

summary judgment in favor of defendants Jerry L. Chapman (Chapman), D&H Trucking, and Dennis Henderson (Henderson) (collectively, the Chapman defendants) after finding, as a matter of law, plaintiffs could not establish that Chapman's alleged negligence was a proximate cause of the motor vehicle accident that killed their father, Gregory Lee Stone (Stone). We affirm.

¶ 3

FACTS

¶ 4 On November 10, 2005, defendant Chapman was driving a tractor-trailer filled with livestock that overturned on Interstate 80 (I-80), resulting in a shutdown of traffic. The accident occurred at 4:56 a.m. in the eastbound lane of I-80, near milepost 112, in Grundy County, Illinois. Defendant Henderson, doing business as D&H Trucking, employed Chapman and owned the truck Chapman was driving at the time of the accident.

¶ 5 A second accident occurred approximately 2½ hours later, at 7:20 a.m., near mile marker 109. At the second location, Daniel Hoffman saw the traffic jam, brought his tractor-trailer to a stop, and waited in the right lane for one to two minutes before observing a “dirty” tractor-trailer rapidly pass him in the left lane. Hoffman then heard a large tractor-trailer, driven by Stone, approaching Hoffman's vehicle from behind at a high rate of speed. Stone attempted to avoid Hoffman's stopped vehicle by driving off the roadway and onto the right shoulder, however, the left corner of Stone's tractor-trailer hit the right corner of Hoffman’s tractor-trailer.

¶ 6 Hoffman testified that Stone hit his vehicle with great momentum because the impact snapped Hoffman's trailer off of the “[j]iff” and then spun Hoffman's trailer around. Stone was ejected from the driver’s seat of his tractor-trailer and died on his way to the hospital.

¶ 7 Defendant Roy Schmell (Schmell), who is not a party to this appeal, was the driver of the “dirty” trailer which passed Hoffman shortly before the second accident. Schmell first observed

Stone's tractor-trailer on I-80 when the vehicle was approximately 400 feet behind Schmell. Schmell noticed traffic was backed up when Hoffman's vehicle was 200 feet in front of him. At this point, Stone's tractor-trailer was less than the distance of a truck length, about 40 feet, behind Schmell. Schmell stated he began to slow down and switched from the right lane to the left lane because he was afraid Stone would be unable to stop and would smash into him from behind.

¶ 8 Sergeant Scott Angus of the Illinois State Police, an accident reconstructionist, investigated the second crash. Angus explained when traffic backs up, there is a potential to have a secondary crash. However, Angus opined that Stone was the "at-fault" driver in the secondary crash due to his following too closely.

¶ 9 Plaintiffs filed suit against all defendants on November 5, 2007 alleging Chapman negligently lost control of his tractor-trailer thereby proximately causing Stone's death. The complaint also alleged Schmell negligently failed to maintain a proper lookout and carelessly swerved into the left lane at the last moment leaving Stone with no chance to avoid colliding with Schmell's vehicle.

¶ 10 The Chapman defendants filed their motion for summary judgment on July 13, 2011, and alleged plaintiffs failed to show Chapman's negligence proximately caused the second crash involving Hoffman and Stone. Schmell also filed a motion for summary judgment on July 29, 2011, but reached a settlement with plaintiffs before the trial court ruled on the motion.

¶ 11 In the written order granting summary judgment in favor of the Chapman defendants, the court found Chapman's conduct made the accident possible, but Stone's own intervening negligence approximately three miles from the original accident scene was not foreseeable to Chapman, and thus the Chapman defendants were relieved of liability. Plaintiffs appeal.

¶ 12

ANALYSIS

¶ 13 On appeal, plaintiffs argue the trial court erred by finding, as a matter of law, Chapman did not proximately cause the second collision resulting in Stone's death. Plaintiffs argue a reasonable jury could find there was no intervening negligence by Stone since Schmell's vehicle blocked Stone's visibility, and thus Stone did not see Hoffman's stalled tractor-trailer until Schmell rapidly changed lanes. Specifically, plaintiffs argue the jury should have been allowed to consider whether Chapman was a proximate cause of Stone's crash as a question of fact.

