SOMVANG CHANTHASALO	*	**NO. 2017-CA-0521**
VERSUS	*	
		COURT OF APPEAL
MELISSA DESHOTEL, DEBRA SCHUM, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, RONALD J. MITCHELL, USAA CASUALTY INSURANCE COMPANY, AND PROGRESSIVE SECURITY INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	* * * * * * *	

APPEAL FROM
St. Bernard Parish, 34th Judicial District Court
NO. 15-0048, Division "C"
Honorable Kim C. Jones, Judge President
* * * * * *
Judge Paula A. Brown
* * * * * *
(Court composed of Judge Paula A. Brown, Judge Tiffany G. Chase)
Judge Marion F. Edwards, Pro Tempore,

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AFFIRMED
12/27/2017

This is a civil appeal, which arises out of two automobile accidents sustained by the Plaintiff/Appellant, Somvang Chanthasalo ("Mr. Chanthasalo"). Mr. Chanthasalo, appeals the district court's judgment that granted motions for summary judgment filed on behalf of Defendants/Appellees, Melissa Deshotel ("Ms. Deshotel") and her insurer, State Farm Mutual Automobile Insurance Company (collectively, "State Farm"); and Progressive Security Insurance Company ("Progressive"), Mr. Chanthasalo's uninsured/underinsured motorist carrier. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On January 17, 2014, while traveling on Interstate-10, near the Williams Boulevard and Loyola Street exits in Kenner, Louisiana, Ms. Deshotel's vehicle rear-ended Mr. Chanthasalo's truck ("Accident No. 1"). After the collision, Mr. Chanthasalo and Ms. Deshotel pulled their respective vehicles onto the shoulder of the road to assess property damages and report the accident to the police. Approximately five to fifteen minutes later, Ronald Mitchell ("Mr. Mitchell") drove his vehicle into the rear of Debra Schum's ("Ms. Schum") vehicle ("Accident No. 2"). The impact of Accident No. 2 pushed Ms. Schum's vehicle onto the shoulder of the road, causing it to strike both Ms. Deshotel and Mr. Chanthasalo. Mr. Chanthasalo incurred significant injuries as a result of Accident No. 2.

On January 16, 2015, Mr. Chanthasalo filed a Petition for Damages ("the Petition') against Ms. Deshotel, Ms. Schum, and their insurer, State Farm;[1] Mr. Mitchell and his insurer, USAA Casualty Insurance Company (USAA);[2] and Progressive. The Petition alleged that the accident was caused by the negligence of Ms. Deshotel, Ms. Schum, and Mr. Mitchell and the defendants were jointly, solidarily, and severally liable unto him for his personal injuries.

On January 6, 2017, State Farm, as the liability insurer of Ms. Deshotel, filed a motion for summary judgment. State Farm contended that Mr. Chanthasalo's lawsuit arose from two accidents, not one. State Farm argued that by Mr. Chanthasalo's own admission, Accident No. 1 was minor and he attributed his injuries exclusively to Accident No. 2. State Farm asserted Ms. Deshotel owed no continuing duty to Mr. Chanthasalo beyond Accident No. 1, arguing that Mr. Chanthasalo offered no facts to prove that Ms. Deshotel's alleged negligence from Accident No. 1 was the legal cause of the injuries he sustained from Accident No. 2. State Farm prayed for dismissal of Mr. Chanthasalo's suit against Ms. Deshotel.

Progressive filed its motion for summary judgment on January 10, 2017. In its motion, Progressive acknowledged that it issued a policy of insurance to Mr. Chanthasalo with uninsured/underinsured ("UM") bodily liability limits of $15,000.00 per person and $30,000.00 per accident. However, Progressive argued that Mr. Chanthasalo was not entitled to UM benefits for Accident No. 1 because

[1] Ms. Deshotel and Ms. Schum were each insured by State Farm.

[2] Mr. Chanthasalo settled with Mr. Mitchell and USAA. They were dismissed from the lawsuit on July 25, 2015.

as he admitted, he was not injured in that accident. Progressive also noted that it had already tendered the $15,000.00 UM policy limits for the damages incurred as a result of Accident No. 2.

