2018 IL App (1st) 171004-U
Order filed: March 30, 2018

FIFTH DIVISION

Nos. 1-17-1004 and 1-17-1039 (consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 13 L 007172

WESTFIELD INSURANCE COMPANY, a/s/o Giertsen Company of Illinois and Esteban Jimenez,

Plaintiff,

v.

RICHARD KLABUNDE, FAB EXPRESS, INC., DONALD BLOW JR., BLUE WATER TRUCKING, INC., MICHELLE STALTER, as special administrator of the estate of Nathan Stalter, and HLP SYSTEMS, INC.,

Defendants

(Richard Klabunde and Fab Express, Inc.

Defendants-Appellants,

and

Michelle Stalter, as special administrator of the estate of Nathan Stalter, and HLP Systems, Inc.,

Defendants-Appellees).

No. 13 L 009280

ESTEBAN JIMENEZ

Plaintiff-Appellant,

Appeal from the Circuit Court of Cook County.

Nos. 13 L 007172 and 13 L 009280 (consolidated)

Honorable John P. Callahan, Judges Presiding.

v.)
)
RICHARD KLABUNDE, FAB EXPRESS, INC.,)
DONALD BLOW JR., BLUE WATER TRUCKING,)
INC., MICHELLE STALTER, as special administrator of)
the estate of Nathan Stalter, and HLP SYSTEMS, INC.,)
)
Defendants)
)
(Richard Klabunde and Fab Express, Inc.)
)
Defendants-Appellants,)
)
and)
)
Michelle Stalter, as special administrator of the estate)
of Nathan Stalter, and HLP Systems, Inc.,)
)
Defendants-Appellees).)

JUSTICE ROCHFORD delivered the judgment of the court.
JUSTICES HALL and LAMPKIN concurred in the judgment.

ORDER

¶ 1 *Held*: Summary judgment entered in favor of two defendants and the denial of motions to reconsider that decision are reversed, where genuine issues of material fact exist as to whether the alleged negligence of those two defendants caused plaintiffs' alleged injuries or merely furnished a condition permitting those injuries to occur through the negligence of others.

¶ 2 In these consolidated appeals, arising out of two consolidated underlying lawsuits, we consider the propriety of an order granting summary judgment on both underlying complaints in favor of defendants-appellees, Michelle Stalter, as special administrator of the estate of Nathan Stalter, and HLP Systems, Inc., and the denial of motions to reconsider that decision. For the following reasons, we reverse.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that on August 24, 2011, Nathan Stalter was operating a truck owned by his employer, HLP Systems, Inc. (HLP). Mr. Stalter was driving northbound on the Tri-State Tollway (I-294), near the Golf Road overpass in Cook County, Illinois. A tire on Mr. Stalter's truck blew out, the truck and a trailer it was pulling jackknifed, and a spool of coiled wire and other items were ejected onto the roadway. No other vehicles were directly involved in this incident, but as a result thereof a number of the four available lanes were blocked to northbound traffic.

¶ 5 Somewhat south of the HLP vehicle, and also traveling northbound, Esteban Jimenez was a passenger in a truck owned by his employer, Giertsen Company of Illinois (Giertsen). That truck was being driven by a coworker, Manual Rivera Salmeron. Behind the Giertsen vehicle was a truck owned by Blue Water Trucking, Inc. (Blue Water), and driven by Blue Water's employee, Donald Blow, Jr. Finally, behind the Blue Water vehicle was a truck owned by Fab Express, Inc. (Fab Express), and driven by Fab Express's employee, Richard Klabunde.

¶ 6 The Giertsen truck was able to come to a full stop in response to the roadway obstruction caused by the incident involving the HLP truck. However, just as the Blue Water truck stopped, it was struck from behind by the Fab Express truck. Thereafter, the Blue Water truck collided with the Giertsen truck. Mr. Jimenez alleges that he suffered injuries as a result of this collision.

¶ 7 In June 2013, Westfield Insurance Company, as subrogee of Giertsen and Mr. Jimenez (Westfield), filed a lawsuit against Mr. Klabunde, Fab Express, Mr. Blow, Blue Water, Mr. Stalter, and HLP (circuit court case No. 13 L 007172). Therein, Westfield asserted that it was Giertsen's workers' compensation insurer, and had paid benefits on Giertsen's behalf due to "serious permanent injuries" suffered by Mr. Jimenez as a result of the collision. Contending that

the negligence of each named defendant caused those injuries, Westfield sought a judgment against each named defendant.

