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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001546-MR

SUZANNE MINNICK APPELLANT

v.

APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM EVANS LANE, JUDGE
ACTION NO. 13-CI-90319

ARCH JOHNSON, JR. APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, JONES AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: Suzanne Minnick appeals from a summary judgment of the Rowan Circuit Court in favor of Arch Johnson, Jr. Because we conclude that under the undisputed facts that Johnson cannot be liable as matter of law, we affirm.

On November 12, 2010, Suzanne was a passenger in a 2008 GMC Acadia driven by her husband, Jeffery Minnick, traveling south on Kentucky Highway 519. Christopher Roberts was driving a 2007 Chevrolet Cobalt and traveling north on Kentucky Highway 519. Johnson was driving a 2006 Dodge pickup truck loaded with tobacco and was also traveling north on Kentucky Highway 519 and behind the Roberts vehicle.

The Minnick vehicle was going into a curve when the Roberts and the Johnson vehicles were coming out of the curve. The Roberts vehicle crossed into the Minnick vehicle's lane of travel and struck the Minnick vehicle. The Minnick vehicle then spun around and entered the northbound lane of travel causing it to impact the Johnson vehicle traveling in its proper lane.[1] Suzanne suffered multiple injuries including a fractured pelvis and spent seventeen days in the hospital.

Suzanne settled her personal injury claim against Roberts. She then filed her complaint against Johnson who filed a third-party complaint against Roberts. Discovery commenced.

Two accident reconstructionists testified by deposition, Joseph Stidham and Daniel Aerni. Stidham opined that the collision between the Minnick and Johnson vehicles occurred because Johnson was following too closely behind

[1] Another vehicle was struck by the Roberts vehicle but was not involved with the collision between Minnick and Johnson and its driver is not a party to this action.

the Roberts vehicle. Stidham testified that Johnson was either following too closely to the Roberts vehicle or Johnson was inattentive. However, Stidham agreed that the impact between the Minnick vehicle and the Johnson vehicle occurred in Johnson's lane of travel.

Aerni agreed that "under some circumstances" if Johnson had been traveling four to five seconds behind Roberts at a rate of forty-five miles per hour, he would have had time to stop prior to the collision between the Minnick vehicle and the Johnson vehicle.

Johnson did not know the exact distance he was traveling behind the Roberts vehicle just prior to the collision but stated it was "[m]aybe a hundred feet or something." Roberts testified that he was unsure of the distance between his vehicle and the Johnson vehicle but testified it was right behind him. Suzanne testified that the collision between the Minnick vehicle and the Johnson vehicle occurred immediately after the Minnick vehicle was struck by the Roberts vehicle.

Roberts testified that he never saw the Johnson vehicle cross the centerline. Jeffery Minnick also testified that he never saw the Johnson vehicle cross the centerline.

Johnson moved for summary judgment based on the undisputed facts that the Roberts vehicle crossed the centerline colliding with the Minnick vehicle causing the Minnick vehicle to cross the centerline into Johnson's lane of travel

causing the two vehicles to collide. Suzanne argued that despite those facts, there were disputed facts as to whether Johnson violated Kentucky Revised Statutes (KRS) 189.290(1) which provides: "The operator of any vehicle upon a highway shall operate the vehicle in a careful manner, with regard for the safety and convenience of pedestrians and other vehicles upon the highway." She also argued that Johnson violated KRS 189.340(9)(a)[2] which provides:

> Except as provided in paragraph (c) of this subsection, the operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having regard for the speed of the vehicle and the traffic upon and condition of the highway.

Finally, Suzanne argued that there was a material issue of fact as to whether Johnson violated his common law duty to exercise ordinary care in light of the conditions and traffic on the roadway. The trial court granted summary judgment to Johnson and Suzanne appealed.

Kentucky Rules of Civil Procedure (CR) 56.02 provides that "[a] party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." When a trial court considers a summary judgment motion, it is required to view "[t]he

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[2] Although Suzanne cites KRS 189.340(8)(a), the pertinent section of the statute is now contained in KRS 189.340(9)(a).

record . . . in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). "Appellate review of a summary judgment involves only legal questions and a determination of whether a disputed material issue of fact exists." *Shelton v. Kentucky Easter Seals Soc'y, Inc.*, 413 S.W.3d 901, 905 (Ky. 2013). We apply "a de novo standard of review with no need to defer to the trial court's decision." *Id.* The trial court ruled that summary judgment was appropriate because, regardless of the underlying facts, Johnson, who was traveling in his proper lane when the collision between the Minnick vehicle and his vehicle occurred, could not be liable to Suzanne. Based on established Kentucky precedent, we agree.

