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FILED
Jul 13 2010, 9:09 am
CLERK
of the supreme court, court of appeals and tax court

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# IN THE
# COURT OF APPEALS OF INDIANA

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| DOUGLAS K. HUFFNAGEL, | ) | |
| | ) | |
| Appellant-Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 20A05-0911-CV-662 |
| | ) | |
| CHRISTOPHER F. CLINE, | ) | |
| | ) | |
| Appellee-Defendant. | ) | |

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Evan S. Roberts, Judge
Cause No. 20D01-0610-CT-68

**July 13, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-plaintiff Douglas K. Huffnagel appeals a directed verdict that the trial court entered in favor of appellee-defendant Christopher F. Cline on Huffnagel's claims for negligence and injuries that he sustained in an automobile accident. Specifically, Huffnagel argues that the trial court erred in concluding that there was no evidence of Cline's alleged negligence, and that it was for the jury to decide whether the cause of Huffnagel's injuries was a reasonably foreseeable consequence of Cline's alleged negligent conduct. Concluding that the trial court properly granted Cline's motion for a directed verdict, we affirm.

## FACTS

On February 17, 2005, at approximately 2:30 p.m., Cline was driving his tractor-trailer near Elkhart on I-80 in the right lane. The weather was clear, no construction was in the area, and the road was dry. At some point, Cline's vehicle began to "sputter" so he pulled to the shoulder of the interstate. Tr. p. 178. However, a portion of the trailer remained in the roadway and Cline was unable to restart the truck. Cline turned on his flashing lights, advised on his CB radio that he was on the side of the road, and looked in the mirror for approaching traffic.

Huffnagel was driving eastbound on I-80 in the left lane when Cline was stopped. At the same time, Derrick Brown was traveling in the right hand lane of eastbound I-80 in his semi-trailer. When Huffnagel was halfway through passing Brown's truck, he noticed Brown's left turn signal and observed Brown begin to move into the left lane. Huffnagel "lightly" applied his brakes and began to gradually slow down to allow Brown to move in front of him. Id. at 165. When Huffnagel's vehicle had slowed to the point

where the rear of his vehicle was even with the rear of Brown's vehicle, he heard a loud crash, turned around, and saw Cahit Ozturk's truck. He then felt Ozturk's truck hit the rear of his vehicle. The accident occurred approximately three to five minutes after Cline had stopped on the shoulder of the interstate.

Prior to the accident, Ozturk was traveling behind Brown in the right hand lane of I-80 and was traveling between 62-63 miles per hour. Ozturk took his eyes off the road for two to three seconds and when he looked back, he saw Brown's brake lights, was only one or two car lengths behind Brown's vehicle, and was unable to avoid hitting Brown and Huffnagel.

After the accident, Huffnagel saw a portion of Cline's vehicle in the roadway. Trooper J. Dolson, of the Indiana State Police, noted in his crash report diagram that Cline's trailer was protruding into the lane. He also indicated that an "Environmental Contributing Circumstance" of the accident affecting all the drivers was an "Animal/Object in Roadway." Appellant's App. p. 69.

Although Cline acknowledged that commercial motor vehicle drivers must activate their signals and place warning devices on the road in some instances when the driver is stopped pursuant to 49 C.F.R. 322.22, Cline did not at any time before or after the accident place warning triangles on the road. Cline also believed that "if you expect to be there longer than ten minutes, you need to set your triangles up." Tr. p. 192. Thus, Cline's flashing lights would have been the only warning signal to approaching drivers that a portion of his vehicle was stopped on the highway.

As a result of the accident, Huffnagel suffered knee and back injuries. Although Huffnagel underwent physical therapy, he required back surgery. The expenses for Huffnagel's medical treatment totaled $55,819.45.

On October 13, 2006, Huffnagel filed a complaint against Cline and Ozturk, seeking damages for their negligence in causing the accident.[1] At a jury trial that commenced on October 13, 2009, Michael Dilich, an accident reconstructionist, testified on cross-examination that based upon Huffnagel and Ozturk's testimony, Ozturk would have had to have been following Brown at a distance of less than forty-five feet for the accident to occur in the manner in which it did. Dilich also testified that "[t]his accident was caused by Mr. Ozturk following Mr. Brown at an unsafely close distance." Tr. p. 391. Furthermore, Dilich testified that Ozturk's "following close and in addition looking away from what's in front of him for two or three seconds aggravated the problem." Id.

Huffnagel testified that he was giving Brown enough room to get by and that they would have easily passed Cline's truck had they not been rear-ended by Ozturk. At the close of Huffnagel's case-in-chief, Cline moved for a directed verdict. After hearing argument, the trial court granted Cline's motion.

