[J-99-2011]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

RONALD T. BOLE AND SUSAN M. BOLE,	:	No. 24 WAP 2011
	:	Appeal from the Order of the Superior
Appellants	:	Court entered May 24, 2010 at No. 1814
	:	WDA 2009, affirming the Order of the Erie
	:	County Court of Common Pleas, entered
v.	:	October 6, 2009 at No. 12609-2007.
	:	
	:	
ERIE INSURANCE EXCHANGE,	:	
	:	
Appellee	:	ARGUED: October 19, 2011

OPINION

MR. JUSTICE EAKIN **DECIDED: August 20, 2012**

Ronald Bole[1] appeals the Superior Court's order affirming an arbitration award denying him recovery of underinsured motorist benefits. We allowed appeal to determine whether the rescue doctrine allows appellant, a volunteer firefighter responding to a crash, to recover despite a finding his injuries were the result of a superseding cause. For the following reasons, we affirm.

Devin Finazzo drove negligently during a hurricane, causing his car to crash. Appellant received a call to respond to this crash. On his way to the fire station, a bridge on his property collapsed as he drove over it, causing him serious injuries.

[1] Susan Bole claims loss of consortium; we refer only to Ronald Bole as appellant.

Because Finazzo was underinsured, appellant sued to collect underinsured motorist benefits from appellee, his insurer.[2]

A divided arbitration panel determined appellant was not entitled to benefits because he was not driving to the scene, and thus did not fall within the rescue doctrine; the trial court affirmed. The Superior Court reversed in a divided published opinion. Bole v. Erie Insurance Exchange, 967 A.2d 1017, 1021 (Pa. Super. 2009). Finding appellant was engaged in a rescue, the court remanded the case to the arbitrators to determine whether appellant acted reasonably in his rescue attempt and whether the bridge collapse was a superseding cause. Id., at 1020-21. Former Justice Fitzgerald filed a dissenting opinion, arguing appellant was not a rescuer as he was still driving to the fire station and would have at most provided post-crash medical care. Id., at 1023-24 (Fitzgerald, J., dissenting).

On remand, the arbitrators again split 2-1, finding that although appellant could reasonably be found to have been engaged in a rescue, the bridge collapsed because of intervening circumstances not attributable to Finazzo. On appeal, the trial court affirmed, and the Superior Court affirmed in an unpublished memorandum. Bole v. Erie Insurance Exchange, No. 1814 WDA 2009, unpublished memorandum at 4 (Pa. Super. filed May 24, 2010). Judge Donohue filed a dissenting memorandum, finding appellant was only attempting to cross the bridge because Finazzo had crashed, and it was irrelevant that Finazzo did not actually cause the bridge to collapse. Id., at 3 (Donohue, J., dissenting).

We granted allocatur to determine:

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[2] Although both parties briefed whether the rescue doctrine allows the recovery of underinsured motorist benefits, this issue is beyond the scope of our grant of allocatur.

> Whether the Superior Court erred in holding that [Petitioner Ronald] Bole, who was engaged in a rescue, could not recover under the rescue doctrine because the collapse of his bridge, which caused him severe injuries, was the result of a superseding cause when it collapsed as a result of flood waters in a blinding nocturnal rain storm when that same storm caused the original accident and created the rescue situation to which Bole was responding, when:
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> > A. Bole, who[,] like other members of the McKean Volunteer Fire Department resided throughout McKean Township, had been summoned by the original tortfeasor by use of his cell phone for emergency assistance for his critically injured passenger; and
> >
> > B. But for the use of modern telecommunications by which Bole and the other members of his volunteer fire department were summoned, [the original tortfeasor's] Finazzo's passenger would likely not have survived.

Bole v. Erie Insurance Exchange, 20 A.3d 1185, 1185 (Pa. 2011) (per curiam). As appellant challenges an arbitration award, we will reverse if "the award is contrary to law and is such that had it been a verdict of a jury the court would have entered a different judgment or a judgment notwithstanding the verdict." 42 Pa.C.S. § 7302(d)(2).

Appellant contends the rescue doctrine eliminates the need to prove Finazzo was the proximate cause of appellant's injury and that the doctrine applies whenever the rescuer has a reasonable belief he is responding to another in imminent peril. Appellant claims he was only crossing the bridge because of the crash caused by Finazzo's negligence, which put Finazzo and his passenger in danger. Thus, as he was attempting a rescue in a reasonable manner, he is entitled to a full recovery, whether or not the rescue attempt was successful.

Appellee insists the rescue doctrine should be limited to situations where citizens are facing emergency situations. Appellee notes that appellant intended to go to the fire station before the crash site, and since other personnel arrived to aid the crash victims, appellant never faced an emergency situation, making the rescue doctrine inapplicable.

Appellee further argues the bridge collapse was a superseding cause of appellant's injuries. It contends the rescue doctrine does not allow recovery when an unforeseeable intervening act occurs prior to the plaintiff's injury. It alleges allowing recovery would expose tortfeasors to potentially unlimited liability and suggests a parade of horribles where Finazzo would be liable for all injuries happening before the rescue was completed.[3]

While the panel of arbitrators and the trial court applied the rescue doctrine, both found that the bridge collapse was a superseding cause that absolved Finazzo (and thus appellee) of liability. As for superseding cause, we have held:

> "A superseding cause is an act of a third person or other force which, by its intervention, prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about." In addition a superseding cause must be an act which is so extraordinary as not to have been reasonably foreseeable.

Von der Heide v. Commonwealth, Department of Transportation, 718 A.2d 286, 288 (Pa. 1998) (citations omitted).