¶ 14 We review *de novo* a trial court's decision to grant summary judgment. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005).

Summary judgment should be granted where, when viewing the evidence in the light most favorable to the nonmoving party, there is no issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

¶ 15 In order to succeed on a claim of negligence, plaintiffs must be able to prove Chapman had a duty to Stone, breached that duty, and the breach was a proximate cause of Stone's injuries. *First Springfield Band & Trust v. Galman*, 188 Ill. 2d 252, 256 (1999). Ordinarily, proximate cause is a question of fact for the jury. *Hooper v. County of Cook*, 366 Ill. App. 3d 1, 11 (2006). However, proximate cause can be decided as a matter of law when "the facts are not only undisputed but are also such that there can be no difference in the judgment of reasonable men as to the inferences to be drawn from them." *Blood v. VH-1 Music First*, 668 F.3d 543, 546 (7th Cir. 2007) (quoting *Merlo v. Pub. Serv. Co. of N. Ill.*, 381 Ill. 300, 318 (1943)). Such is the case at bar.

¶ 16 In *Anderson v. Jones*, 66 Ill. App. 2d 407 (1966), the court established a four part test to determine whether a motor vehicle accident was the legal proximate cause of a successive collision. *Id.* at 412. The factors to be considered are: (1) the lapse of time between the two collisions; (2) whether the original force was still active at the time plaintiff was injured; (3) whether the act of the intervening tortfeasor could be considered extraordinary; and (4) whether the intervening act was a normal or extraordinary response to the situation created by the wrongdoer. *Id.* at 412. The *Jones* court applied these factors and found the first driver, defendant Jones, did not proximately cause the second car collision between plaintiffs and defendant Zehr which resulted in plaintiffs' injuries. *Id.* at 412-13. When reaching this decision, the court first noted that approximately 3 to 10 minutes had passed between the original accident and the second collision. *Id.* at 412. The court also observed "[t]he force set in motion by Jones had spent itself. It was in repose. It was quiescent. The incident was at an end." *Id.* Finally, the court found defendant Zehr was "was the extraordinary rather than the ordinary reaction to the situation. He alone failed to follow the pattern of conduct all others followed after the force of the first collision came to a rest." *Id.* at 413. While acknowledging the first defendant, Jones, had created abnormal road conditions, the court ultimately held that Jones's negligence did not proximately cause the injuries to plaintiffs.

¶ 17 Here, the undisputed facts establish the collision between Hoffman and Stone occurred approximately 2½ hours later and three miles from the site of the original accident. It is also undisputed that after Hoffman came to a complete stop, other vehicles, including Schmill's tractor-trailer, were able to come to a complete stop without incident. Finally, Stone's tractor-trailer was the only vehicle unable to stop before colliding with Hoffman's tractor-trailer.

¶ 18 Legal cause is established when the injury “is of a type that a reasonable person would see as a *likely result* of his or her conduct.” *Galman*, 18 Ill. 2d at 260. In this case, no reasonable jury could find Stone's intervening negligence was foreseeable to Chapman. Applying the first *Anderson* factor, we note that approximately two hours and 24 minutes passed between the first accident, caused by Chapman, and the second collision involving Stone and Hoffman. In addition, the original force, *i.e.*, the Chapman accident, was no longer operational at the time of the second collision. Finally, Stone was the extraordinary rather than the ordinary response to the traffic jam on I-80. Notably, many other vehicles, including those driven by Hoffman and Schmell, were able to come to a complete stop without incident. Stone’s vehicle, on the other hand, not only collided with Hoffman’s tractor-trailer, but managed to do with such force that Hoffman’s trailer snapped off of the “[j]iff.” After applying the four *Anderson* factors, as discussed above, we conclude the trial court properly found Stone's intervening negligence proximately caused his own death and then granted summary judgment in favor of the Chapman defendants.

¶ 19

CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Grundy County is affirmed.

¶ 21 Affirmed.