STATE OF MICHIGAN

COURT OF APPEALS

COLLEEN ENGLISH, Personal Representative of the Estate of DAVID C. ENGLISH, Deceased,

Plaintiff-Appellant,

v

JASON BAKKER, R. E. BARBER FORD, DARLA ACKERMAN, and MARY JOSLIN,

Defendants-Appellees.

UNPUBLISHED
November 2, 2001

No. 224558
Muskegon Circuit Court
LC No. 98-038956-NI

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting the motions for summary disposition filed by defendants Jason Bakker/R.E. Barber Ford, Darla Ackerman, and Mary Joslin. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On January 23, 1998, several accidents occurred on northbound US-31. Vehicles traveling in the left lane slowed when a semi slowed in an effort to change lanes. A vehicle traveling behind the semi was struck in the rear by a truck driven by Bakker and owned by his employer, R.E. Barber Ford. A trailer became detached from the truck, and was struck by a vehicle driven by Ackerman. Shortly thereafter, and also in the left lane, an accident occurred between a vehicle driven by Jeremy Byl and a vehicle driven by non-participating defendant Benjamin Novak and owned by non-participating defendant Harold's Northshore Service. In the meantime, traffic began to slow in the right lane. A vehicle driven by Rhonda Bordeaux came to a stop in the right lane, approximately one-half mile south of the accident involving Bakker. Bordeaux's vehicle was struck in the rear by a vehicle driven by Joslin. Joslin was adjusting the radio in her vehicle, and was unable to stop in time to avoid the collision. Approximately five minutes after this accident occurred, decedent parked his vehicle on the right shoulder, exited the vehicle, and stood beside it. Several minutes later, a vehicle driven by non-participating defendant Jodi Connell went out of control when she slammed on the brakes, traveled across both lanes and onto the right shoulder, and struck and killed decedent.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff filed suit, alleging that defendants operated their vehicles in a negligent manner, that each accident contributed to the subsequent accidents, and that each accident was a proximate cause of decedent's death. Defendants Bakker/Barber, Ackerman, and Joslin filed separate motions for summary disposition pursuant to MCR 2.116(C)(10), arguing that the accidents in which they were involved could not be considered a proximate cause of decedent's death because his death was not a foreseeable result of any negligence on their parts. The trial court granted the motions, finding that decedent's death was not foreseeable, and that Connell's actions were an independent intervening cause of decedent's death. In addition, the trial court rejected plaintiff's argument that the rescue doctrine operated to impose liability.

Plaintiff stipulated to the dismissal of her claim against Novak/Harold's Northshore Service. Plaintiff settled her claim against Connell for $50,000.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Proof of causation requires both cause in fact and proximate cause. Cause in fact requires a showing that the harmful result would not have occurred but for the negligent conduct. *Helmus v Dep't of Transportation*, 238 Mich App 250, 255-256; 604 NW2d 793 (1999). To show proximate cause, a plaintiff must prove that the injury was a probable, reasonably anticipated, and natural consequence of the alleged negligence. *Allen v Owens-Corning Fiberglas Corp*, 225 Mich App 397, 401; 571 NW2d 530 (1997). An injury may have more than one proximate cause. *Hagerman v Gencorp Automotive*, 457 Mich 720, 729; 579 NW2d 347 (1998). Proximate cause is generally an issue for the trier of fact, but if reasonable minds could not differ, the issue becomes one of law for the court. *Dep't of Transportation v Christensen*, 229 Mich App 417, 424; 581 NW2d 807 (1998).

Plaintiff argues that the trial court erred by granting summary disposition in favor of Bakker/Barber and Joslin.[1] We disagree and affirm. Assuming arguendo, as did the trial court, that an issue of fact existed as to whether Bakker drove in a negligent manner and caused the first accident, reasonable minds could not disagree that Bakker could not have foreseen that his conduct would result in the subsequent accidents. Bakker's accident occurred in the left lane of US-31. Bordeaux's vehicle was stopped in the right lane when it was struck by Joslin's vehicle. In her deposition, Joslin testified that she was told that traffic had slowed due to earlier accidents; however, she acknowledged that had she not been distracted by her efforts to adjust the radio in her vehicle, she would have been able to stop in time to avoid striking Bordeaux's vehicle. The trial court correctly found that reasonable minds could not disagree that Bakker could not have foreseen that a subsequent accident would occur in this manner. *Allen*, *supra*. Moreover, the

[1] Plaintiff does not challenge that portion of the trial court's order granting summary disposition in favor of Ackerman.

trial court correctly found that reasonable minds could not disagree that Connell's act of slamming on her brakes when no need to do so existed, thereby causing her vehicle to swerve across both lanes and onto the right shoulder where it struck decedent, was an independent intervening cause that relieved Bakker and Joslin from liability. *Meek v Dep't of Transportation*, 240 Mich App 105, 120; 610 NW2d 250 (2000).

Finally, the trial court correctly held that the rescue doctrine did not operate to impose liability on either Bakker/Barber or Joslin. That doctrine states that a person who negligently creates a risk of harm may be liable to a volunteer whose intervention is reasonably foreseeable, and who is exposed to personal danger in order to avert the danger to others or to personal property. See, e.g., *Brugh v Bigelow*, 310 Mich 74; 16 NW2d 668 (1944). Neither Bakker nor Joslin made a plea for assistance to which decedent responded. Cf. *Id*., 81. Furthermore, plaintiff's assertion that decedent stopped to render assistance at the scene of the Bordeaux-Joslin accident is based on speculation. In her deposition, Joslin stated that decedent simply parked his vehicle on the right shoulder and stood beside it. He did not speak to anyone to determine if he could render assistance. Summary disposition was properly granted. *Berry v J & D Auto Dismantlers, Inc*, 195 Mich App 476, 479; 491 NW2d 585 (1992).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C. Schmucker