D/A 5-8-86

IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF TRANSPORTATION, Petitioner, vs. CLEOPATRA GAYLE ANGLIN, et vir., et al., Respondents.	:	CASE NO. 67, 599
SEABOARD COAST LINE RAILROAD COMPANY, now known as SEABOARD SYSTEM RAILROAD, INC., Petitioner, vs. CLEOPATRA GAYLE ANGLIN and THOMAS P. ANGLIN, her husband, Respondents.	:	CASE NO. 67, 600

PETITIONER SEABOARD'S INITIAL BRIEF ON THE MERITS

An Appeal From a Decision of the District Court of Appeal, First District, State of Florida

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STATEMENT OF THE CASE

The action below was a personal injury negligence action by the Respondents Cleopatra Gayle Anglin and her husband, Thomas Anglin, against Seaboard Coast Line Railroad Company (SCL) and the State of Florida Department of Transportation (DOT).[1] The Complaint filed by the Anglins in the Circuit Court in and for Leon County, Florida, charged SCL and DOT with negligence in the design, construction, or maintenance of a highway and railway roadbed allegedly resulting in water being allowed to accumulate or pond on the surface of a state roadway near a railroad crossing. (R 1). The allegations of negligence were denied by both SCL and DOT. (R 16, 107).

The trial court entered final summary judgment for SCL and DOT, finding the negligence of the Anglins and of the driver of the car that ran into them to be efficient, independent, intervening causes of the accident. (R 779). The Anglins appealed that decision to the First District Court of Appeal which reversed the trial court.

SCL and DOT each filed motions to invoke the discretionary jurisdiction of this Court to review the First District's decision pursuant to Florida Rule of Appellate Procedure 9.120. This Court consolidated the two causes on its own motion, and accepted jurisdiction by Order dated February 4, 1986.

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[1]In this brief, Respondent Seaboard Coast Line Railroad will be abbreviated "SCL" and Respondent State of Florida, Department of Transportation, will be abbreviated "DOT." The symbol (R) will be used to designate the Record on Appeal.

STATEMENT OF THE FACTS

On September 3, 1979, Mr. and Mrs. Anglin and Mr. Anglin's brother, Fred Anglin, were traveling in a southerly direction on Alternate U.S. 27 near Lake Hamilton in Polk County, Florida, in their 1965 Chevrolet pickup truck. (R 405-06). It had been raining throughout the day in that area as a result of Hurricane David. (R 352-53, 389).

At approximately 8:30 p.m., the Anglins' pickup truck stalled after going through a puddle of water approximately six inches deep on the highway near a railroad crossing. After their engine stalled, the Anglins began pushing their pickup truck down the right-hand lane of the highway. While they were pushing the truck, a passing motorist, Edward Dubose, coming from the opposite direction passed them and then turned around to assist. (R 237-38).

Fred Anglin, Mr. Anglin's brother and a professional truck driver, was riding in the right front seat of the Anglin truck when it stalled. His testimony is quoted in part below:

> A. Well, starting at the railroad tracks, we hit the mud puddle or the puddle of water, and she run about fifty yards, maybe spitting and stalling and trying to get it running. And finally it just wouldn't. The distributor was wet, evidently. My first opinion on why it died.
>
> So we pulled off the side of the road and we tried starting it a few times and it was just too wet.
>
> So we proceed to push it, to save our lights and battery. And it was a small uphill grade.
>
> So my brother and I had just started pushing it.

> We pushed it to the top of that grade, it might have been a hundred yards, possibly more, I was pushing.
>
> And it got onto a level grade, and maybe a small incline. And as we got it faster, Gayle [Mrs. Anglin] didn't know how to jump start. So we figured it would be dried up quicker.
>
> So Tom ran up and jumped in. So I was just pushing by myself for a spell. So she jumped out, ran around behind me, got next to me and started pushing, also.
>
> So we were pushing it maybe fifty yards or something, trying to catch it from time to time.
>
> Then this car load of people went by and they yelled. My first opinion, they were flirting with her. Then the last thing -- the main thing I caught was, 'We will be back to help.'

(R 237-38).

