STATE OF MICHIGAN

COURT OF APPEALS

DONNA SCHULTZ, Personal Representative of the Estate of SANDRA MICHALSKI, Deceased,

Plaintiff-Appellant,

v

RALPH BOWNS, WADE SOULLIERE, FRANK BILLINGS, and SILVER LAKE TRANSPORT, INC.,

Defendants-Appellees.

UNPUBLISHED
June 2, 1998

No. 203286
Baraga Circuit Court
LC No. 95-004121 NI

Before: Markman, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

In this wrongful death action, plaintiff appeals as of right an order granting summary disposition in favor of defendants. On appeal, plaintiff claims that the lower court erred in finding no genuine issue of material fact on the issues of negligence and proximate cause. We affirm.

I

Plaintiff's decedent was a passenger in an automobile that crossed the centerline on a snow-covered road and drifted into the path of a truck that was the second in a convoy of three trucks traveling in the opposite direction. As in all negligence actions, the plaintiff bears the burden of producing evidence regarding the following four elements: (1) the defendant owed a duty to the plaintiff; (2) the defendant breached the duty; (3) the defendant's breach of duty was a proximate cause of the plaintiff's damages; and (4) the plaintiff suffered damages. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993).

Duty

The Federal Motor Carrier Safety Regulations regarding the driving of commercial motor vehicles under hazardous conditions, 49 CFR 392.14, provide as follows:

> Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

With regard to speed restrictions, Michigan law provides that:

> A person driving a vehicle on a highway shall drive at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other condition then existing. A person shall not drive a vehicle upon a highway at a speed greater than that which will permit a stop within the assured, clear distance ahead. [MCL 257.627; MSA 9.2327.]

Michigan traffic laws (MCL 257.643; MSA 9.2343) also regulate the distance between vehicles:

> (1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon, and the condition of, the highway.
>
> * * *
>
> (3) A distance of not less than 500 feet shall be maintained between 2 or more driven vehicles being delivered from 1 place to another.
>
> (4) A person who violates this section is responsible for a civil infraction.

In addition, the common law imposes an obligation to use due care or to act so as not to unreasonably endanger the person or property of others. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 95; 485 NW2d 676 (1992). Regarding their duty of care, both defendant truck drivers testified that they knew that distances between vehicles had to be adjusted to exceed the statutory minimum of five hundred feet to allow for severe weather conditions. In addition, both defendant drivers testified regarding their knowledge of defensive driving, which required them to anticipate erratic drivers in traffic. Moreover, both defendant drivers were aware that their trailers were empty, increasing the stopping distance of their rigs. Accordingly, based on the statutory provisions and the common law, we conclude that defendant truck drivers had a duty to exercise care, considering the snow-covered, icy, and slippery road surface that created treacherous driving conditions.

Breach of Duty

Plaintiff argues that there was a genuine issue regarding whether defendant truck drivers' speed, and the increased snow clouds that were created by their speeds, constituted a breach of duty. However, the evidence showed that defendants were going at a reasonable speed, corresponding to that of other vehicles on the road. Even though plaintiff's expert witness gave his opinion that a safe speed under the circumstances would have been slower, he admitted that he had no scientific basis for his position. Also, although there was testimony that snow clouds created a visibility problem for drivers going in both directions, the evidence was undisputed that snow clouds were commonly created by vehicles traveling on the snow-covered road on the day of the accident and that the vehicle in which plaintiff's decedent was a passenger lost control before it encountered the snow cloud created by defendant Frank Billings' truck. Accordingly, the lower court properly concluded that there were no genuine issues of fact regarding these claims.

Further, plaintiff argues that defendant Ralph Bowns did not maintain a proper distance behind the snow cloud created by defendant Billings' truck. Plaintiff asserts that she provided expert testimony with some factual basis to the effect that defendant Bowns was negligent in not maintaining a safe following distance and that a factual issue for trial was presented on the issue of breach of duty, amounting to more than sheer speculation and conjecture. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993); *Easley v University of Michigan*, 178 Mich App 723, 726; 444 NW2d 820 (1989). However, even if we were to accept plaintiff's argument, we conclude that the lower court did not err in granting summary disposition because defendants' alleged negligence was not a proximate cause of the collision.

Proximate Cause

Next, plaintiff argues that the lower court erred in ruling that plaintiff failed to submit sufficient evidence to create a genuine issue of material fact on the issue of proximate cause. We disagree. Proximate cause involves two concepts: (1) causation in fact, and (2) foreseeability. *Derbeck v Ward*, 178 Mich App 38, 44; 443 NW2d 812 (1989); SJI2d 15.01. Cause in fact requires that the harmful result would not have come about but for the negligent conduct. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Causation may be established by circumstantial evidence, but such proof must be subject to reasonable inferences and not mere speculation. *Id.* at 163-164. Proximate cause is that which, in a natural and continuous sequence, unbroken by new and independent causes, produces the injury. *McMillian v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985). Proximate cause "normally involves examining the foreseeability of consequences and whether a defendant should be held legally responsible for such consequences." *Skinner, supra* at 163. Proximate cause is usually a factual issue to be decided by the trier of fact, *Schutte v Celotex Corp*, 196 Mich App 135, 138; 492 NW2d 773 (1992), but if the facts bearing on proximate cause are not disputed and if reasonable minds could not differ, then the issue is one of law for the court. *Rogalski v Tavernier*, 208 Mich App 302, 306; 527 NW2d 73 (1995); *Derbeck, supra.*

