

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0049**

Raymond G. Hartmann,
Appellant,

vs.

Circuit City Stores, Inc.,
Respondent.

**Filed December 9, 2008
Affirmed
Stauber, Judge**

Hennepin County District Court
File No. 27CV0620904

Brendan J. Flaherty, Fred H. Pritzker, Pritzker, Ruohonen & Associates, P.A., Suite 2950, Plaza VII, 45 South Seventh Street, Minneapolis, MN 55402-1652 (for appellant)

Michael S. Ryan, Christopher J. Willey, Murnane Brandt, Suite 3200, 30 East Seventh Street, St. Paul, MN 55101 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from summary judgment in this negligence action, appellant argues that the district court erred in concluding that the injuries sustained by appellant when a shoplifter stole his car were not proximately caused by respondent store's employees'

pursuit of the shoplifter. Appellant also contends that the district court erred in concluding that (1) there were two superseding intervening causes and (2) appellant assumed the risk of his injuries by confronting the shoplifter. Finally, appellant argues that as a matter of public policy, respondent store should be liable for appellant's injuries. Because respondent store's employees' pursuit of the shoplifter was not the proximate cause of appellant's injuries, we affirm.

FACTS

This appeal stems from an incident in which an individual attempted to steal some items from respondent, the Circuit City store located in Minnetonka. On the afternoon of December 27, 2003, employees at respondent store observed a suspected shoplifter placing DVDs into a bag. The employees subsequently notified Alvaro Camillo Pineda, an operations manager for the store, who instructed the employees to call police. As the shoplifter neared the store's exit, Pineda ordered him to stop. When the shoplifter refused to stop, Pineda followed the shoplifter out of the store and into the parking lot. As Pineda left the store, he motioned for another employee, Kyle Usgaard, to join the pursuit.

Respondent has a policy that prohibits employees from chasing a suspected shoplifter. Despite this policy, however, Pineda and Usgaard followed the shoplifter through the parking lot and next to a frontage road. As the shoplifter approached the road, the driver of a pick-up truck, observing the pursuit, swerved to try and block the shoplifter's path. The shoplifter dodged the pick-up truck and continued to run, but eventually became winded and slowed to a walk. Consequently, Pineda and Usgaard

drew within a few feet of the suspect, and Pineda asked the suspect to come back to the store. When the shoplifter did not respond, Pineda told Usgaard not to touch the man, and suggested that they just follow him.

Pineda and Usgaard followed the shoplifter through a fast-food restaurant parking lot. At some point, when Usgaard was “abreast” with the suspect, the man told Usgaard “I’ll hurt you,” if Usgaard did not stop following him. Usgaard subsequently “dropped back behind him,” and continued to follow the shoplifter at a “leisurely walking pace.” Despite the shoplifter’s threat, however, Usgaard claimed that he never feared for his safety or felt that he would be physically harmed in any way.

As Pineda and Usgaard followed the shoplifter through the restaurant parking lot, Pineda yelled to people in the drive-through lane to call the police. The suspect then reached the edge of the parking lot, where he fell off a small retaining wall, dropping everything he was carrying, including some of the stolen DVDs. When Pineda and Usgaard stopped to pick up the stolen DVDs, Usgaard, who was within a few feet of the suspect, asked him if he had a receipt for the merchandise. The shoplifter subsequently fled again, proceeding toward a retaining wall along Interstate 394. Pineda and Usgaard resumed the chase, but when the suspect reached the retaining wall and appeared to be considering jumping over the wall onto the freeway 40 feet below, Pineda shouted to the suspect: “Don’t. That’s high. You’re going to get hurt.” According to Pineda, the suspect was “doing weird stuff,” which was the “only time during the chase that [he] felt in danger.”

In response to Pineda's warning, the shoplifter ran away from the freeway retaining wall and toward a nearby liquor store. Although Pineda eventually lost sight of the suspect, Usgaard, who had been picking up DVDs, handed them to Pineda and followed the shoplifter to the liquor store, where appellant Raymond Hartmann had parked his Acura Legend Coupe. Appellant had parked his car in the loading area of the liquor store's parking lot because he was dropping off empty cardboard boxes for recycling. After he was finished unloading his car, appellant stood in the doorway of the loading area talking to the liquor store manager. While the two were conversing, appellant noticed an unknown male approach his car. Appellant, who had left his car unlocked, the driver's side window down, and the vehicle running, assumed the man was a truck driver wanting him to move his car out of the loading area. However, when the man opened the driver's side door and placed the stolen items into the vehicle, appellant shouted: "Hey, that's my car." Appellant then ran over to his car and attempted to pull the man out of the car through the window. The suspect put the car in reverse, and drove for about 60-to-70 feet with appellant's upper torso stuck in the window of the car. After being dragged by the moving vehicle, appellant flew off of the car and landed on the pavement, while the suspect fled the scene in appellant's Acura.

