

**IN THE SUPREME COURT OF TEXAS**

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NO. 02-0552

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FORD MOTOR COMPANY

v.

JACK RIDGWAY AND LINDA RIDGWAY

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ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

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**ARGUED ON SEPTEMBER 10, 2003**

CHIEF JUSTICE PHILLIPS delivered the opinion of the Court.

JUSTICE HECHT filed a concurring opinion, in which JUSTICE OWEN joined.

We must decide whether the evidence offered by plaintiffs in response to the defendant's Rule 166a(i) summary judgment motion created a genuine issue of material fact that a manufacturing defect in the defendant's product caused the plaintiff's injuries. Because we hold that the court of appeals erred in holding that the evidence was sufficient, we reverse the judgment of the court of appeals, 82 S.W.3d 26, and render judgment that the plaintiffs take nothing.

I

Jack Ridgway sustained serious injuries when his two-year-old Ford F-150 pick-up truck caught fire while he was driving. Ridgway was the truck's third owner. The first owner drove the truck approximately 7,000 miles and installed a spotlight on the front left "A" pillar, which is the front part of the door frame. The second owner drove the truck approximately 47,000 more

miles and had the truck repaired four times at the Red McCombs Ford dealership in San Antonio (“Red McCombs”). Each repair attempted to fix a clunking noise that occurred during hard turns. Three of the four repairs also involved the fuel system and attempted to improve the truck’s poor gas mileage. The Ridgways drove the truck for only one month before the fire, making no repairs or modifications.

The fire occurred when Ridgway was driving home from work on a paved county road in Bandera County. Driving at or below the speed limit, he looked into the rear-view mirror and noticed flames curling up around the cab of the truck. Before he could jump out of the truck, Ridgway sustained second-degree burns to 20 percent of his body.

Ridgway and his wife Linda sued Red McCombs and Ford, alleging products liability, breach of express and implied warranties, violations of the Texas Deceptive Trade Practices Act, and negligence. After both defendants moved for summary judgment, the Ridgways nonsuited Red McCombs, leaving only their negligence and strict products liability claims against Ford. After adequate time for discovery, Ford moved for summary judgment under Rule 166a(i) and alternatively under Rule 166a(c). The trial court granted summary judgment without specifying on which provision it relied. On appeal, a divided court of appeals affirmed the trial court’s judgment on plaintiffs’ negligence claim but reversed on products liability. We granted Ford’s petition for review to determine whether the Ridgways presented more than a scintilla of evidence in support of their claim.

## II

We first review the trial court’s summary judgment under the standards of Rule 166a(i).

The non-movants, here the plaintiffs, must produce summary judgment evidence raising a genuine issue of material fact to defeat the summary judgment under that provision. TEX. R. CIV. P. 166a(i). A genuine issue of material fact exists if more than a scintilla of evidence establishing the existence of the challenged element is produced. *Morgan v. Anthony*, 27 S.W.3d 928, 929 (Tex. 2000). If the plaintiffs fail to produce more than a scintilla of evidence under that burden, then there is no need to analyze whether Ford's proof satisfied the Rule 166a(c) burden.

A manufacturing defect exists when a product deviates, in its construction or quality, from the specifications or planned output in a manner that renders it unreasonably dangerous. *Torrington Co. v. Stutzman*, 46 S.W.3d 829, 844 (Tex. 2000); *Am. Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 434 (Tex. 1997). A plaintiff must prove that the product was defective when it left the hands of the manufacturer and that the defect was a producing cause of the plaintiff's injuries. *Torrington Co.*, 46 S.W.3d at 844.

In an attempt to defeat Ford's motion, the Ridgways presented affidavits from all three of the truck's owners and from Bill Greenlees, an expert who inspected the truck after the accident. The owners explained when and where they purchased the truck, how many miles they drove it, and any modifications or repairs they made. In addition, Ridgway described when he first noticed the fire, how he reacted, and the injuries he sustained. Greenlees explained that his expert opinion was based on his visual inspection of the truck after the accident, a visual comparison of a similar but undamaged truck, a review of Ford service manuals, and a review of the National Highway Traffic Safety Administration's database. Based on the areas of greatest damage to the truck and an indication of a "hot spot in the left center area of the engine

compartment,” Greenlees concluded that the fire originated within the engine compartment and opined that “a malfunction of the electrical system in the engine compartment is suspected of having caused this accident.” Greenlees, however, declined to eliminate all portions of the fuel system as a possible cause of the accident and conceded that “the actual cause of the fire has not been determine [sic] yet.” Although Greenlees suggested that further investigation might yield a more definitive conclusion, particularly if the vehicle were disassembled, the Ridgways made no motion for further testing and did not complain that the trial court failed to allow adequate time for or sufficient scope of discovery.<sup>1</sup>

When determining if more than a scintilla of evidence has been produced in response to a Rule 166a(i) motion for summary judgment, the evidence must be viewed in the light most favorable to the non-movant. *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 208 (Tex. 2002). We have repeatedly held that more than a scintilla of evidence exists if the evidence “rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.” *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997); *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995); *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 25 (Tex. 1994). On the other hand, “[w]hen the evidence offered to prove a vital fact is so weak as to do no more than create a mere surmise or suspicion of its existence, the evidence is no more than a scintilla and, in legal effect, is no evidence.” *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983).