When a number of factors contribute to produce an injury, one actor's negligence can still be a proximate cause if it was a substantial factor in bringing about the injury. *Brisboy v Fibreboard Corp*, 429 Mich 540, 547; 418 NW2d 650 (1988). Factors to be considered include

> whether the actor's conduct created a force or series of forces that were in continuous and active operation up to the time of the harm, or created a situation harmless in itself unless acted upon by other forces for which the actor is not responsible. *Poe v Detroit*, 179 Mich App 564, 576-577; 446 NW2d 523 (1989). [*Hagerman v Gencorp (On Remand)*, 218 Mich App 19, 23; 553 NW2d 623 (1996), lv gtd 456 Mich 851 (1997).]

The Supreme Court has distinguished between proximate cause and events that merely provide a condition affording an opportunity for another event to produce the injury:

> An event may be one without which a particular injury would not have occurred, but if it merely provided the condition or occasion affording opportunity for the other event to produce the injury, it is not the proximate cause thereof. Negligence which merely makes possible the infliction of injuries by another, but does not put in motion the agency by which the injuries are inflicted, is not the proximate cause thereof. Causes of injury which are mere incidents of the operating cause, while in a sense factors, are so insignificant that the law cannot fasten responsibility upon one who may have set them in motion. [*Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 145; 565 NW2d 383 (1997), quoting 57A Am Jur 2d, Negligence, § 473, pp 454-455.]

Here, the lower court found that there were no facts to indicate that "even speculated evidence of negligence on the part of defendants was a substantial factor and proximate cause of the death of plaintiff's decedent." Because it is not disputed that the vehicle in which the decedent was a passenger crossed the centerline into the path of oncoming traffic, it appears that the actions of defendants Billings and Bowns were harmless in themselves "unless acted upon by other forces for which the actor[s] [were] not responsible." *Poe*, *supra* at 576-577. Similarly, it appears that the presence of the trucks on the road "merely provided the condition or occasion affording opportunity for the other event to produce the injury," *Singerman*, *supra* at 145, and was therefore not a proximate cause. Accordingly, we hold that reasonable people could not differ regarding the application of the facts to the legal concept of "proximate cause." Even assuming that defendant Bowns was negligent in failing to appreciably deaccelerate once he was notified by defendant Billings that an approaching car was losing control, Bowns' conduct was not a substantial factor in bringing about the injury. *Brisboy*, *supra* at 547. The alleged negligence of defendant Bowns merely made possible the infliction of injuries after plaintiff's vehicle had crossed the centerline of the road but did not "put in motion the agency by which the injuries [were] inflicted." *Singerman*, *supra* at 145, quoting 57A Am Jur 2d, Negligence, § 473, pp 454-455.

II

Plaintiff next argues that in granting summary disposition, the lower court improperly engaged in fact-finding and weighing of the evidence. The court is not permitted to assess credibility or to determine facts on a motion for summary judgment. *Zamler v Smith*, 375 Mich 675, 678-679; 135 NW2d 349 (1965). Instead, the court's task is to review the record evidence, and all reasonable

inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial." *Skinner*, *supra* at 161.

The lower court found that

> what caused the involved collision, purely, simply and unfortunately, was the fact that Helen Kilduff lost control of her vehicle, crossed the centerline of the highway, and slid into the semi-tractor operated by defendant Bowns.

Plaintiff apparently argues that the lower court could not have made this finding without accepting that defendant Billings' testimony was credible. However, this finding did not necessarily depend on the court weighing the credibility of the witnesses, since the undisputed physical evidence showed that the accident occurred after Kilduff's vehicle had crossed the centerline of the road into the path of defendant Bowns' truck. Because the court did not have to weigh the credibility of defendant Billings' testimony to make this finding, we find that there was no error.

Plaintiff also argues that the lower court impermissibly weighed and rejected the testimony of plaintiff's expert witness. In order to find that there was no substantial evidence of negligence, it appears that the court had to consider the expert's testimony. The expert testified that even if defendant Bowns performed two evasive maneuvers, of which he was unaware, this would not substantially have affected the conclusion that Bowns did not maintain a safe following distance which was based on his time-distance analysis. Thus, it appears that there was a question of fact regarding defendant Bowns' breach of his duty and that the lower court erred in apparently weighing and rejecting this testimony regarding a breach of duty. However, even if the court erred in concluding that this testimony did not create a genuine issue of material fact regarding defendant Bowns' breach of duty, this error was harmless because the court did not have to weigh this testimony to find that any negligence on the part of defendants was not a substantial factor and proximate cause of the injury. Because this finding of the court was supported by undisputed testimony that the infliction of injury was put in motion when the vehicle crossed the centerline into the path of Bowns' truck, we conclude that there was no error requiring reversal.

Affirmed.

/s/ Stephen J. Markman
/s/ Richard Allen Griffin
/s/ William C. Whitbeck