The trial court entered sixteen findings of fact and thirteen conclusions of law and determined that no evidence was presented regarding Cline's truck in relation to the other vehicles that were involved in the accident. The trial court further found that the evidence established that Cline only created a condition "by which [Huffnagel's] injury

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[1] Ozturk eventually settled with Huffnagel and was dismissed from the case on March 6, 2008.

was made possible." Appellant's App. p. 24. Moreover, it was determined that no evidence was presented establishing that the accident would have occurred had Ozturk not taken his eyes off the road. Finally, the trial court concluded that Ozturk's negligence was a superseding intervening cause that "effectively severed any liability that . . . Cline may have had in this instance." Appellant's App. p. 21. Huffnagel now appeals.

## DISCUSSION AND DECISION

### I. Standard of Review

The standard of review on a challenge to a directed verdict, also known as judgment on the evidence, is the same as the standard governing the trial court in making its decision. State Farm Mut. Auto. Ins. Co. v. Noble, 854 N.E.2d 925, 931 (Ind. Ct. App. 2006). Judgment on the evidence is proper where all or some of the issues are not supported by sufficient evidence. Id. We will examine only the evidence and the reasonable inferences that may be drawn therefrom that are most favorable to the nonmovant, and the motion should be granted only where there is no substantial evidence to support an essential issue in the case. Id. If there is evidence that would allow reasonable people to differ as to the result, judgment on the evidence is improper. Id.; see also Ind. Trial Rule 50(A). Finally, when the only evidence supporting the claim requires undue speculation, that claim is ripe for the entry of a directed verdict. Faulk v. N.W. Radiologists, P.C., 751 N.E.2d 233, 238 (Ind. Ct. App. 2001).

### II. Huffnagel's Claims

#### A. Negligence in General

In addressing Huffnagel's argument that the trial court erred in granting Cline's motion for a directed verdict, we initially observe that the tort of negligence is comprised of three elements: (1) a duty on the part of the defendant in relation to the plaintiff; (2) a failure by the defendant to conform his conduct to the requisite standard of care; and (3) an injury to the plaintiff proximately caused by the failure. Precedent Partners I, L.P. v. Hulen, 863 N.E.2d 328, 331 (Ind. Ct. App. 2007). The imposition of a duty is limited to those instances where a reasonably foreseeable victim is injured by a reasonably foreseeable harm. Hawn v. Padgett, 598 N.E.2d 630, 632 (Ind. Ct. App. 1992). Id. Thus, absent a duty, there can be no breach and no recovery under a negligence theory. Id. Finally, we note that negligence cannot be inferred from the mere fact of an accident. Wright Corp. v. Quack, 526 N.E.2d 216, 217 (Ind. Ct. App. 1988).

Huffnagel directs us to the following provisions of 49 CFR 392.22 in support of his claim that the trial court erred in concluding that no evidence was presented regarding Cline's negligence:

> (b) Placement of warning devices.
>
> (1) General rule. Except as provided in paragraph (b)(2) of this section, whenever a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within 10 minutes, place the warning devices required by 393.95 of this subchapter. . .
>
> (2) Special rules . . .
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> . . .
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> (ii) Daylight hours. Except as provided in paragraph (b)(2)(iii)[2] of this section, during the period lighted lamps are not required, three

[2] This section applies to businesses or residential districts.

> bidirectional reflective triangles, or three lighted fuses or liquid-burning flares shall be placed as specified in paragraph (b)(1) of this section within a time of 10 minutes. . . .

In addition to the above, Indiana Code section 9-21-7-2 defines the time during which lighted lamps are required:

> (1) Between the time from sunset to sunrise; and
>
> (2) At any other time when, due to insufficient light or unfavorable atmospheric conditions, person and vehicles on the highway are not clearly discernible at a distance of five hundred (500) feet ahead.

In this case, the undisputed evidence established that Cline was sitting in his tractor-trailer for approximately three to five minutes before the accident occurred. Tr. p. 185. Although Cline activated his flashers, he did not attempt to put out any reflective orange triangles—either before or after the accident happened. Id. Notwithstanding Cline's testimony, it was undisputed that the accident happened during daylight hours, and the weather was cold and partly cloudy. Id. at 116. Therefore, lighted lamps were not required at the time of the accident under 49 CFR 392.22(b)(2)(ii). Indeed, the only time limit placed on the driver of a commercial motor vehicle, such as Cline, was ten minutes. And, as the regulation makes clear, the "as soon as possible" requirement is not applicable during daylight hours. 49 CFR 392.22(b)(2)(ii).

Also, as noted above, the undisputed evidence shows that Cline was on the side of the road for only three to five minutes. Id. at 185. Thus, because the evidence showed that Cline acted in accordance with the applicable rules and regulations, Huffnagel has

failed to demonstrate that that Cline's actions were negligent for allegedly breaching the provisions of 49 CFR 392.22.

