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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-344
A10-417

Thomas Edward Welsh,
Appellant (A10-344),
Plaintiff (A10-417),

vs.

Tory Patrick Keefe,
Respondent (A10-344),
Appellant (A10-417),

Alan Dale Denny, et al.,
Respondents.

Filed November 16, 2010
Reversed and remanded
Collins, Judge[*]

Olmsted County District Court
File No. 55-CV-08-3425

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[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Collins, Judge.

UNPUBLISHED OPINION

COLLINS, Judge

In these consolidated appeals arising out of a multiparty negligence action, appellants Thomas Welsh and Tory Keefe challenge the district court's grant of summary judgment in favor of respondents Alan Denny and R & K Express Inc., arguing that the district court erred in concluding that (1) Denny did not owe a duty of care and (2) there was insufficient evidence of proximate cause to withstand summary judgment. Because Denny owed a duty to operate his motor vehicle with reasonable care and because there is a genuine issue of material fact as to whether Denny's alleged negligence proximately caused Welsh's injuries, we reverse and remand.

FACTS

On November 10, 2006, Keefe struck Welsh with his pickup truck on highway 63 south of Rochester. Denny was driving a white semi-tractor he had leased to R & K and was pulling a loaded trailer owned by R & K, pursuant to a contractor operating agreement. Due to limited visibility caused by falling and blowing snow, Denny had missed the exit from highway 63 toward his intended destination. But he thought that he could make a U-turn and return to the exit, despite the weather, road, and traffic conditions.

Denny's semi-tractor trailer became stuck in the snow before he was able to complete the U-turn. Welsh, seeing Denny's predicament, stopped his cement truck

behind Denny and got out to assist. After clearing snow from around Denny's wheels, Welsh suggested that Denny continue straight on highway 63 a short distance to where he could turn around in an off-road parking area, but Denny declined. As Denny continued with the U-turn, for a time his semi-tractor trailer blocked both lanes of one side of the highway. Welsh walked onto the highway to direct traffic, where he was struck by Keefe's pickup truck. According to Denny, he did not ask Welsh for assistance; Welsh's recollection is limited due to the head injuries that he sustained. After managing to complete the U-turn, Denny drove away, apparently unaware that Welsh had been struck.

According to Keefe, as he approached the scene, the vehicle that he was following changed lanes and Denny's semi-tractor trailer suddenly appeared before him; it was perpendicular across the highway. At the same time, Keefe saw Welsh standing in the middle of his lane. Keefe swerved, avoided colliding with Denny, but struck Welsh with the side of his pickup truck.

Welsh commenced this action seeking damages for his injuries allegedly caused by the negligence of Keefe and Denny and contending that R & K was vicariously liable for Denny's negligence. Keefe denied liability, asserting that Welsh's own negligence and Denny's negligence caused Welsh's injuries. Denny and R & K denied liability and brought a cross-claim against Keefe on the basis of his alleged negligence. In turn, Keefe cross-claimed against Denny and R & K, seeking contribution and/or indemnity on the basis of Denny's alleged negligence.

Denny and R & K moved for summary judgment on all claims and cross-claims against them. They argued that Denny did not breach a duty to exercise reasonable care

in the operation of his vehicle when attempting the U-turn, that he did not owe a duty to prevent Welsh from walking onto the highway of his own accord to direct traffic, and that Denny's driving conduct was not a proximate cause of Welsh's injuries. The district court granted summary judgment, dismissing all claims and cross-claims against Denny and R & K. The district court concluded that Denny owed a duty to drive with reasonable care and in accordance with traffic laws and regulations, but that Denny did not owe a duty to protect Welsh or to prevent him from going onto the highway to direct traffic. The court also concluded that, as a matter of law, the evidence was insufficient to establish that Denny's allegedly negligent driving conduct proximately caused Welsh's injuries. The district court reasoned that Welsh's reliance on the emergency rule was misplaced; that the rescue doctrine did not apply on the undisputed facts of this case; and that Welsh's own conduct was an intervening act amounting to a superseding cause of his injuries.