¶ 8 In August 2013, Mr. Jimenez filed a separate lawsuit against the same defendants (circuit court case No. 13 L 009280). Therein, he too alleged that the negligence of each defendant caused the injuries he suffered in the collision, and sought a judgment against each named defendant.

¶ 9 These two lawsuits were consolidated below for purposes of discovery and trial. Furthermore, following the death of Mr. Stalter, he was substituted as a defendant with Michelle Stalter, serving as special administrator of Mr. Stalter's estate. Each of the named defendants filed counterclaims against the other named defendants for contribution. In addition, Mr. Klabunde, Fab Express, Mr. Blow, and Blue Water filed third-party claims for contribution against Giertsen and Mr. Salmeron.

¶ 10 After the parties engaged in extensive fact discovery, including taking the depositions of a number of participants in the incident and state troopers that responded thereto, appellees filed a motion for summary judgment with respect to both complaints. Therein, they contended that the facts established that the actions of Mr. Stalter and HLP did not cause plaintiffs' alleged injuries, but *at most* merely furnished a condition permitting those injuries to occur through the negligence of the other defendants. As such, appellees contended that they were entitled to summary judgment in their favor, because plaintiffs could not establish that Mr. Stalter and HLP proximately caused any injury.

¶ 11 On January 11, 2017, the circuit court granted the motion and awarded summary judgment in favor of Mr. Stalter and HLP. The written order also found that "pursuant to Supreme Court Rule 304A *** there is no just cause to delay enforcement or appeal from this

order." Motions to reconsider were filed on behalf of Mr. Jimenez, Mr. Klabunde, Fab Express, and Giertsen, primarily asserting that the circuit court had misapplied the existing law to the facts of this case. Those motions were denied on March 22, 2017, in a written order that also contained a finding of no just reason to delay the enforcement or appeal thereof.

¶ 12 Separate notices of appeal from the order granting summary judgment and the order denying the motions to reconsider were filed by Mr. Klabunde and Fab Express (appellate court case No. 1-17-1004) and Mr. Jimenez (appellate court case No. 1-17-1039). In an order entered by this court on June 26, 2017, the two appeals were consolidated.

¶ 13 II. ANALYSIS

¶ 14 On appeal, appellants contend that the circuit court improperly granted summary judgment in favor of appellees and denied the motions to reconsider that judgment.

¶ 15 A. Standards of Review and Legal Framework

¶ 16 Summary judgment is properly granted where the pleadings, depositions, and admissions on file, together with any affidavits, indicate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016). The purpose of summary judgment is not to answer a question of fact, but to determine whether one exists. *Ballog v. City of Chicago*, 2012 IL App (1st) 112429, ¶ 18. The court must examine the evidence in the light most favorable to the nonmoving party (*Pavlik v. Wal-Mart Stores, Inc*., 323 Ill. App. 3d 1060, 1063 (2001)), and must construe the material strictly against the movant and liberally in favor of the nonmovant (*Espinoza v. Elgin, Joliet and Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995)). Although a drastic means of disposing of litigation, summary judgment is, nonetheless, an appropriate measure to expeditiously dispose of a suit when the moving party's right to the judgment is clear and free from doubt. *Gaston v. City of Danville*, 393 Ill. App. 3d

591, 601 (2009). However, where "a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied." *Zameer v. City of Chicago*, 2013 IL App (1st) 120198, ¶ 13. When reviewing an order granting summary judgment, "we conduct a *de novo* review of the evidence in the record." *Espinoza*, 165 Ill. 2d at 113.

¶ 17 The "purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence that was not available at the time of the hearing, changes in the law or errors in the court's previous application of existing law." *Pence v. Northeast Illinois Regional Commuter R.R. Corp*., 398 Ill. App. 3d 13, 16 (2010). "When reviewing a trial court's denial of a motion to reconsider that was based on new matters, such as additional facts or new arguments or legal theories that were not presented during the course of the proceedings leading to the issuance of the order being challenged, this court employs an abuse of discretion standard. When reviewing a denial of a motion to reconsider based only on the circuit court's application of existing law, the standard is *de novo*." *Muhummad v. Muhummad-Rahmah*, 363 Ill. App. 3d 407, 415 (2006).