The automobile that passed the Anglins and returned to help them was the Dubose car. The Anglin brothers each observed the Dubose car go back down the road a short distance and turn around to approach the Anglin truck from the rear. (R 237, 333). Despite this fact, the Anglins continued to push their pickup truck down the roadway. (R 237-38, 243-44).

Although Dubose knew the Anglin vehicle was stalled and had turned around to assist them, when he approached the Anglin truck he inexplicably failed to stop his car in time and slid into the rear of the pickup truck, pinning Mrs. Anglin between the two vehicles and causing her severe personal injuries. (R 238, 334, 493).

The puddle of water on the highway had no effect on Dubose's negligent operation of his car. The Dubose vehicle approached the Anglins from the opposite direction and turned around before

reaching the point in the road where the puddle of water was located. (R 333, 524-25).

Although SCL officials routinely conferred with DOT engineers on common problems at railroad crossings, neither DOT engineers nor the SCL Roadmaster was aware of any problem at this location prior to the accident in question. (R 673-75, 699). The Florida Highway Patrol Trooper who investigated the accident also testified his office had no reports of water problems at that location. (R 388-89).

The Anglins originally filed suit against Dubose and his insurance carrier, State Farm. That suit was settled upon payment to the Anglins of Dubose's policy limits. The present action was then filed by the Anglins against SCL and DOT. (R 114-17).

SUMMARY OF THE ARGUMENT

Where reasonable persons cannot differ, the question of whether a superseding force is an active and efficient, intervening cause is one for the court. In the instant case, the circuit court was correct in granting SCL and DOT summary judgment because it properly found the actions of the Anglins and the approaching driver, Edward Dubose, to be efficient, independent, intervening causes of the accident.

Any negligence on the part of the Defendants in the instant case simply provided the occasion for the negligent actions of the Anglins. After the Anglins' pickup truck stalled, they were

able to safely maneuver it to the side of the road. At that point in time, there were no injuries. Rather than remove their stalled vehicle from the road and remain there until help arrived, the Anglins decided to push their pickup truck back onto and then down the roadway. This decision coupled with the failure of the Anglins to keep a safe look-out for approaching cars after deciding to push their truck down the roadway together constitute one efficient, independent, intervening cause of the accident that followed.

The grossly negligent actions of Dubose constitute a second efficient, independent, intervening cause of the accident. In Gibson v. Avis Rent-A-Car System, Inc., 386 So.2d 520 (Fla. 1980), this Court ruled that reasonable persons could conclude that the stopping of a car on an interstate highway creates the risk of a collision caused by an approaching driver who does not become aware of the stopped car in a sufficient amount of time to stop. In the instant case, however, Dubose was not only aware of the stalled Anglin vehicle, he had passed it and turned around and approached it with the intent of stopping. While reasonable persons could conclude the stopping of a car on a busy highway creates the risk of a collision caused by an approaching driver who does not become aware of the stopped car in a sufficient amount of time to stop, reasonable persons could not conclude the stopping of a car on a rural two-lane highway creates the risk of a collision caused by an approaching driver who does become aware of the stopped car in a sufficient amount

of time to stop, yet inexplicably fails to do so. Such a collision is too unforeseeable a result to be attributed to Defendants.

ARGUMENT

THE TRIAL COURT CORRECTLY GRANTED DEFENDANTS SUMMARY JUDGMENT BECAUSE IT PROPERLY FOUND TWO SEPARATE, EFFICIENT, INDEPENDENT, INTERVENING CAUSES OF THE ACCIDENT AS A MATTER OF LAW.

Where reasonable persons cannot differ, the question of whether a superseding force is an active and efficient, intervening cause is one for the court. Hoffman v. Bennett, 477 So.2d 43 (Fla. 3d DCA 1985); Cassel v. Price, 396 So.2d 258 (Fla. 1st DCA 1981), pet. for rev. denied, 407 So.2d 1102 (Fla. 1981); Nance v. James Archer Smith Hospital, Inc., 329 So.2d 377 (Fla. 3d DCA 1976), cert. denied, 339 So.2d 1171 (Fla. 1976). In the instant case, the circuit court was correct in granting SCL and DOT summary judgment because it properly found the actions of the Anglins and of the approaching driver, Edward Dubose, to be efficient, independent, intervening causes of Mrs. Anglin's injuries. While the general rule is that whoever acts negligently is answerable for all the consequences that may ensue in the ordinary course of events, the actions of the three Anglins and of Dubose were so unforeseeable that any negligence that could possibly be attributed to the Defendants was relieved.