Welsh and Keefe separately appealed the district court's grant of summary judgment, and this court ordered that their appeals be consolidated.

DECISION

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, we review de novo whether the district court erred in its application of the law and whether there are any genuine issues of material fact, viewing the evidence in the

light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). Doubts about the existence of a material fact are resolved in favor of the nonmoving party. *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 112 (Minn. 1992).

1. *Negligence and proximate cause*

A plaintiff must meet four elements essential to recovery in a negligence action: "(1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of that duty being the proximate cause of the injury." *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001). A defendant is entitled to summary judgment when the record shows a lack of proof on any of those elements. *Id.* The existence of a legal duty is a question of law, and analysis of a negligence action begins with inquiry into the duty owed. *Foss v. Kincade*, 766 N.W.2d 317, 320 (Minn. 2009).

Drivers of motor vehicles in Minnesota owe others a duty to exercise reasonable care when operating their vehicles. Minn. Stat. § 169.14, subd. 1 (2008); *see also Schubitzke v. Minneapolis, St. Paul & Sault Ste. Marie R.R. Co.*, 244 Minn. 156, 160, 69 N.W.2d 104, 107 (1955) (framing question as "[d]id the driver adhere to the standard of care to be expected from a reasonably prudent person under similar circumstances?"). Violation of a traffic law is prima facie evidence of negligence. Minn. Stat. § 169.96(b) (2008). "[T]he prima facie case so established must prevail against the violator in the absence of countervailing evidence showing a statutory or other reasonable ground for such violation." *Simon v. Carroll*, 241 Minn. 211, 215, 62 N.W.2d 822, 826 (1954). The traffic laws prohibit a driver from making a U-turn unless the U-turn "can be made safely

and without interfering with other traffic" and the driver's vehicle is visible to other drivers in either direction by 1,000 feet. Minn. Stat. § 169.19, subd. 2 (2008).

There is no true dispute here as to the existence or nature of the duty owed by Denny. Denny owed a duty to all others on the roads—including Welsh and Keefe—to operate his vehicle at all times, and specifically when making the U-turn, in compliance with the traffic laws and with reasonable care in light of the conditions then and there existing. The record evidence indicates that Denny made an ill-fated driving decision and, due to obvious weather and road conditions, became stuck while attempting a U-turn. Although the evidence as to the extent of visibility is conflicting, the record contains evidence indicating that visibility was less than the statutorily required 1,000 feet. The record evidence also indicates that, after resuming the U-turn, Denny's driving conduct interfered with approaching traffic. Thus, there is sufficient evidence to establish, for summary-judgment purposes, that Denny may have breached the duty of care.

The district court concluded, and Denny and R & K continue to argue on appeal, that there was no special relationship between Denny and Welsh creating a duty on the part of Denny to affirmatively protect Welsh from harm by preventing him from walking out onto the highway. But neither Welsh nor Keefe alleges or relies on the existence of such a special relationship or duty. Rather, they assert an ordinary negligence theory: that Denny negligently operated his semi-trailer truck, thereby creating a hazardous traffic condition, and proximately caused Welsh's injuries. Thus, the central question is

simply one of causation: did Denny's allegedly negligent driving conduct proximately cause Welsh's injuries?[1]

The existence of proximate cause is a question of fact, but it may be resolved as a matter of law if the evidence would permit reasonable minds to arrive at only one conclusion. *Lubbers v. Anderson*, 539 N.W.2d 398, 402 (Minn. 1995). Because this involves an intensely fact-specific inquiry, determination of proximate cause is most suitable for jury fact-finding and should be decided as a matter of law in only exceptional cases. *McCuller v. Workson*, 248 Minn. 44, 47, 78 N.W.2d 340, 342 (1956) ("Since proximate cause is usually a question of fact for the jury, it can seldom be disposed of on a motion for summary judgment. This principle is of long standing."); *Zimprich v. Stratford Homes, Inc.*, 453 N.W.2d 557, 560 (Minn. App. 1990) ("[N]egligence issues, such as proximate cause, are most often questions of fact for the jury and can rarely be disposed of on a motion for summary judgment.").