¶ 18 A plaintiff bringing a negligence claim must prove the defendant owed a duty of care, the defendant breached that duty, and this breach was the proximate cause of his injury. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 236 (2010). Summary judgment is properly entered for the defendant where plaintiff fails to establish one of these elements. *Pavlik*, 323 Ill. App. 3d at 1063). However, the issue on appeal is one of proximate cause. "The proximate cause of an injury is, in most cases, a question of fact to be determined from all the attending circumstances. [Citation.] It can only be a question of law when the facts are not only undisputed but also such that there can be no difference in the judgment of reasonable people as to the inferences to be drawn from them." *Parikh v. Gilchrist*, 2017 IL App (1st) 160532, ¶ 28.

¶ 19 "There are two requirements for a showing of proximate cause: cause in fact and legal cause." *Stanphill v. Ortberg*, 2017 IL App (2d) 161086, ¶ 32. As the question of cause in fact is not contested on appeal, the issue before this court is legal cause. As this court has recognized:

> "Legal cause is established if an injury was foreseeable as the type of harm that a reasonable person would expect to see as a likely result of his conduct. [Citation.] Although the foreseeability of an injury will establish legal cause, the extent of the injury or the exact way in which it occurs need not be foreseeable. [Citation.] By requiring a plaintiff to show legal cause for an injury, the law sets limits on how far a defendant's legal responsibility should extend for his actions. [Citation.]" *Id*.

¶ 20 In conducting this analysis, "Illinois courts draw a distinction between a condition and a cause. Indeed, if the negligence charged does nothing more than furnish a condition by which the injury is made possible, and that condition causes an injury by the subsequent, independent act of a third person, the creation of the condition is not the proximate cause of the injury." *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 257 (1999). Stated differently, if "the negligence charged does nothing more than furnish a condition by which the injury is made possible and that condition causes an injury by the subsequent, independent act of a third person, the creation of the condition is not the proximate cause of the injury where the subsequent act is an intervening efficient cause which breaks the casual connection between the original wrong and the injury, and itself becomes the proximate or immediate cause." *Quintana v. City of Chicago*, 230 Ill. App. 3d 1032, 1035 (1992). Nevertheless, "if the defendant could reasonably foresee the intervening act, that act will not relieve the defendant of liability." *Id*. at 1034.

¶ 21 Applying the foregoing rules to negligence actions arising from a series of highway collisions involving multiple vehicles, Illinois courts have traditionally looked to the following

relevant factors to guide their analysis as to whether a defendant was a cause or merely created a condition: (1) lapse of time; (2) whether the force initiated by the original wrongdoer continued in active operation up to the injury for which recovery is sought; (3) whether the act of the intervenor can be considered extraordinary rather than usual or normal; and (4) whether the intervening act was a normal response to the situation created by the wrongdoer or an extraordinary response. *Anderson v. Jones*, 66 Ill. App. 2d 407, 412 (1966); *Downs v. Camp*, 113 Ill. App. 2d 221, 227 (1969); *Cox v. Stutts*, 130 Ill. App. 3d 1018, 1023 (1985); *Cherry v. McDonald*, 176 Ill. App. 3d 471, 480 (1988).

¶ 22 B. Discussion

¶ 23 With this background in mind, we now consider whether the circuit court correctly concluded that—as a matter of law—plaintiffs could not establish that appellees proximately caused any injury.

¶ 24 On appeal, appellees contend that the circuit court's conclusion was correct in light of the evidence presented below and the legal principals we have discussed above. They assert that this matter involves "two separate automobile accidents," significantly separated in time and location. They further contend that the extraordinary negligence of Mr. Klabunde could not have been foreseen, such that they cannot be held liable for plaintiffs' injuries.

¶ 25 In support of these contentions, appellees note that deposition testimony from two state troopers who responded to the incidents indicate that the incident involving the HLP vehicle and the collision involving the other trucks were located a quarter to a third of a mile apart, at mile markers 46.25 and 45.9, respectively. Appellees also note that Nicholas Caffrey, a former HLP employee who was a passenger in the HLP vehicle driven by Mr. Stalter, testified that it was not until 20-30 minutes after the tire blew out that the police arrived on the scene. Only then did he

hear a noise to the south and notice the second incident located in that direction. Appellees assert that it is "a reasonable inference that the noise was the sound of the accident" involving the other parties to this appeal, such that the two incidents therefore occurred 20-30 minutes apart. Finally, appellees note that no other collisions resulted from the HLP vehicle's incident, and that it was only Mr. Klabunde who was unable to avoid colliding with another vehicle.