Usgaard, who had chased the shoplifter from respondent store, saw the suspect get into appellant's car. Usgaard also observed appellant struggling with the man through the driver's side window as the man put the car in reverse and proceeded to drive backward with appellant still hanging out of the window. According to Usgaard, the police arrived within 30 seconds after the shoplifter drove off in appellant's car. When the police

arrived, Pineda flagged down the officer, jumped in the passenger seat of the squad car, and pointed the officer in the direction the suspect had fled. After a short pursuit, however, the officer abandoned the chase because he was a “part-time” or “just a school cop,” and not prepared to engage in a high-speed pursuit. Appellant’s vehicle was later recovered, but the suspect was never apprehended.

After the chase, both Pineda and Usgaard provided written statements to law enforcement. Both claimed that they were not trying to apprehend the suspect, but were only following the suspect to observe where he was going, to get a physical description of the suspect, and to get a license plate number if the suspect fled in a vehicle. Dan Hannula, respondent’s district manager for loss prevention at the time of the incident, stated that respondent’s policy does not prohibit employees from following a suspected shoplifter out of the store. Nevertheless, Pineda was told by Hannula that he should not have left the store premises and involved an associate in the chase.

As a result of being dragged and thrown from his vehicle, appellant suffered injuries to his head, ribs, lower back, knee, and shoulder. Appellant subsequently brought suit against respondent, alleging that respondent’s employees’ pursuit of the shoplifter violated respondent’s store policy, was negligent, and caused appellant’s injuries. Respondent moved for summary judgment, and the district court granted respondent’s motion on the basis that respondent did not proximately cause appellant’s injuries. The district court also determined that appellant’s own conduct was a superseding intervening cause insulating respondent from liability. The court further

concluded that respondent's employees had no duty to protect appellant from harm because appellant assumed the risk of injury by his actions. This appeal followed.

D E C I S I O N

The district court shall grant summary judgment if the pleadings, discovery, and affidavits show that there are no genuine issues of material fact and that either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. On appeal from summary judgment, this court asks whether there are any issues of material fact and whether the district court erred in applying the law. *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). This court must consider the evidence in the light most favorable to the party against whom summary judgment was granted. *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). But a genuine issue of material fact cannot be established based on evidence that merely creates a metaphysical doubt as to a factual issue and is not sufficiently probative to permit reasonable people to draw different conclusions regarding an essential element of a party's case. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

Appellant argues that the district court erred in concluding that Pineda and Usgaard's pursuit of the shoplifter did not proximately cause appellant's injuries. "The essential elements of a negligence claim are: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury was sustained; and (4) breach of the duty was the proximate cause of the injury." *State Farm Fire & Cas. v. Aquila, Inc.*, 718 N.W.2d 879, 887 (Minn. 2006) (quotation omitted). The Minnesota Supreme Court has stated that in order for a party's negligence to be the proximate cause of an injury "the act [must be]

one which the party ought, in the exercise of ordinary care, to have anticipated was likely to result in injury to others, . . . though he could not have anticipated the particular injury which did happen.” *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 113 (Minn. 1992) (quoting *Ponticas v. K.M.S. Invs.*, 331 N.W.2d 907, 915 (Minn. 1983)). In other words, even when a duty exists, the duty only extends to foreseeable acts. *Spitzak v. Hylands, Ltd.*, 500 N.W.2d 154, 158 (Minn. App. 1993), *review denied* (Minn. July 15, 1993). “As expressed by Chief Justice Cardozo, ‘The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension.’” *Connolly v. Nicollet Hotel*, 254 Minn. 373, 381, 95 N.W.2d 657, 664 (1959) (quoting *Palsgraf v. Long Island R.R.*, 162 N.E. 99, 100 (N.Y. 1928)). “Generally, proximate cause is a question of fact for the jury; however, where reasonable minds can arrive at only one conclusion, proximate cause is a question of law.” *Lubbers v. Anderson*, 539 N.W.2d 398, 402 (Minn. 1995).

