FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-5081

DZE CORPORATION,

Appellant,

v.

VINCE DURON VICKERS, individually and as the Husband of Shakelia K. Vickers (deceased), as the Parent of Vincent T. Vickers (deceased), and as the Personal Representative for the ESTATES OF SHAKELIA K. VICKERS AND VINCENT T. VICKERS, and MARVIN and TRACEY BIGGINS individually as the Parents of Tyler Biggins (deceased), and as Co-Personal Representatives for the ESTATE OF TYLER BIGGINS,

Appellees.

On appeal from the Circuit Court for Leon County.
Charles W. Dodson, Judge.

June 8, 2020

B.L. THOMAS, J.

DZE Corporation manufactured products containing synthetic marijuana known as "spice," a highly dangerous chemical marketed as "potpourri," and other products. Here, the potpourri was labeled: "Not for human consumption." It is not disputed that the product was dangerous if consumed. It is also not disputed that Christopher Generoso voluntarily consumed it, became impaired, drove at a very high rate of speed, and rammed his vehicle into another vehicle, causing the deaths of Appellees' decedents. Generoso was sentenced to state prison for his criminal conduct.[1]

Appellees filed suit against DZE for wrongful death, alleging numerous bases for liability. The case proceeded to a jury trial on two of the claims, negligence and strict liability, both of which were premised on a failure to warn theory. At trial, DZE moved for a directed verdict, arguing, in part, that no proximate cause could be proven because Generoso's intoxicated driving was the sole proximate cause of the deaths. The trial court denied the motion without discussion. The jury returned a substantial verdict against DZE, finding it 65 percent at fault and Generoso 35 percent at fault.

We review the trial court's order denying DZE's motion for directed verdict de novo and view the evidence in a light most favorable to Appellees, including drawing all reasonable inferences from the evidence in Appellees' favor. *State Farm Mut. Auto. Ins. Co. v. Hanania*, 261 So. 3d 684, 687 (Fla. 1st DCA 2018). We must affirm an order denying a directed verdict unless "no proper view of the evidence could sustain a verdict in favor of the nonmovant." *Id.*

That standard is met here. Generoso's criminal conduct was the sole proximate cause of Appellees' injuries as a matter of law.[2]

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[1] Generoso was convicted and sentenced to a lengthy prison term for vehicular homicide and reckless driving. *State v. Generoso*, 2012-CF-1714A (Fla. 2nd Cir. Ct. May 29, 2012).

[2] DZE also persuasively argues it had no duty to Appellees to prevent the accident. *See Aguila v. Hilton, Inc.*, 878 So. 2d 392 (Fla. 1st DCA 2004); *Grunow v. Valor Corp. of Fla.*, 904 So. 2d 551, 557 (Fla. 4th DCA 2005) (holding that in the arena of products liability,

See McCain v. Florida Power Corp., 593 So. 2d 500, 504 (Fla. 1992) (stating the question of proximate cause is generally left to the fact-finder, but the judge may address this matter where the facts are unequivocal, such as where the evidence supports no more than a single inference).

In *Department of Transportation v. Anglin*, 502 So. 2d 896, 898 (Fla. 1987), the Florida Supreme Court reversed this Court's decision and upheld summary judgment on the issue of proximate cause. The case involved a suit against the department for a negligent road design that caused the plaintiff's car to stall. *Id.* at 896. The plaintiff suffered catastrophic injuries when an intervening actor slammed into plaintiff's stalled car while attempting to render aid. *Id.* at 897. The supreme court held that even where an actor's conduct creates a dangerous situation, the law will not allow a jury to find proximate cause where an unforeseeable, intervening act is responsible for the injuries:

> While it may be arguable that petitioners, by creating a dangerous situation which caused the respondents to require assistance, could have reasonably foreseen that someone may attempt to provide such assistance, it was not reasonably foreseeable that DuBose would act in such a bizarre and reckless manner. Petitioners' negligent conduct did not set in motion a chain of events resulting in injuries to respondents; it simply provided the occasion for DuBose's gross negligence. *See, e.g., Mull v. Ford Motor Company*, 368 F.2d 713 (2d Cir. 1966).

Id. at 899–900. The same rule of law and logic applies here.