¶ 26 For all these reasons, appellees contend that plaintiffs cannot establish proximate cause as a matter of law because appellees "could not have foreseen that a driver (Klabunde) would negligently operate his truck and rear-end another truck twenty minutes later and a quarter mile down the road. [Appellees] could not reasonably foresee that Klabunde would negligently fail to slow and stop his truck without rear-ending other vehicles like the drivers ahead of him had done for twenty minutes."

¶ 27 We agree with appellants that these arguments misstate the evidence presented below, ignore contrary evidence, and improperly present the evidence in the light most favorable to *appellees*, the parties that sought summary judgment in their favor. We also agree with appellants that in light of the evidence presented below (as viewed in the light most favorable to appellants) and the legal principals discussed above, the circuit court improperly granted summary judgment in favor of appellees and denied the motions to reconsider that judgment.

¶ 28 For example, State Trooper Gerald Ellis, who responded to the incident involving the HLP truck, did *not* testify that the incident occurred at mile marker 46.25. Rather, he specifically testified that this was the location where he made an inspection of the HLP vehicle, after it had been moved off the roadway, and that he did not know exactly where the incident involving the HLP vehicle actually took place. Trooper Ellis further testified that the distance between the HLP and the other vehicles was close to a quarter of a mile, but again, this was after the HLP

vehicle had been relocated. Other deponents provided unclear or inconsistent testimony regarding the distance between the HLP incident and the collision involving the other trucks, to wit: (1) Mr. Blow estimated that the incident to the north of his collision was located approximately a half-mile to the north, although he also indicated that this was the distance to where the northern incident was being investigated after the HLP vehicle was removed to the shoulder; and (2) Mr. Caffrey estimated that the distance between the two incidents was only 200 feet, acknowledging that this estimate was a "guess."

¶ 29 In addition, while it may well be a reasonable inference that the sound Mr. Caffrey heard to the south 20-30 minutes after the HLP incident was the collision involving the other parties, that is certainly not the only reasonable inference supported by the evidence presented below. Mr. Blow testified that, along with the other traffic around him, he was traveling approximately 55 miles-per-hour just prior to the collision and traffic was only beginning to "bunch up" and slow down at that time. Mr. Klabunde also testified that traffic was just beginning to slow down just prior to the collision. We agree with appellants that this testimony could support an inference that the second incident occurred much closer in time to the HLP incident than Mr. Caffrey's testimony might indicate.

¶ 30 Finally, we note that there was conflicting testimony as to whether the HLP incident resulted in an obstruction of two or three of the four northbound lanes. This discrepancy obviously impacts the nature of the obstruction created by the HLP incident, which has consequences for the analysis of whether the actions of the other truck drivers can be considered extraordinary rather than usual or normal and whether their actions were a normal response to the situation created by appellees or an extraordinary response. *Anderson*, 66 Ill. App. 2d 412.

¶ 31 In sum, we conclude that there are significant and genuine issues of disputed material fact with respect to the nature of the obstruction created by the HLP incident, and the time and distance between that incident and the second occurrence involving the other vehicles. All of these disputed issues of fact go directly to the relevant cause vs. condition proximate cause analysis outlined above.

¶ 32 In making our decision, we reiterate that summary judgment is an appropriate measure to dispose of a suit only when the moving party's right to the judgment is clear and free from doubt (*Gaston*, 393 Ill. App. 3d at 601), and where "a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied" (*Zameer*, 2013 IL App (1st) 120198, ¶ 13). We also reiterate the issue of proximate cause is, in most cases, a question of fact and can only be a question of law when "the facts are not only undisputed but also such that there can be no difference in the judgment of reasonable people as to the inferences to be drawn from them." *Parikh*, 2017 IL App (1st) 160532, ¶ 28. This matter does not present such a situation, and we therefore agree with appellants that "viewing the evidence in the light most favorable to [them], at a minimum, genuine issues of material fact exist as to whether Stalter/HLP's conduct was a material and substantial element in bringing about plaintiff[s]' injury and/or whether the second accident was such that a reasonable person in Stalter/HLP's position would see as a likely result of their conduct." We therefore reverse the circuit court's orders granting summary judgment on both underlying complaints in favor of appellees and the denial of the motions to reconsider that decision.

¶ 33 Finally, we note that the parties also address the propriety of new material that was presented below in support of the motions to reconsider. We need not further address this issue, as a review of that material—even if we did consider it—would do nothing to alter the

conclusion we have already reached above. See *In re Jonathan P.*, 399 Ill. App. 3d 396, 400 (2010). ("Generally, courts of review do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided.").

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we reversed the judgment of the circuit court.

¶ 36 Reversed.