In opposition to State Farm's summary judgment motion, Mr. Chanthasalo argued that pursuant to La. C.C. art. 2315,[3] Ms. Deshotel was responsible for the damages he sustained from Accident No. 2. He averred that the duty owed from Accident No. 1 extended to Accident No. 2 because it was entirely foreseeable that a second collision might occur after the parties—as required by law—had pulled onto the shoulder of a dangerous, busy interstate highway to call the police and exchange information.

Mr. Chanthasalo's opposition to Progressive's summary judgment motion asserted that its UM exposure for Accident No. 1 depended on whether Ms. Deshotel was liable for the injuries he sustained in Accident No. 2. Accordingly, Mr. Chanthasalo claimed to the extent that any liability assessed against Ms. Deshotel for Accident No. 2 exceeded her insurance policy limits, Progressive had potential UM exposure for Accident No. 1.

The district court heard argument on the summary judgment motions on February 17, 2017. After taking the matter under advisement, the district court granted both summary judgment motions. Pursuant to a consent motion to include decretal language in the judgment,[4] the district court rendered an amended

[3] La. C.C. art. 2315(A) provides: "[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."

[4] State Farm filed a Motion to Amend Judgment by Consent, which requested that the original judgment be amended to include the appropriate decretal language as to both summary judgments and to clarify the relief granted.

judgment on March 2, 2017. The amended judgment re-affirmed the grant of the respective summary judgment motions.

In the amended judgment, the district court found no genuine issues of material fact to preclude State Farm's request for summary judgment, and specifically dismissed all claims asserted by Mr. Chanthasalo against Ms. Deshotel and State Farm, with prejudice. The amended judgment also granted State Farm's motion to designate the judgment as a final judgment.

In its incorporated reasons for judgment, the district court found two separate and distinct accidents occurred on January 17, 2014. It reasoned that "the duty owed by Defendant Melissa Deshotel and the scope of protection afforded at law to the Plaintiff, Somvang Chanthasalo, did not extend from the first accident to the second accident involving different actors." The district court further reasoned:

> [T]he actions of Defendant Melissa Deshotel were not substantial in character relative to the cause of the second accident. There is no "ease of association" in which the original accident at issue (the first accident) became the legal and/and or proximate cause of the second accident. Thus, the Plaintiff having raised no genuine issues of material fact which would preclude this Court's finding, summary judgment is appropriate.

The district court specifically found the judgment on State Farm's summary judgment motion pertained only to Accident No. 1.

As to Progressive, the amended judgment granted its motion for summary judgment on Accident No. 1 and dismissed any UM claims Mr. Chanthasalo raised against Progressive with prejudice; however, it reserved Mr. Chanthasalo's right to proceed against Progressive for UM benefits that arose out of Accident No. 2.[5]

[5] The record indicates that on March 16, 2017, Mr. Chanthasalo executed a motion to dismiss Progressive after it had tendered its UM policy limits for Accident No. 2. The dismissal reserved

The district court found Ms. Deshotel was free of fault regarding Accident No. 2; accordingly, Progressive had no UM coverage exposure as to Accident No. 1.

This appeal followed.

DISCUSSION

Mr. Chanthasalo claims the district court committed legal error in granting the motions for summary judgment because it did not apply the proper standard to grant summary judgment relief and did not employ the proper duty-risk analysis.

This Court discussed the standard of review for summary judgment in *Ducote v. Boleware,* 2015-0764, p. 6 (La. App. 4 Cir. 2/17/16), 216 So.3d 934, 939, *writ denied*, 2016-0636 (La. 5/20/16), 191 So.3d 1071, as follows:

> Appellate courts review the grant or denial of a motion for summary judgment de novo, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. This standard of review requires the appellate court to look at the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to determine if they show that no genuine issue as to a material fact exists, and that the mover is entitled to judgment as a matter of law. A fact is material when its existence or nonexistence may be essential to the plaintiff's cause of action under the applicable theory of recovery; a fact is material if it potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. A genuine issue is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, no need for trial on that issue exists and summary judgment is appropriate. To affirm a summary judgment, we must find reasonable minds would inevitably conclude that the mover is entitled to judgment as a matter of the applicable law on the facts before the court.

