IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRENDA SIMS,	)	
	)	No. 361, 2007
Plaintiff Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for Sussex County
	)	
CAMILLE STANLEY,	)	C.A. No. 06C-01-020
	)	
Defendant Below,	)	
Appellee.	)	

Submitted: January 16, 2008
Decided: April 1, 2008

Before **STEELE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

O R D E R

This 1st day of April 2008, it appears to the Court that:

(1) Plaintiff-appellant Brenda Sims appeals a Superior Court judge's grant of summary judgment for defendant-appellee Camille Stanley. Sims argues that the judge erred as a matter of law by concluding that Sims's continued operation of her damaged car constituted an intervening event that broke the causal connection between Stanley's negligence and Sims's injuries in a subsequent accident. We agree that Sims's continued driving of her car was unreasonable under the circumstances and, therefore, superseded Stanley's negligence as the proximate cause of her accident. Accordingly, we affirm the grant of summary judgment. Stanley, who won in the initial arbitration, cross appeals the Superior

Court judge's award of arbitration costs, contending that he excluded recoverable costs from her recovery. Because Stanley incurred, but the court did not award, reimbursable subpoena costs under Superior Court's then existing rule, we affirm that award in part and reverse and remand in part.

(2) On Friday March 19, 2004, Sims and Stanley attended a party in Milton, Delaware. Stanley left the party before Sims and apparently, unknowingly struck Sims's parked car with her vehicle as she backed out. Later Sims noticed that her convertible top had been damaged and did not drive the car home *that* night because she believed it to be unsafe to drive. On Saturday, March 20, 2004, Sims called the police to investigate the damage to her car. After the officer finished his report, Sims drove the car from the scene.

On her way home, Sims stopped to ask her car's former owner to help fix the convertible top. They put the top down temporarily and Sims drove home. That night, she drove the car to Milford to meet some friends for dinner. When it began to rain after dinner, Sims and her friends attempted to put the top back up, but were unable to get both sides latched completely. Despite the fact that she knew only one latch was secure, Sims elected to drive home anyway because it was raining. She arrived uneventfully and left the car in her garage until Monday.

Sims planned to take the car to her insurance adjuster on Monday March 22, 2004, but decided to make work-related stops in Rehoboth Beach and Lewes first.

En route to Lewes from Rehoboth Beach, Sims's car left the roadway and struck a tree. Sims testified that before leaving the roadway, the top of the car started to shake and then lifted. Sims suffered serious injuries in the accident.

(3) Sims filed a personal injury action against Stanley in Superior Court alleging that Stanley's negligence in striking and damaging her vehicle on Friday, March 19, 2004, proximately caused Sims's injuries on March 22, 2004. The matter was initially referred for arbitration. After the arbitrator found for Stanley, Sims demanded a trial *de novo*.

(4) Stanley moved for summary judgment on several grounds. The Superior Court judge granted summary judgment, finding that the injuries for which Sims sought recovery were not reasonably foreseeable as a matter of law. He found that Sims's continued operation of her car, despite an awareness that it was unsafe to drive, constituted an intervening cause of the March 22 accident, sufficient to break the causal connection between Stanley's negligence and Sims's accident and injuries.

(5) We review a Superior Court judge's grant of summary judgment *de novo*.[1] To prevail on a negligence claim in Delaware, a plaintiff must establish by a preponderance of the evidence that the defendant's actions breached a duty of

[1] *Williams v. Geier*, 671 A.2d 1368, 1375 (Del. 1996); *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1141 (Del. 1990).

care and that the breach proximately caused injury.[2] In *Duphily v. Delaware Electric Co-Op., Inc.*, we recognized that the proximate cause necessary to sustain a negligence claim must be one "which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred."[3] An intervening act following the initial negligence does not automatically break the continuous chain of events.[4] When there has been negligence and a later intervening act, however, the original tortfeasor should be held liable only if the intervening act was reasonably foreseeable.[5] "If . . . the intervening negligence was not reasonably foreseeable, the intervening act supersedes and becomes the *sole* proximate cause of the plaintiff's injuries, thus relieving the original tortfeasor of liability."[6] While the superseding causation is fact-driven and thus usually a jury question,[7] we held that a court may decide the issue as a matter of law if there can be "no reasonable

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[2]*Russell v. K-Mart Corp.*, 761 A.2d 1, 5 (Del. 2000).

[3] 662 A.2d 821, 829 (Del. 1995) (quoting *Culver v. Bennett*, 588 A.2d 1094, 1097 (Del. 1991)) (emphasis omitted).

[4]*Id.*

[5]*Id.*

[6]*Id.*

[7] *Id.* at 830.

difference of opinion as to the conclusion to be reached on the question of whether an intervening cause is abnormal, unforeseeable, or extraordinarily negligent. . . ."[8]

(6) We find that there can be no reasonable difference of opinion that Sims's actions were extraordinary, risky and unforeseeable. The evidence in the record, even taken in the light most favorable to Sims, undisputedly shows she knew that the convertible top was not latched properly and that she did not seek to have it repaired before continuing to drive the car. Having identified the damage to her car and admitting that she found the car to be unsafe, Sims nevertheless continued to drive her car with the top only half-latched. Driving a car in that condition beyond what was necessary to seek repair exceeds what reasonable people would consider normal or minimally risky. Her actions did not seek to protect her own safety in the face of a known risk and thus could not have been anticipated. We agree with the Superior Court judge's characterization of Sims's continued driving as being "so flagrant in nature that it served to break the causal connection between Defendant's tortious conduct and Plaintiff's injury." Therefore, Sims's actions superseded Stanley's negligence and became the sole proximate cause of the March 22 accident.

[8] *Id.* at 831.

(7) Stanley cross appeals the Superior Court judge's award of costs. Ruling on her motion for costs, the trial judge only awarded her portion of the arbitration fee. He wrote that mileage and court reporting expenses are not "costs" under Superior Court Rule 16.1. Stanley argues on appeal that she should have also been awarded court reporting expenses and the cost of subpoenas. We review the award of costs for an abuse of discretion.[9]

(8) Former Superior Court Rule 16.1(k)(11)(D)(iii) stated that "[i]f the party who demands a trial de novo fails to obtain a . . . judgment from the Court, . . . more favorable to the party than the arbitrator's order, that party shall be assessed the costs of the arbitration, and the ADR Practitioner's total compensation."[10] Under Superior Court Rule 16.1(k)(7), a party may have a transcript made "at its expense."[11] Therefore the trial judge correctly denied Stanley's court reporting expenses. Sims conceded, in her brief and at oral argument, however, that the cost of subpoenas was recoverable under the Superior Court's then existing Rule 16. Accordingly, we affirm the trial judge's order on costs in part and reverse and remand in part for the award of $90 for the cost of Stanley's subpoenas.

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[9] *Bell Atlantic-Delaware, Inc. v. Saporito*, 875 A.2d 620, 625 (Del. 2005).

[10] Super. Ct. Civ. R. 16.1(k)(11)(D)(iii) (2007) (repealed on Feb. 5, 2008, effective in civil actions filed after Mar. 1, 2008).

[11] Super. Ct. Civ. R. 16.1(k)(7) (2007).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED in part and REVERSED and REMANDED in part.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice