NO. COA05-890

NORTH CAROLINA COURT OF APPEALS

Filed: 20 June 2006

CHARLES G. CLODFELTER
Plaintiff,

v.

Forsyth County
No. 04 CVS 3153

DAVID W. LEONARD,
Defendant.

Appeal by plaintiff from order entered 25 April 2005 by Judge Michael E. Helms in the Superior Court in Forsyth County. Heard in the Court of Appeals 9 February 2006.

Wells Jenkins Lucas & Jenkins, PLLC, by Ellis B. Drew, III, for plaintiff-appellant.

Teague, Rotenstreich & Stanaland, L.L.P, by Paul A. Daniels and Kenneth B. Rotenstreich, for defendant-appellee.

HUDSON, Judge.

After plaintiff sustained injuries in a motor vehicle accident, he filed this negligence action against defendant. On 25 April 2005, the trial court granted summary judgment to defendant. Plaintiff appeals. As discussed below, we affirm the trial court.

The evidence tends to show that on 18 June 2002, plaintiff was operating a truck owned by his employer and was traveling west in the center lane of Interstate 40 in Greensboro. Defendant was traveling westerly in the left lane, approximately half a truck length ahead of plaintiff. A dark SUV pulled up behind defendant and to the left of plaintiff. The SUV, which had been traveling

faster than plaintiff or defendant, slowed down, merged in behind plaintiff, and then changed lanes again to the right and passed plaintiff in the right lane. The SUV then changed lanes back into the center lane, in front of plaintiff, and then again into the left lane, in front of defendant. According to plaintiff, there was less than one car length's distance between the SUV and defendant's vehicle when the SUV pulled into defendant's lane of travel. Defendant slammed on his brakes and lost control of his vehicle, sideswiping plaintiff. Plaintiff pulled off the highway onto the right shoulder, got out of his truck to look at the damage, and got back in the truck to call his employer. Defendant pulled off onto the left shoulder and ran across the highway to plaintiff's truck. Plaintiff got out and met defendant at the rear of plaintiff's truck. Plaintiff was uninjured. As plaintiff and defendant stood talking on the shoulder, a car driven by Ola Patrick swerved off the road and struck plaintiff, pinning him between the rear of his truck and the car, severing his left leg. Plaintiff sued defendant for negligence.

Plaintiff argues that the trial court erred in granting summary judgment to defendant. Summary judgment should be granted "if 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 any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2004). On appeal, we conduct a *de novo* review to determine whether there is a genuine issue of material

fact and whether the movant is entitled to judgment as a matter of law. *See Draughon v. Harnett Cty. Bd. of Educ.*, 158 N.C. App. 705, 707, 582 S.E.2d 343, 345 (2003). A defendant may meet its burden of proof by showing that the plaintiff's deposition affirmatively demonstrates that an essential element of the plaintiff's claim was lacking. *Young v. Fun Services-Carolina, Inc.*, 122 N.C. App. 157, 159, 468 S.E.2d 260, 262, *disc. review denied,* 344 N.C. 444, 476 S.E.2d 134 (1996).

In a negligence claim, the plaintiff must put forth evidence that the defendant breached a duty to him and that this breach proximately caused the damages of which plaintiff complains. *Blue Ridge Sportcycle Co., Inc., v. Schroader*, 60 N.C. App. 578, 580, 299 S.E.2d 303, 304-05 (183). Our Court has defined proximate cause as

> that cause, *unbroken by any new or independent cause, which produces the result in continuous sequence and without which it would not have occurred,* and one from which any man of ordinary prudence could have foreseen that such a result was probable under all of the facts then existing. Foreseeability is thus a requisite of proximate cause, which is, in turn, a requisite for actionable negligence.

Williams v. Smith, 68 N.C. App. 71, 73, 314 S.E.2d 279, 280, *certiorari denied*, 311 N.C. 769, 321 S.E.2d 158 (1984) (internal citation omitted) (emphasis added). Here, it is undisputed that plaintiff was uninjured after defendant's vehicle struck his and that plaintiff sustained injuries as a result of the accident with Ms. Patrick. However, plaintiff argues that defendant's negligence placed plaintiff in a hazardous position and thus defendant is

liable for plaintiff's injuries. Plaintiff cites *Boykin v. Morrison* in support of this argument. 148 N.C. App. 98, 103, 557 S.E.2d 583, 585 (2001).

In *Boykin*, the first defendant (Morrison) collided with plaintiff's vehicle when Morrison ran a red light. 148 N.C. App. at 100, 557 S.E.2d at 584. Boykin got out of his car, found Morrison passed out drunk behind the wheel, and returned to his car to wait for the police and ambulances. *Id.* Fifteen minutes later, the second defendant (Wilson) came through the intersection and struck Boykin's car that was still sitting in the intersection from the wreck caused by Morrison; the impact threw Boykin out of his car. This Court held that

> Wilson's act was not sufficiently independent of, and unassociated with, Morrison's initial negligence of colliding into plaintiff's car, to insulate Morrison from liability. Morrison could reasonably foresee that . . . . Wilson's colliding into plaintiff's car was a foreseeable intervening act and was associated with Morrison's initial negligence.

Id. at 103, 557 S.E. 2d at 586. Plaintiff argues that *Boykin* is on all fours with his case. We disagree and conclude that the present case is more similar to *McNair v. Boyette*, 15 N.C. App. 69, 189 S.E.2d 590, *aff'd*, 282 N.C. 230, 192 S.E.2d 457 (1972).

In *McNair*, defendant Boyette negligently collided with another car and the plaintiff arrived on the scene of the collision and determined that no one was injured. 15 N.C. App. at 70, 189 S.E.2d at 591. Plaintiff then crossed the road to get a flashlight from another car to use in directing traffic and was struck by another car. 15 N.C. App. at 71, 189 S.E.2d at 592. The Court held that

Boyette was not liable because the negligence of the car that struck plaintiff was not foreseeable and was "independent" of Boyette's negligence because "it resulted in injury to plaintiff after the alleged negligence of [the defendant] had ceased to operate." 15 N.C. App. at 73, 189 S.E.2d at 593.

> This doctrine of insulating the negligence of one by the subsequent intervention of the active negligence of another really belongs to the definition of proximate cause . . . . While there may be more than one proximate cause, that which is new and entirely independent breaks the sequence of events and insulates the original or primary negligence . . . . The test is whether the intervening act and the resultant injury is one that the author of the primary negligence could have reasonably foreseen and expected. The law only requires reasonable foresight, and when the injury complained of is not reasonably foreseeable, in the exercise of due care, the party whose conduct is under investigation is not answerable therefor . . . . In searching for the proximate cause of an event, the question always is: Was there an unbroken connection between the wrongful act and the injury, a continuous operation? Do the facts constitute a continuous succession of events, so linked together as to make a natural whole, or was there some new and independent cause intervening between the wrong and the injury? Many causes and effects may intervene between the original wrong and the final consequence, and if they might reasonably have been foreseen, the last result, as well as the first and every immediate consequence, is to be considered in law as the proximate cause of the original wrong. But when a new cause intervenes, which is not itself a consequence of the first wrongful cause, nor under the control of the original wrongdoer, nor foreseeable by him in the exercise of reasonable prevision, and except for which the final injurious consequence would not have happened, then such injurious consequence must be deemed too remote to constitute the basis of a cause of action against the original wrongdoer.

282 N.C. at 237-38, 192 S.E.2d at 461-62.

Here, according to the forecast of evidence, plaintiff had come to rest safely on the shoulder of the highway after the

collision with defendant. Plaintiff was uninjured and had exited his truck to survey the damage and gotten back in to call his employer. It is undisputed that Ms. Patrick's vehicle hit plaintiff only after plaintiff again got out of his vehicle to speak with defendant. Because the collision with defendant was over and plaintiff had come to rest in a place of safety, and because the second collision was not part of the first, we conclude that the uncontroverted forecast of Patrick's subsequent, intervening act was sufficiently independent of defendant's initial negligence. Thus, no genuine issue remains of defendant's liability for Patrick's negligence. Unlike in *Boykin*, where the plaintiff's car came to rest in the middle of an intersection and the defendant could reasonably foresee that the vehicle would be struck by another vehicle, plaintiff here had come to rest safely on the shoulder of the highway and Ms. Patrick later swerved off of the roadway and hit plaintiff. Here, as plaintiff's forecast of evidence lacked the necessary element of proximate cause, the trial court did not err in granting summary judgment to defendant.

Affirmed.

Judges TYSON and GEER concur.

Report per Rule 30(e).