In the instant case, State Farm's and Progressive's respective motions for summary judgment are premised on different facts and legal arguments, which necessitate separate *de novo* reviews. Accordingly, we shall first consider whether the district court properly granted State Farm's motion for summary judgment.

Mr. Chanthasalo's right to appeal the district court's grant of summary judgment with reference Accident No. 1.

State Farm's Motion for Summary Judgment

Established Louisiana jurisprudence employs a duty-risk analysis to resolve negligence claims under La. C.C. art. 2315. *Roberts v. Benoit*, 605 So.2d 1032, 1041 (La. 1991). To prevail under a negligence claim, the plaintiff must prove five elements:

> (1) the defendant had a duty to conform his conduct to a specific standard (the duty element);
>
> (2) the defendant failed to conform his conduct to the appropriate standard (the breach of duty element);
>
> (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element);
>
> (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and
>
> (5) actual damages (the damages element)

Roberts, 605 So.2d at 1051.

Here, both parties agree that Mr. Chanthasalo asserts a negligence action against Ms. Deshotel for Accident No. 1 when she rear-ended Mr. Chanthasalo's vehicle. La. R.S. 32:81(A) provides "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and condition of the highway."[6] As such, elements one and two of the duty-risk analysis—the duty element and the breach of duty element—are met.

The third element of the duty-risk analysis—cause-in-fact—is also met. Mr. Chanthasalo would not have been injured in Accident No. 2 "but for" Ms.

[6] *See also* La. R.S. 32:58(A), which provides: "[a]ny person operating a public vehicle on the public roads of this state shall drive in a careful and prudent manner, so as not to endanger the life, limb, or property of any person. Failure to drive in such a manner shall constitute careless operation."

Deshotel's alleged negligence in causing Accident No. 1, which resulted in Mr. Chanthasalo standing on the shoulder of the interstate highway. Louisiana jurisprudence provides that if a plaintiff would not have sustained injuries "but for" the defendant's substandard conduct, then such conduct is a cause-in-fact. *Fowler v. Roberts*, 556 So.2d 1, 5 (La. 1989). Therefore, to the extent that Ms. Deshotel's actions had something to do with the damages Mr. Chanthasalo sustained in Accident No. 2, the test of a factual, causal relationship is met. *Hill v. Lundin & Associates, Inc.*, 260 La. 542, 256 So.2d 620, 622 (1972).

We now turn to the fourth element of the duty-risk analysis—scope of protection. To answer whether or not Ms. Deshotel's alleged substandard conduct was a legal cause of Mr. Chanthasalo's damages, we must analyze whether any breach of duty owed from Accident No. 1 extends to place Mr. Chanthasalo within the scope of protection for damages that resulted from Accident No. 2.

Legal cause or the scope of protection inquiry has been explained as follows:

> The essence of the . . . inquiry is whether the risk and harm encountered by the plaintiff fall within the scope of protection ¸of the [duty]. It is a hazard problem. Specifically, it involves a determination of whether the . . . duty . . . [was] designed, at least in part, to afford protection to the class of claimants of which the plaintiff is a member from the hazard [encountered].

Peterson v. Doe, 1994-1013, p. 8 (La. App. 4 Cir. 12/15/94), 647 So.2d 1288, 1293 (citing *Dixie Drive It Yourself System New Orleans Co. v. American Beverage Co.*, 242 La. 471, 488, 137 So.2d 298, 304 (1962)). In short, the inquiry contemplates whether the injury the plaintiff suffered is one of the risks encompassed by the rule of law that imposed the duty. *Fowler*, 556 So.2d at 6. The finding of legal causation "requires a proximate relation between the actions of a defendant and the

harm which occurs and such relation must be substantial in character." *Roberts*, 605 So.2d at 1056 (quoting *Sinitiere v. Lavergne*, 391 So.2d 821, 825 (La. 1980)).