A. THE TRIAL COURT CORRECTLY FOUND THE ACTIONS OF THE ANGLINS TO BE AN EFFICIENT, INDEPENDENT, INTERVENING CAUSE OF THE ACCIDENT.

Florida courts have consistently recognized the general principle that a defendant is liable only for those results which are proximately caused by its negligent act. Cone v. Inter County Telephone & Telegraph Co., 40 So.2d 148 (Fla. 1949). The proximate cause of an injury is that cause which produces the injury in a natural and continuous fashion, unbroken by any efficient, independent, intervening causes. If an efficient, independent, intervening cause comes between the original negligence and the injury, however, and the original negligence does not contribute to the force or effectiveness of the intervening cause, the original negligence is not considered the proximate cause of the injury, even though the injury might not have occurred but for the original negligence. Tampa Electric Co. v. Jones, 138 Fla. 746, 190 So. 26 (1939).

In other words, it is only when an injury has resulted in a direct and ordinary sequence from a negligent act without the intervention of any independent efficient causes that recovery is allowed. Where the loss is not a direct result of the negligent act, or does not follow in a natural, ordinary sequence from such act but is merely a possible as opposed to a probable result of the negligence, recovery will not be allowed. Cone, supra; Pope v. Pinkerton-Hays Lumber Co., 120 So.2d 227 (Fla. 1st DCA 1960), modified, Pinkerton-Hays Lumber Co. v. Pope, 127 So.2d 441 (Fla. 1961).

The trial court correctly found the actions of the Anglins to constitute an efficient, independent intervening cause of the accident. After passing through the puddle of water the Anglins

were able to safely maneuver their vehicle to the side of the road. At that point, there were no injuries. Rather than remove their stalled truck from the roadway, the Anglins decided to push it back onto and then down the roadway, continuing to push it even after hearing someone from the Dubose car call out "We will be back to help," and watching the Dubose vehicle turn around and head back toward them. (R 238).

The Anglins' decision to push their truck down the highway was an independent, efficient intervening cause of the accident similar to that of the driver in Metropolitan Dade County v. Colina, 456 So.2d 1233 (Fla. 3d DCA 1984), review denied, 464 So.2d 554 (Fla. 1985).[2] The plaintiff's decedent in Colina was a passenger in a van which had stopped at an intersection because the traffic signal was out due to a power outage. While the driver of the van saw two cars approaching the intersection, he nonetheless decided to try to cross the intersection ahead of them but was unsuccessful.

In Colina, the decedent's estate brought suit against the driver of the car which actually struck the van and the county for failing to repair the traffic light in a timely manner, and the jury returned a verdict against both. The Third District Court of Appeal reversed as to the county holding the trial court erred in failing to direct a verdict for the county since the

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[2]Whether knowingly or not, the Anglins' decision to push their truck down the highway was in violation of Section 316.071, Florida Statutes, which requires the driver of a disabled vehicle to remove it from the street or highway so as not to obstruct the flow of traffic.

county's negligence, though a cause in fact, was not a proximate cause of the passenger's death. The Third District Court stated:

> Any negligence on Dade County's part simply provided the occasion for the actions of Masferrer and Colina [drivers of the car and van, respectively], which together were the proximate cause of Mrs. Colina's death. Both Masferrer and Colina could see that the traffic light was not functioning and by complying with statutory requirements, could have avoided the collision. To hold the county liable on these facts would make it an insurer of motorists acting in disregard of their own safety and that of others.

Id. at 1235 (emphasis added). Similarly, any negligence on the part of Defendants in the instant case simply provided the occasion for the negligent actions of the Anglins.