The rescue doctrine provides "'[i]t is not contributory negligence for a plaintiff to expose himself to danger in a reasonable effort to save a third person or the land or chattels of himself or a third person from harm.'" Guca v. Pittsburgh Railways Co., 80

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[3] Appellee also encourages us to adopt the "Fireman's Rule," which would preclude professional rescuers from recovering against an original tortfeasor. As this claim is beyond the scope of our grant of allocatur, we will not address it.

A.2d 779, 782 (Pa. 1951) (quoting Restatement of Torts § 472). Thus, the rescue doctrine permits injured rescuers to recover when their recovery would be otherwise barred by the strict application of the defense of contributory negligence. Nonetheless, "the defense of contributory negligence has been modified by the Comparative Negligence Act[.]" Bell v. Irace, 619 A.2d 365, 369 (Pa. Super. 1993) (en banc) (citing 42 Pa.C.S. § 7102).

The Superior Court has held the rescue doctrine still serves to establish a causal connection between a tortfeasor's negligence and the rescuer's injury. Id. (citing Pachesky v. Getz, 510 A.2d 776, 783 (Pa. Super. 1986)). That court has characterized the rescue doctrine as "a narrow exception to the ordinary principles of negligence which require a showing of proximate causation." Id., at 368-69. There, the court indicated the rescue doctrine establishes "a causal connection between a defendant's original negligence and a plaintiff/rescuer's injury where a causal connection might not otherwise exist." Id., at 369 (citing Pachesky, at 783). As the rescue doctrine creates a causal link, we must determine whether it bars the application of the doctrine of superseding causes: that is, is a tortfeasor liable for all injures a rescuer suffers during the rescue, even when the injuries are caused by an unforeseeable superseding cause?

The rescue doctrine holds the original tortfeasor liable, as one would reasonably foresee that rescuers summoned may be injured. It is quite another matter to make him a guarantor of the rescuer's safety. Foreseeability is still in play, and the modifier "reasonably" still abides in its application — harm that is not reasonably foreseeable is not the responsibility of the tortfeasor.

Over 90 years ago, Judge Cardozo explained the rationale for the rescue doctrine as: "The risk of rescue, if only it be not wanton, is born of the occasion. The emergency begets the man. The wrongdoer may not have foreseen the coming of a

deliverer. He is accountable as if he had." Wagner v. International Railway Co., 133 N.E. 437, 438 (N.Y. 1921). A tortfeasor who places himself or another in peril is presumed to foresee that people will come to render aid — he cannot argue the rescue attempt was unforeseeable, nor that it was contributory negligence. However, the rescue doctrine cannot be so broad as to make the tortfeasor liable for all harm befalling a rescuer. The rescue doctrine may allow recovery if the rescuer was struck by a car while driving to the scene, for that is reasonably foreseeable — it would not allow recovery if the rescuer was struck by a meteor as that is not reasonably foreseeable.

Other states have held the rescue doctrine does not guarantee recovery in the face of a superseding cause. See, e.g., Hodge v. Dixon, 167 S.E.2d 377, 378 (Ga. Ct. App. 1969) (car which fatally struck police officer while directing traffic at accident scene was superseding cause); Govich v. North American Systems, Inc., 814 P.2d 94, 100 (N.M. 1991) ("Rather than to rely on the rescue doctrine's fictive notions of causation … it is more direct to rely upon the … traditional rules of proximate and independent intervening causation."); McCoy v. American Suzuki Motor Corp., 961 P.2d 952, 957 (Wash. 1998) ("[A] rescuer [must] show the defendant proximately caused his injuries."); but see Ryder Truck Rental, Inc. v. Korte, 357 So. 2d 228, 231 (Fla. Dist. Ct. App. 1978) ("[W]e think that [a rescuer] should be able to recover when his injury results from a danger not reasonably foreseeable."); Ouellette v. Carde, 612 A.2d 687, 693 (R.I. 1992) ("The rescue doctrine assigns the party who negligently creates a dangerous situation with responsibility for any rescuer injured in a reasonable rescue attempt.").

We hold the rescue doctrine will not make an original tortfeasor liable for injuries attributable to a superseding cause, and we disapprove any language in Bell or Pachesky to the contrary. We reiterate the language of Von der Heide, cited above, that "a superseding cause must be an act which is so extraordinary as not to have been

reasonably foreseeable." Id., at 288. If it was reasonable to foresee that Finazzo's rescuers may be injured by a collapsing bridge while coming to his aid, the rescue doctrine would allow recovery. However, the majority of the arbitration panel, as affirmed by the trial court and the Superior Court, determined the bridge collapse was not reasonably forseeable, and it was a superseding cause. The rescue doctrine does not obviate that finding.

Determinations of superseding cause are normally made by the fact-finder. See Powell v. Drumheller, 653 A.2d 619, 624 (Pa. 1995) (citing Mascaro v. Youth Study Center, 523 A.2d 1118, 1122 (Pa. 1987)) ("A determination of whether an act is so extraordinary as to constitute a superseding cause is normally one to be made by the jury."). We cannot say this finding was contrary to law. Finazzo could have foreseen appellant would come from miles away to render assistance and might have been injured during his attempt. However, it is not reasonable to foresee a bridge more than three miles away, on the rescuer's own property, would collapse and injure appellant as he drove to the station. Therefore, we will not undo the arbitrators' determination that the bridge collapse was a superseding cause of appellant's injuries.

The order of the Superior Court is affirmed.

Jurisdiction relinquished.

Madame Justice Orie Melvin did not participate in the decision of this case.

Mr. Chief Justice Castille, Messrs. Justice Saylor and Baer and Madame Justice Todd join the opinion.

Mr. Justice McCaffery files a dissenting opinion.