STATE OF MICHIGAN

COURT OF APPEALS

LEROY A. LEWIS,

Plaintiff-Appellant,

v

JASON ROBERT CAMERON,

Defendant,

and

GARY D. TUCKER, GARY TUCKER TRUCKING, and SELECT TRANSPORT, INC.,

Defendants-Appellees.

UNPUBLISHED
April 25, 2017

No. 330743
Monroe Circuit Court
LC No. 14-036097-NI

Before: SAWYER, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals the final order in this case that dismissed defendant Jason Robert Cameron. However, the issue on appeal relates to a prior order that granted appellees' motion for summary disposition in this negligence action. For the reasons provided below, we affirm.

This action arises out of a multi-vehicle accident. At around 7:30 a.m. on December 19, 2013, plaintiff was driving northbound on I-75 in a semi-truck and was hauling a flatbed with coiled steel as cargo. Defendant Gary Tucker[1] was driving directly behind plaintiff in his own semi-truck and was hauling an empty propane tank trailer. According to both plaintiff and defendant, Jason Cameron was driving a black pickup truck in the far left lane on northbound I-75 at a high rate of speed.[2] When Cameron got ahead of plaintiff's position, he ran into some

[1] Our use of the term "defendant" refers to Gary Tucker, individually. Because defendant Cameron is not part of this appeal, "defendants" refers to Gary Tucker, Gary Tucker Trucking, and Select Transport, Inc.

[2] Both plaintiff and defendant estimated that Cameron was traveling approximately 80 mph.

accumulated snow near the left guard rail,[3] which caused the pickup truck to spin sideways and slam into the guard rail. The resulting crash caused snow to get thrown up into the air. Plaintiff testified that he had to activate his windshield wipers because of the snow that got thrown in front of him. Defendant explained that he temporarily could see nothing because all he saw was "a cloud of snow flying back to me."

After Cameron slammed into the barrier, he ricocheted into the center lane of the freeway, where he struck another (silver) pickup truck that was towing an enclosed trailer. The silver pickup was pushed into the right lane and its trailer got turned over on its side. Plaintiff managed to slow down and avoid any contact with either the silver pickup or its trailer. Defendant, who had let up on the gas during these events, was struck along the side by the silver pickup trailer immediately before rear-ending plaintiff. Defendant explained that this whole sequence of events happened very quickly.

After plaintiff filed suit, defendants moved for summary disposition under MCR 2.116(C)(10). The trial court granted defendants' motion and ruled that defendant was faced with a sudden emergency and acted reasonably under the circumstances.

On appeal, plaintiff argues that the trial court erred when it granted defendants' motion for summary disposition based on the sudden emergency doctrine because reasonable minds could differ as to whether there was a sudden emergency and whether defendant was negligent. We disagree.

This Court "review[s] de novo a circuit court's decision on a motion for summary disposition." *Bonner v City of Brighton*, 495 Mich 209, 220; 848 NW2d 380 (2014). A court must consider the pleadings, depositions, affidavits, admissions, and other documentary evidence that has been filed by the parties in a light most favorable to the nonmoving party when deciding whether to grant a motion for summary disposition under MCR 2.116(C)(10). *Id*. "Summary disposition is appropriate under MCR 2.116(C)(10) if, '[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.' " *Id*., quoting MCR 2.116(C)(10). " 'A genuine issue of material fact exists when, viewing the evidence in a light most favorable to the nonmoving party, the record which might be developed . . . would leave open an issue upon which reasonable minds might differ.' " *Id.*, quoting *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013).

Plaintiff alleged that defendants, either directly or vicariously, failed to drive at a prudent speed and drove in a negligent manner. Plaintiff further alleged, *inter alia*, that defendants violated, either directly or vicariously, MCL 257.402 by "overtaking and striking the rear-end of a vehicle traveling ahead in the same direction," and are, thus, presumed negligent.

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[3] While conditions were clear at the time of the accident, there was snow accumulated near the guard rail from prior plowings. Plaintiff and defendant testified that the roads may have had patches of moisture. But plaintiff also stated that the roads were not icy.

A violation of the rear-end collision statute, MCL 257.402(a), creates a rebuttable presumption of negligence, *White v Taylor Distrib Co, Inc*, 482 Mich 136, 139; 753 NW2d 591 (2008), and provides:

> In any action, in any court in this state when it is shown by competent evidence, that a vehicle traveling in a certain direction, overtook and struck the rear end of another vehicle proceeding in the same direction, or lawfully standing upon any highway within this state, the driver or operator of such first mentioned vehicle shall be deemed prima facie guilty of negligence. This section shall apply, in appropriate cases, to the owner of such first mentioned vehicle and to the employer of its driver or operator.

Here, defendant undisputedly struck the rear end of plaintiff's truck, which created a reputable presumption that defendant was negligent. However, "[t]he statutory presumption of negligence under MCL 257.402(a) may be rebutted by showing the existence of a sudden emergency."[4] *White*, 482 Mich at 136, citing *VanderLaan v Miedema*, 385 Mich 226, 231; 188 NW2d 564 (1971). Our Supreme Court has explained the sudden-emergency doctrine as such:

> "One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence." [*Socony Vacuum Oil Co v Marvin*, 313 Mich 528, 546; 21 NW2d 841 (1946) (citation omitted).]