Although Huffnagel maintains in his reply brief that the case should be for the jury to decide whether Cline behaved reasonably—even assuming that Cline's actions did not violate the provisions of CFR 392.22—the evidence that Huffnagel presented in his case-in-chief is devoid of additional facts, circumstances, or conditions that would support a negligence claim against Cline.

B. Proximate Cause

Notwithstanding our conclusion above, Huffnagel also argues that it should have been for the jury to decide whether Ozturk's conduct of "looking into his rearview mirror and following another driver too closely was reasonably foreseeable by Cline." Appellant's Br. p. 6. In other words, Huffnagel maintains the jury should have been permitted to decide whether the causal chain between Cline and Huffnagel was broken to the extent that Cline's actions could not have been a proximate cause of the accident.

We note that there can be more than one proximate cause of a plaintiff's injury. Hellums v. Raber, 853 N.E.2d 143, 146 (Ind. Ct. App. 2006). In determining whether a successive negligent act is an intervening cause or a proximate cause, our Supreme Court has observed that

> [a]n intervening cause, with respect to the doctrine of proximate cause, means, not a concurrent and contributing cause, but a superseding cause, which is itself the natural and logical cause of the harm or the immediate and direct cause of the injury; and where the cause of an injury or death is the negligent act of an independent responsible intervening agency, such act must be regarded as the proximate cause thereof and the original negligence considered as only the remote cause.

. . .

> Accordingly, if harm is a natural, probable, and foreseeable consequence of the first negligent act or omission, the original wrongdoer may be held liable even though other independent agencies intervene between his negligence and the ultimate result. Generally, where harmful consequences are brought about by intervening and independent forces, the operation of which might have been reasonably foreseen, then the chain of causation extending from the original wrongful act to the injury is not broken by the intervening and independent forces, and the original wrongful act will be treated as a proximate cause; but, if the new independent intervening force was not reasonably foreseeable at the time of the actor's wrongful conduct, the consequences, ordinarily, are not caused by the original wrongful act.

Havert v. Caldwell, 452 N.E.2d 154, 158-59 (Ind. 1983) (quoting 21 I.L.E. Negligence § 67, at 330-33 (1959)).

In light of the above, Huffnagel contends that the question in this case with regard to proximate cause is "whether Ozturk's behavior while driving his tractor-trailer was reasonably foreseeable by Cline." Appellant's Br. p. 12. In other words, Huffnagel claims that it was for the jury to decide whether it was reasonably foreseeable to Cline that a driver, such as Ozturk, would be inattentive and that his trailer protruding into the roadway would cause an accident and result in the injuries that were sustained. Id. at 14. Thus, Huffnagel asserts that only a jury should determine if Ozturk's conduct was a separate proximate cause that does not relieve Cline of his liability or if the conduct was an intervening cause that broke the chain of liability.

Instructive is this court's opinion in Schroer v. Funk & Sons, Inc., 142 Ind.App. 223, 227, 233 N.E.2d 680, 683 (1968), where it was observed that

> "Where an injury is to some extent due to two distinct successive causes, unrelated in operation, and one of them is a prior, passive, or remote cause,

> which does no more than furnish a condition or give rise to the occasion by which the injury was made possible, and the other cause is an active, direct, independent, effective, and intervening cause, the law is well settled that courts will, as a general rule, with but few exceptions, look only to the latter as the proximate cause and will disregard the former or remote cause."

(quoting Wilcox v. Urschel 101 Ind.App. 627, 631, 200 N.E. 465, 466 (1936)).

Although Huffnagel argues that "Cline could have complied with the safety statute but chose instead to try and restart the vehicle and talk on the CB radio," appellant's br. p. 16, we have concluded above that no evidence was presented during Huffnagel's case-in-chief that Cline violated CFR 392.22. Moreover, Dilich testified that the "accident was caused by Mr. Ozturk following Mr. Brown at an unsafely close distance."[3] Tr. p. 391. Dilich also testified that "following close and in addition looking away from what's in front of him for two or three seconds aggravated [the] problem." Id. at 391. In considering this testimony in addition to the other evidence that was presented during Huffnagel's case-in-chief, we cannot say that Cline should have foreseen that Ozturk would follow too closely, travel at an unsafe distance behind Brown's trailer, and be inattentive to the road. Thus, we agree with the trial court's determination that "Ozturk's intervening and independent acts of negligence severed the link of causation between . . . Cline's actions and the Ozturk/Brown/Huffnagle accident." Appellant's App. p. 24. For

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[3] Indiana Code section 9-21-8-15 provides that

> Except when overtaking and passing, a person who drives a motor truck, motor truck drawing another vehicle or tractor-trailer combination, when traveling upon a roadway system, whether within or without a business or residence district, may not follow within three hundred (300) feet of another motor truck, motor truck drawing another vehicle, or a tractor-trailer combination.

all of these reasons, we conclude that the trial court properly granted Cline's motion for a directed verdict.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.