's Motion for Summary Judgment.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[20] Appellant's Opening Br. Appendix at A374.