In determining whether there is a duty-risk relationship for a defendant's substandard conduct and a plaintiff's harm, Louisiana jurisprudence employs an ease of association analysis to assess liability. The ease of association inquiry asks:

> How easily does one associate the plaintiff's complained-of harm with the defendant's conduct?" . . . Although ease of association encompasses the idea of foreseeability, it is not based on foreseeability alone. Crowe, [*The Anatomy of a Tort-Greenian, as Interpreted by Crowe who has been Influenced by Malone—A Primer*, 22 Loy. L. 903, 907(1976)]. Absent an ease of association between the duty breached and the damages sustained, we have found legal fault lacking. *Hill*, [256 So.2d at 622-23]*; Sibley v. Gifford Hill and Co., Inc.*, 475 So.2d 315, 319 (La. 1985); *See also Williams v. Southfield School, Inc.*, 44 So.2d 1339, 1342 (La. App. 2d Cir. 1986).

Roberts, 605 So.2d at 1045.

Mr. Chanthasalo principally relies on *Minvielle v. Lewis*, 610 So.2d 942 (La. App. 1 Cir. 1992) to support his contention that Ms. Deshotel's alleged negligence from Accident No. 1 was the legal cause of the injuries he sustained in Accident No. 2. In *Minvielle*, the defendant driver drove across the median and struck the vehicle in which the plaintiff was a passenger. Upon stopping, the plaintiff exited the vehicle to walk to the front of the car to observe the property damage. After he walked back to the point of collision, he fell and injured his ankle when he stepped on a deteriorated portion of the roadway. The plaintiff filed suit against the other driver and the State. The defendant driver claimed that the plaintiff's injuries were caused when he stepped on the deteriorated roadway, not by the vehicular accident. Where there may be multiple causes for an injury, *Minvielle* provided:

> To be actionable, the cause need not be the sole cause, but it must be a cause in fact, and to be a cause in fact it must have a proximate relation to the harm which occurs and it must be substantial in nature." 610 So.2d at 944. In assessing some liability to the defendant driver, the First Circuit opined that the striking of plaintiff's vehicle "was a proximate cause without which plaintiff's accident [falling on the deteriorated roadway] would not have happened. *Dixie Drive It Yourself Systems v. American Beverage Company*, 137 So.2d 298 (La. 1992); *Miller Car Washes, Inc. v. Crowe*, 245 So.2d 485 (La. App. 2d Cir. 1971). In determining liability, the governing criteria is whether the person creating the danger could or should reasonably have foreseen that the accident might occur.

610 So.2d at 945.

In assessing some liability to the defendant driver, the *Minvielle* Court opined that the striking of plaintiff's vehicle by the defendant driver "was a proximate cause without which plaintiff's accident [falling on the deteriorated roadway] would not have happened. Similarly, Mr. Chanthasalo contends that he was within the scope of protection of a duty owed to him by Ms. Deshotel because he would not have been in a hazardous location on the shoulder of the roadway had Ms. Deshotel not breached that duty. As such, he argues the district court improperly granted State Farm's summary judgment motion.

In opposition, State Farm asserts the district court properly granted summary judgment and correctly decided that the scope of any duty Ms. Deshotel owed to Mr. Chanthasalo did not extend to the remote possibility that he might be struck by a vehicle as a result of a second, unrelated accident. State Farm relies in part on *Hamilton v. City of Shreveport*, 38,965 (La. App. 2 Cir. 10/27/04), 896 So.2d 76. In *Hamilton*, the Appellate Court found the district court properly granted summary judgment in favor of the vehicle drivers and against the surviving spouse. The surviving spouse's husband was killed after he collided with a stationery police cruiser that was placed on the roadway to block traffic as a result of a

multiple car accident involving the vehicle drivers. The Court employed a scope of protection inquiry and determined that the risk of injury from a stationary police car at the accident scene, a situation produced by a combination of the vehicle drivers' conduct and the act of a third party, was not within the scope of protection of the duty—to drive at reasonable speeds and not follow too closely—imposed on the vehicle drivers while operating their motor vehicles. *Hamilton*, 38,965, p. 6, 896 So.2d at 80. Summary judgment was, therefore, appropriate inasmuch as the plaintiffs failed to demonstrate an ease of association between the drivers' conduct in causing the first accident and the risk of injury the decedent encountered when he collided with the stationery police cruiser in the second accident.[7]