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<sup>1</sup> Greenlees’ affidavit stated: “The inspection of the subject Ford was a visual inspection only. No disassembly nor alterations have been performed as of this time.” In oral argument, the Ridgways’ attorney suggested that Greenlees could not perform destructive testing on the vehicle because it was severely damaged.

Both direct and circumstantial evidence may be used to establish any material fact. *Lozano v. Lozano*, 52 S.W.3d 141, 149 (Tex. 2001); *Browning-Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 928 (Tex. 1993). To raise a genuine issue of material fact, however, the evidence must transcend mere suspicion. Evidence that is so slight as to make any inference a guess is in legal effect no evidence. *Lozano*, 52 S.W.3d at 148; *Browning-Ferris, Inc.*, 865 S.W.2d at 928.

The Ridgways produced no direct evidence of the fire's cause, and their circumstantial evidence that a manufacturing defect existed in the Ford F-150 when it left the manufacturer does not exceed a scintilla. Ridgway's affidavit establishes only that a fire occurred, and Greenlees could say no more than that he "suspects" the electrical system caused the fire. Because Greenlees could not rule out part of the fuel system as a possible cause and because there is no proof that identified a defect in the truck at the time it left the manufacturer, Greenlees' affidavit is not sufficient to raise a fact issue.

The Ridgways argue that this proof is nevertheless sufficient under section 3 of the Third Restatement of Torts, which provides:

It may be inferred that the harm sustained by the plaintiff was caused by a product defect existing at the time of sale or distribution, without proof of a specific defect, when the incident that harmed the plaintiff:

- (a) was of the kind that ordinarily occurs as a result of a product defect;
- and
- (b) was not, in the particular case, solely the result of causes other than the product defect existing at the time of sale or distribution.

RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 3 (1998). No Texas court has ever cited this section, and we do not decide today whether it reflects the law of this state. Even if section 3 were the law in Texas, it would generally apply only to new or almost new products.

Such products typically have not been modified or repaired, therefore making a product defect the likely cause of an accident. The drafters of the Restatement realized this limitation and noted: “The inference of defect may not be drawn . . . from the mere fact of a product-related accident. . . . Evidence that the product may have been used improperly or was altered by repair people weakens the inference [that there was a product defect].” *Id.* at reporters’ notes to cmt. d (citations omitted). The reporters’ notes also provide several examples to illustrate when a product defect cannot be inferred without proof of a specific defect because of the product’s age or the presence of modifications or repairs. Compare *Woodin v. J.C. Penney Co.*, 629 A.2d 974, 976-77 (Pa. Super. Ct. 1993) (recognizing that a product defect cannot be inferred in a freezer cord when it functioned flawlessly for eight years before catching fire), and *Walker v. Gen. Elec. Co.*, 968 F.2d 116, 120 (1st Cir. 1992) (holding that the mere fact that a six-year-old toaster oven caught fire does not support an inference that a manufacturing defect exists), with *Dietz v. Waller*, 685 P.2d 744, 748 (Ariz. 1984) (stating that a boat that broke in half after only ten hours of use gives rise to an inference of a manufacturing defect). When courts have cited section 3, they have also noted this limitation on the Restatement’s operation. See *Jarvis v. Ford Motor Co.*, 283 F.3d 33, 44 (2nd Cir. 2002) (applying a New York law similar to section 3 to excuse a plaintiff from proving a specific defect, instead inferring a defect from proof that a six-day-old vehicle did not perform as intended); *Myrlak v. Port Auth.*, 723 A.2d 45, 56 (N.J. 1999) (adopting section 3 in a case involving a collapsed five-week-old chair). Therefore, we reiterate that because section 3 is not applicable to the facts of this case, we need not decide if it is an accurate statement of Texas law.

### III

Under the circumstances of this case, the Ridgways' summary judgment proof is no more than a scintilla of evidence that a manufacturing defect was present when the truck left the manufacturer. Therefore, the Ridgways have not met their burden of showing that a genuine issue of material fact exists regarding a manufacturing defect. We accordingly reverse the judgment of the court of appeals and render judgment that the plaintiffs take nothing.

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Thomas R. Phillips  
Chief Justice

OPINION DELIVERED: February 6, 2004