Here, the district court, “[f]or the sake of argument . . . assume[d] that [respondent] owed a duty to [appellant] and breached that duty when its employees pursued the shoplifter.” But the court held that respondent’s “breach was not the proximate cause of [appellant’s] injury because it was not foreseeable.”

Appellant argues that it was foreseeable that he would be injured by the actions of respondent’s employees. To support his claim, appellant contends that the following evidence in the record demonstrates that his injuries were foreseeable: (1) respondent had a policy prohibiting employees from chasing suspected shoplifters; (2) a bystander attempted to block the fleeing shoplifter’s path with his pick-up truck; (3) the shoplifter

exhibited dangerous behavior; and (4) Pineda and Usgaard expected the shoplifter to flee in a vehicle. Appellant argues that because it was foreseeable that he would be injured as a result of Pineda and Usgaard's pursuit of the shoplifter, the district court erred in concluding that respondent's breach was not the proximate cause of appellant's injuries.

We disagree. Although respondent does not dispute the fact that it has a policy prohibiting employees from chasing or confronting suspected shoplifters, there is nothing in the policy indicating that such conduct is prohibited because a suspected shoplifter might commandeer a vacant, running vehicle, and that the owner of that vehicle may then be injured attempting to thwart the theft. Rather, the concern of the policy is that chasing or attempting to apprehend a suspect may place the safety of the employee or other customers at risk. Moreover, the fact that a person may have attempted to block the shoplifter's path with his pick-up truck did not give Pineda or Usgaard any reason to believe that another bystander would physically engage the suspect in an attempt to thwart the theft of their vehicle. The driver of the pick-up truck never attempted to exit the vehicle, nor did the shoplifter attempt to commandeer the pick-up truck. In fact, there were many people sitting in their vehicles in the fast-food restaurant drive-through lane during the pursuit of the shoplifter, and the shoplifter did not confront them, nor did these bystanders attempt to physically confront the suspect.

The shoplifter's behavior also did not make appellant's injuries foreseeable. Although there is no dispute that the shoplifter threatened Usgaard at one point during the chase, and seemed to exhibit "weird" behavior at times, there is no evidence in the record that the suspect had any interactions or confrontations with any bystanders prior to

appellant confronting the suspect and attempting to thwart the theft of his unattended vehicle. In fact, even when the suspect threatened Usgaard, there was never a time that Usgaard feared for his safety. Moreover, the fact that Pineda and Usgaard suspected that the shoplifter would flee in a vehicle does not make it foreseeable that the shoplifter would flee in a vehicle that he commandeered. Pineda and Usgaard merely thought the shoplifter would flee in a vehicle in which an accomplice was waiting, not in a vehicle that was left running, unattended, and unlocked.

Appellant argues that there is a fact question as to whether his vehicle was left “unattended.” He claims that because he was just dropping off some boxes in a loading area, and was only a few feet away from his car, his car was not “unattended.” But regardless of whether appellant’s vehicle was “attended” or “unattended,” it was not foreseeable that the shoplifter would find a vehicle that was unlocked and running with the driver standing in the doorway of a liquor store, and that a simple misdemeanor shoplifting offense would escalate into a felony car theft with an injured victim. Moreover, even if a car theft was foreseeable, it was not foreseeable that the owner of the car would attempt to thwart the car theft by trying to pull the thief out of the car through the driver’s side window, and in the process, get stuck in the window, only to be thrown from the vehicle and sustain injuries as a result of his efforts. Although it may be foreseeable that a bystander could be injured as a result of being in the path of a fleeing shoplifter chased by store employees, appellant was not injured by merely being in the suspect’s flight path. Rather, appellant’s injuries were the result of unforeseeable circumstances. *See Luke v. City of Anoka*, 277 Minn. 1, 8, 151 N.W.2d 429, 434 (1967)

(stating that no one can be expected to guard against an occurrence which is so unlikely or improbable that possibility of such occurrence is commonly disregarded).

Accordingly, the alleged breach was not the proximate cause of appellant's injuries.

Because the alleged breach was not the proximate cause of appellant's injuries, the district court did not err in granting summary judgment in favor of respondent, and we need not address the remaining issues raised by the parties.

Affirmed.