When we review the facts of the present case, we find no ease of association between Accident No. 1 and Accident No. 2. The facts are uncontested that two separate and distinct accidents occurred. The record shows a five to fifteen minutes lapse between the accidents. The parties agree that Ms. Deshotel, Mr. Chanthasalo and their respective vehicles were on the shoulder of the interstate at the time of Accident No. 2. Mr. Chanthasalo offers no evidence that Ms. Deshotel's actions from Accident No. 1 caused or contributed to the occurrence of Accident No. 2. The duty Ms. Deshotel owed to Mr. Chanthasalo from the first accident—not to follow too closely and drive at a safe speed—did not extend to cover him for the risk of injury from an unrelated second accident. We agree with *Hamilton* that the primary purpose of a motorist's duty to drive at a safe speed and distance is to prevent the type of accident that initially occurred between Mr. Chanthasalo and Ms. Deshotel. 38,965, p. 6, 896 So.2d at 80. Accordingly, Ms.

[7] The facts indicated that the drivers' accident happened at 1:30 a.m. Their vehicles were stopped and the decedent was legally intoxicated at the time he collided with the police cruiser near 3:10 a.m.

Deshotel's alleged substandard conduct in causing Accident No. 1 cannot be the legal cause of Mr. Chanthasalo's injuries from Accident No. 2. Mr. Chanthaslo fails to satisfy the fourth element of the duty-risk analysis—scope of protection—to support a negligence action against Ms. Deshotel. As there are no genuine issues of material fact at issue, based on our *de novo* review, the district court did not err in granting State Farm's motion for summary judgment.

We now review whether the trial court erred in granting Progressive's motion for summary judgment.

Progressive's Motion for Summary Judgment

Mr. Chanthasalo makes no separate argument as to why the district court erred in granting Progressive's summary judgment motion; instead, his appeal suggests that the district court erred for the same reason it did in granting State Farm's motion for summary judgment—namely, Ms. Deshotel's breach of duty in Accident No. 1 was the legal cause of his damages that resulted from Accident No. 2. Accordingly, as this Court has already determined that Ms. Deshotel was not the legal cause of Mr. Chanthasalo's Accident No. 2 injuries, we need not review this assignment of error. Notwithstanding, considering the merits, Mr. Chanthasalo's claim that Progressive's potential UM exposure for Accident No. 1 derives from whether the duty Ms. Deshotel breached in Accident No. 1 was the legal cause of Accident No. 2 lacks merit. Our established jurisprudence provides that the issue of Progressive's UM liability emanates from the insurance contract between Progressive and Mr. Chanthasalo. An insurance policy is a contract between the parties and its interpretation is construed by using the general rules of contract as set forth in our Civil Code. *Louisiana Ins. Guar. Ass'n v. Interstate*

Fire & Cas. Co., 1993-0911 (La. 1/14/94), 630 So.2d 759, 763. The parties' intent as to the level of coverage provided is reflected by the words of the policy. *Id*.

Here, Mr. Chanthaslo's UM insurance policy coverage with Progressive contains the following provisions:

> [W]e will pay for damages that an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of **bodily injury**:
>
> 1. Sustained by an insured person;
> 2. Caused by an accident; and
> 3. Arising out of the ownership, maintenance, or use of an uninsured motor vehicle. (emphasis added**).**

Mr. Chanthasalo admits that he was not injured in Accident No. 1. Therefore, based on the clear and unambiguous terms of the insurance contract, which requires bodily injury, Mr. Chanthasalo is not entitled to UM benefits for Accident No. 1. Thus, as a matter of law, the district court did not err when it granted Progressive's motion for summary judgment, finding Mr. Chanthasalo was not entitled to any UM recovery for Accident No. 1; however, reserving his right to UM benefits for Accident No. 2.[8]

CONCLUSION

Based on the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED

[8] As previously referenced, the record shows that Progressive tendered its policy limits as to the second accident on February 21, 2017 and has been dismissed in relation to that accident.