As the Third District explained in a case involving a bicycle accident and an alleged failure to warn of the bicycle's defect:

> When front tire rotation is suddenly stopped—whether from hard braking, hitting a pothole, or, as in this case,

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gun distributor had no duty to Grunow where establishing duty would make distributor an insurer of its product). We do not address the question of DZE's duty in this case because the lack of proximate cause as to DZE precludes Appellees' claims as a matter of law.

> from a foreign object tangling the spokes, the likely result is that the rider will fall or be thrown from the bike by sheer momentum. This is a danger independent of the materials used in the bike's construction. To link a failure to warn of the potential of damaged carbon fiber to fail to Miguelez's choice of bicycle, and, in turn, to an event that might occur to any bicyclist using the equipment as intended, *is stretching the concept of proximate legal causation too far*. *See Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1018 (Fla. 1984) ("A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant" (*quoting* W. Prosser, *Law of Torts* § 41 (4th ed. 1971))); *Tampa Elec. Co. v. Jones*, 190 So. 26, 27 (Fla. 1939) (holding that, in negligence actions, Florida courts follow the "more likely than not" standard of causation, i.e., they require proof that the negligence "probably caused" the plaintiff's injury).

Trek Bicycle Corp. v. Miguelez, 159 So. 3d 977, 979–80 (Fla. 3d DCA 2015) (emphasis added). Here, too, the concept is overstretched. Any conclusion that DZE's failure to warn was the proximate legal cause of the devastating crash that occurred requires speculation that DZE could foresee Generoso would: 1) disregard the warning on the product and consume the potpourri; 2) become voluntarily intoxicated; and 3) drive recklessly in violation of the state's criminal laws and cause an accident.

Furthermore, Florida law does not permit a jury to consider proximate cause where a person responsible for the injury is voluntarily impaired or intentionally misuses a product. *See Barnes v. B.K. Credit Service, Inc.*, 461 So. 2d 217, 219 (Fla. 1st DCA 1984) (holding tavern owner was not liable to plaintiff injured as a result of being intoxicated because the proximate cause of the injury was plaintiff's voluntary act of rendering herself incapable of driving a vehicle); *Cook v. MillerCoors, LLC*, 872 F. Supp. 2d 1346, 1347–48 (M.D. Fla. 2012) (applying Florida law in holding alcoholic-beverage manufacturer was not liable under failure to warn theory for motorcycle passenger's injuries because of the

well-known risks of consuming alcohol); *Labzda v. Purdue Pharma, L.P.*, 292 F. Supp. 2d 1346, 1356 (S.D. Fla. 2003) ("As in *Bruner,* the intentional misuse of an intoxicating product is the sole proximate cause of the injury under Florida law.").

Courts outside of Florida have also refused to recognize proximate causation where voluntary impairment results in injuries to third parties. *Horstman v. Farris*, 725 N.E.2d 698 (Ohio Ct. App. 1999) (holding manufacturer of airbrush propellant was not liable to plaintiffs injured in car accident because other driver's intentional inhalation of the propellant to become intoxicated broke the chain of causation, rendering the intoxicated driver the sole proximate cause of plaintiffs' injuries); *Boris v. Tops Mkts., Inc.*, 623 N.Y.S.2d 698 (N.Y. Sup. Ct. 1995) (holding manufacturer of lighter fluid was not liable to plaintiff because individual's intentional inhalation of lighter fluid severed the chain of causation). We agree with the rationale and logic of these decisions as they coincide with the relevant Florida authority.

DZE concedes that it does not appeal any finding that it negligently manufactured its product or provided inadequate warnings. Nevertheless, DZE correctly argues that there can be no liability to a third party that was not directly impacted by DZE's product, where another party voluntarily consumed Appellant's product to become intoxicated and made the illegal decision to drive. As a matter of law, Generoso's conduct was the sole superseding proximate cause of the accident that resulted in the tragic deaths of Appellees' decedents. The trial court, therefore, erred in allowing the jury to decide otherwise. We reverse with directions to grant a directed verdict in favor of DZE.

REVERSED.

LEWIS and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Bradley J. Ellis and Anthony J. Manganiello, III of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A., Sarasota, for Appellant.

John S. Mills, Courtney Brewer, and Johnathon A. Martin of The Mills Firm, P.A., Tallahassee, for Appellees.