A negligent act proximately causes an injury when the act (1) was a substantial factor in bringing about the injury *and* (2) was one that the actor should have known was likely to result in injury to others. *Lietz v. N. States Power Co.*, 718 N.W.2d 865, 872 (Minn. 2006). In regard to the second factor, foreseeability, the law merely requires that the actor should reasonably have anticipated that the act "was likely to result in injury to

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[1] Denny and R & K maintain that Denny operated his vehicle with reasonable care, but they do not dispute that there is sufficient evidence of Denny's breach of this duty of care to create a fact question sufficient to survive summary judgment. Instead, Denny and R & K contend that summary judgment was appropriate for the reasons stated in the district court's opinion—that Denny owed no duty to prevent Welsh from going onto the highway and directing traffic and that there is insufficient evidence that Denny's allegedly careless driving proximately caused Welsh's injuries.

others . . . even though he could not have anticipated the particular injury which did happen." *Wartnick*, 490 N.W.2d at 113 (citation omitted); *see also Ponticas v. K.M.S. Invs.*, 331 N.W.2d 907, 912 (Minn. 1983) ("We have often held that negligence is not to be determined by whether the particular injury was foreseeable."). But proximate cause is not established by a plaintiff showing only that the defendant would not have been injured but for the complained-of conduct. *Lubbers*, 539 N.W.2d at 402.

We conclude that reasonable jurors could disagree about whether Denny's decisions and conduct when operating his semi-tractor trailer that morning amounted to a substantial factor in bringing about Welsh's injuries, as well as whether Denny should have known that his conduct was likely to result in injury to another.

2. *Superseding cause*

Denny and R & K contend that Welsh's decision to go onto the highway and direct traffic was a superseding cause defeating any potential liability for Denny's conduct. An intervening act is a superseding cause if its harmful effects occurred after the original negligence, it was not brought about by the original negligence, it actively worked to bring about a result that would not otherwise have followed from the original negligence, and it was not reasonably foreseeable by the original wrongdoer. *Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997). A superseding cause "breaks the chain of causation set in operation by a defendant's negligence, thereby insulating his negligence as a direct cause of the injury." *Lennon v. Pieper*, 411 N.W.2d 225, 228 (Minn. App. 1987). An intervening act is not a superseding cause when the act was "a normal reaction to the stimulus of a situation created by the defendant's wrong."

Johnson v. Chicago Great W. Ry. Co., 242 Minn. 130, 135, 64 N.W.2d 372, 377 (1954). Rather, it "must be independent in the sense that it must not be stimulated by the defendant's conduct." *Henjum v. Bok*, 261 Minn. 74, 76, 110 N.W.2d 461, 462-63 (1961).

Here, by initiating a U-turn after missing his exit, Denny set in motion the chain of events that ultimately resulted in injury to Welsh. An intervening act occurred when Welsh, of his own volition, walked onto the highway to direct traffic in order that Denny might safely complete the U-turn. But whether this amounts to a superseding cause is a question of fact for trial because it requires a determination of whether Welsh's actions were a normal reaction to the stimulus of the situation that he encountered: a semi-tractor trailer (1) having already been stuck, (2) attempting to complete a U-turn, and (3) substantially blocking the highway, on a slippery road surface in reduced visibility. We cannot conclude, as a matter of law, that Welsh's decision to go onto the highway and continue to assist Denny by holding off other motorists was not foreseeable or brought about by Denny's alleged negligence.

Therefore, because the record evidence at this stage would permit a reasonable juror to conclude that Denny's driving conduct proximately caused injury to Welsh and because it remains a disputed issue of material fact as to whether Welsh's intervening act constitutes a superseding cause of his injury, we must reverse the district court's order for summary judgment.

3. *Rescue doctrine and emergency rule*

Welsh and Keefe also rely on both the rescue doctrine and the emergency rule to defeat summary judgment. Having determined to reverse the order for summary judgment as discussed above, it is unnecessary to analyze the applicability of either the rescue doctrine or the emergency rule, and we decline to address them.

Reversed and remanded.