Any negligence claim has four elements: "(1) a legally-cognizable duty, (2) a breach of that duty, (3) causation linking the breach to an injury, and (4) damages." *Patton v. Bickford*, 529 S.W.3d 717, 729 (Ky. 2016). "Duty presents a question of law, whereas breach and injury are questions of fact for the jury to decide." *Id*. "Causation presents a mixed question of law and fact." *Id.*

As observed in *Lewis v. B & R Corp.*, 56 S.W.3d 432, 437 (Ky.App. 2001) (footnotes omitted):

> The causal connection or proximate cause component traditionally was composed of two elements: cause-in-fact and legal or consequential causation. Cause-in-fact involves the factual chain of events leading to the injury;

> whereas, consequential causation concerns the concepts of foreseeability and the public policy consideration on limiting the scope of responsibility for damages. In Kentucky, the cause-in-fact component has been redefined as a "substantial factor" element as expressed in Restatement (Second) of Torts § 431.

That same Restatement section provides explanation of the term "substantial" adopted in *Deutsch v. Shein*, 597 S.W.2d 141, 144 (Ky. 1980), *abrogated on other grounds by Osborne v. Keeney*, 399 S.W.3d 1 (Ky. 2012) (quoting RESTATEMENT OF TORTS, SECOND § 431 Comment a):

> The word 'substantial' is used to denote the fact that the defendant's conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility, rather than in the so-called 'philosophic sense,' which includes every one of the great number of events without which any happening would not have occurred. Each of these events is a cause in the so-called 'philosophic sense,' yet the effect of many of them is so insignificant that no ordinary mind would think of them as causes.

In short, the substantial factor test explained in *Deutsch* recognizes there can be more than one cause of an injury.

The second component of causation is proximate causation. The notion of proximate cause is that "although conduct in breach of an established duty may be an actual but-for cause of the plaintiff's damages, it is nevertheless too attenuated from the damages in time, place, or foreseeability to reasonably impose liability upon the defendant." *Patton*, 529 S.W.3d at 731. It is "bottomed

on public policy as a limitation on how far society is willing to extend liability for a defendant's actions." *Id*. (quoting *Ashley County, Arkansas, v. Pfizer, Inc.*, 552 F.3d 659, 671 (8th Cir. 2009).

In *Tupts v. Judy*, 272 S.W.2d 335 (Ky. 1954), the Court held that there was no causation where it was alleged that KRS 189.340 was violated, and the violator collided with an oncoming car. The Court explained as follows:

> The simple answer to this contention is that the prior proximity of the two trucks on the highway (which was not shown specifically in the evidence) had nothing whatever to do with this accident. Assuming defendant's driver had violated this statute, it had no possible causal connection with the accident, and therefore it cannot be a basis of defendant's liability.

Id. at 336.

Similar to the facts in this case, in *Dixie Ohio Express Co. v. Eagle Express Co*., 346 S.W.2d 30 (Ky. 1961), an accident occurred on a two-lane highway and the initial collision was between a northbound and southbound vehicle. After the initial impact, the southbound vehicle collided with a truck that had been traveling behind the first northbound vehicle. As here, the plaintiff alleged that the second truck was following too closely behind the truck in front and, therefore, the driver of the second truck could be liable for negligence. The Court disagreed.

The Court held that any duty not to follow a vehicle too closely as required by statute or the common law had no causal connection to an accident involving a vehicle traveling in the opposite direction. *Id*. at 31. The Court explained that even assuming a vehicle follows another too closely as prohibited by statute, as a matter of law, there is "no causal connection with an accident involving a collision of the violating vehicle with a vehicle approaching from the opposite direction." *Id*. at 31-32.

Suzanne argues that *Dixie* and *Tupts* are no longer viable because of the adoption of comparative negligence in *Hilen v. Hayes*, 673 S.W.2d 713 (Ky. 1984) and the concept of apportionment of fault. However, that decision has no relevance as to whether Johnson can be liable to Suzanne. The undisputed fact is that Johnson was traveling in his proper lane of travel. The collision between his vehicle and the Minnick vehicle occurred as a result of the place where he was, not because of any negligence on his part.

For the reasons stated, the summary judgment of the Rowan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paula Richardson
Morehead, Kentucky

BRIEF FOR APPELLEE:

John J. Ellis
Morehead, Kentucky