Thus, for the sudden emergency doctrine to apply, the situation must be unsuspected or unusual and not of the defendant's own making. *White*, 482 Mich at 139-141; *VanderLaan*, 385 Mich at 231-232. A situation is unsuspected if the danger was not "in clear view for any significant length of time" and was "totally unexpected." *VanderLaan*, 385 Mich at 232. A situation is unusual if it "varies from the everyday traffic routine confronting the motorist." *Id*.

As a preliminary matter, plaintiff argues that a jury rather than the trial court should have resolved whether the sudden emergency doctrine applies. However, a jury's role in this regard hinges on whether the facts justifying the doctrine's application are disputed in the first instance. Compare *White*, 482 Mich at 143 ("the questions regarding whether [the sudden emergency doctrine applies] . . . under *the facts presented in this case* are proper questions for the jury") (emphasis added), with *Cashaw v Great Lakes Greyhound Lines*, 331 Mich 291, 293-294; 49 NW2d 183 (1951) (affirming the trial court's application of the sudden emergency doctrine on directed verdict based on the undisputed facts contained in the plaintiffs' declarations).

[4] Because of the clear view of the Supreme Court on this matter, we reject plaintiff's position that the sudden emergency doctrine has no application for statutory violations.

The sudden emergency doctrine arises from the broader question of whether a defendant exercised reasonable care. Indeed, "the sudden-emergency doctrine is a logical extension of the 'reasonably prudent person' standard, with the question being whether the defendant acted as a reasonably prudent person when facing the emergency, giving consideration to all the circumstances surrounding the accident." *White v Taylor Distrib Co, Inc*, 275 Mich App 615, 622; 739 NW2d 132 (2007), aff'd 482 Mich 136 (2008). This is significant, for where reasonable jurors cannot disagree regarding the reasonableness of a defendant's actions, the issue is to be decided as a matter of law. See *Fiser v Ann Arbor*, 417 Mich 461, 469-470; 339 NW2d 413 (1983), overruled on other grounds *Robinson v Detroit*, 462 Mich 439, 445; 613 NW2d 307 (2000); cf. *Nichols v Dobler*, 253 Mich App 530, 532; 655 NW2d 787 (2002) ("[I]f reasonable minds could not differ regarding the proximate cause of the plaintiff's injury, the court should decide the issue as a matter of law."). Thus, the question is not whether the defendant could invoke the sudden emergency doctrine at this stage of the proceedings but, rather, whether the trial court erred when it concluded that no genuine issue of material fact precluded application of the doctrine under these facts.

Plaintiff claims that defendant should not be able to invoke the sudden-emergency doctrine because there was no sudden emergency. We disagree.

As we have already noted, the doctrine is applicable when a situation arises that is unsuspected or unusual and not of the defendant's own making. That is precisely what the evidence shows happened here. Both plaintiff and defendant described the accident similarly. Both witnessed the black pickup truck driving in the left-hand lane on the highway lose control after it struck a mound of snow and then slam into the guard rail, which created a large cloud of snow. In his deposition, plaintiff noted that there was so much snow thrown into the air that he had to use his windshield wipers. While defendant did not activate his wipers, he testified that he could see nothing except for the cloud of snow. Plaintiff attempted to create a question of fact by claiming in an affidavit that the snow spray did not impair *his* ability to see. The veracity of such a claim is questionable, as he previously testified that he *had* to use his windshield wipers. Regardless, taking plaintiff's affidavit at face value, it does nothing to call into doubt defendant's version of events. In other words, the simple fact that plaintiff arguably did not suffer a "white out" condition from the snow spray does not mean that defendant did not and could not have encountered one. Further, plaintiff's reliance on photographic evidence taken after the accident, which showed no snow on defendant's vehicle, does not speak to the condition outside defendant's windshield at the time of the accident. Any cloud of snow that was in the air at the time would not have necessarily fallen to rest (and remained) on the hood or windshield of defendant's truck. Consequently, from the proffered evidence, there is no question of fact that the snow cloud severely impaired defendant's ability to see.

We further reject plaintiff's claim that the emergency was not "totally unexpected." Plaintiff argued that the fact that the highway contained ice or small patch of snow in December is not unusual or unexpected. But the presence of snow or ice on the freeway was not the basis for the sudden emergency doctrine. To the contrary, the court recognized not only that there was "the throwing of snow" from Cameron's truck, but also that Cameron's truck struck a silver pickup truck, which caused the silver pickup's trailer to be overturned and strike defendant's truck. All of these events happened in quick succession and occurred *before* defendant actually rear-ended plaintiff. These are not ordinary driving conditions which are part of the everyday

traffic routine and they were certainly unsuspected given defendant's momentary blindness. And, finally, none of these factors were of defendant's own making as it is uncontested that Cameron's pickup truck slamming into the median set this chain of events in motion. And while plaintiff suggests that defendant's inability to completely stop his truck shows that he was driving too fast when plaintiff otherwise brought his vehicle to a "rolling stop," this ignores the fact that defendant was temporarily blinded and unable to anticipate that plaintiff would slow all the way down to a rolling stop immediately in front of him.

For these reasons, we hold that the trial court did not err when it ruled that the sudden emergency doctrine applied and that no reasonable juror could conclude that defendant acted negligently in light of the circumstances.

Affirmed. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Michael J. Riordan