The actions of the Anglins also resemble that of the plaintiff in Pope v. Cruise Boat Co., 380 So.2d 1151 (Fla. 3d DCA 1980). In Pope, the Third District affirmed a summary judgment for the defendant boat company holding that its negligence, if any, in allowing boats and vehicles to block a pedestrian's passage along the shoulder of a road did not, as a matter of law, proximately cause the injuries sustained by the plaintiff when she left the shoulder of the road to walk around the vehicles and was struck by a car. The court, in effect, concluded the plaintiff could have easily come to a complete stop upon encountering the obstacles and her decision to go onto the road without exercising proper care was "too extraordinary and too unforeseeable to be considered a proximate cause of the defendant's negligence." Stahl v. Metropolitan Dade County, 438 So.2d 14 (Fla. 3d DCA 1983)(discussing Pope). Similarly, in the instant case the Anglins' truck was brought to a safe stop on the side of the

roadway after the engine stalled. Like the negligence of the plaintiff in Pope, their decision to push their truck down the roadway and to continue pushing even after seeing the Dubose car turn around to assist them is too extraordinary and unforeseeable a result to be attributed to Defendants.

That the actions of the Anglins were an independent and efficient cause of the accident is further supported by the First District Court of Appeal's decision in Melton v. Estes, 379 So.2d 961 (Fla. 1st DCA 1979). In Melton, the plaintiff's decedent was a mover of mobile homes who was crushed to death when inadequate boards which were placed under a house trailer the decedent was attempting to move gave way. At the time of the accident, the decedent was attempting to lift the trailer out of a septic tank into which the trailer had fallen the previous day.

The decedent's estate brought suit against Estes, the owner of the trailer park, for failing to advise the decedent of the location of the septic tank. The First District Court of Appeal, in affirming a summary judgment for the defendant, found the actions of the decedent, Melton, and of his co-worker, Lord, to be independent of any previous negligence on the part of Estes:

> The activity of Lord and Melton in the procedures followed by them in their effort to extract the house trailer constituted an independent, intervening cause that completely disintegrated the causal connection between Estes prior negligence and the claimant's injuries. It was not foreseeable by Estes that Lord and Melton would not observe that which was obvious and would not take reasonable care for their own safety. Therefore, there was no issue of fact for a jury determination. (emphasis added.)

Id. at 963.

Like the decedent in Melton, the failure of the Anglins to stay off the highway as required by Section 316.071, Florida Statutes, and the failure of the Anglins to maintain a proper look-out for approaching cars after deciding to push their truck down the highway created a substantial risk of harm that could easily have been avoided. The trial court correctly granted Defendants summary judgment based on its finding that the actions of the Anglins constituted an efficient, independent, intervening cause of the accident that followed.

B. THE TRIAL COURT CORRECTLY FOUND THE ACTIONS OF DUBOSE TO BE AN EFFICIENT, INDEPENDENT, INTERVENING CAUSE OF THE ACCIDENT.

The trial court also correctly found the actions of Edward Dubose to be an efficient, independent, intervening cause of the accident.[3] In this case Dubose was not only aware of the stalled truck, he passed it from the opposite direction and turned around and approached it with the intent of stopping. The gross negligence of Dubose in colliding with the Anglin truck upon his return cannot be deemed foreseeable.

In Gibson v. Avis Rent-A-Car System, Inc., 386 So.2d 520 (Fla. 1980), this Court set forth a three-part test for determining the foreseeability of an intervening cause. First, the Legislature may specify the type of harm for which a tortfeasor is

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[3]The First District Court of Appeal, relying on Crislip v. Holland, 401 So.2d 1115 (Fla. 4th DCA 1981), reversed this ruling. The First District's reliance on Crislip, however, was misplaced because in Crislip there were no independent causes present. Rather, the injuries merely occurred in an unexpected manner.

liable. Second, it may be shown that a particular defendant had actual knowledge that the same type of harm has resulted in the past from the same type of negligent conduct. Third, there is the type of harm that has so frequently resulted from the same type of negligence that in the field of human experience the same type result may be expected again.

Applying the above analysis to the facts of this case[4], it is clear Dubose's operation of his vehicle was an unforeseeable intervening cause. In Gibson, this Court ruled that from the field of human experience reasonable persons could conclude that the stopping of a car on an interstate highway creates the risk of a collision caused by an approaching driver who does not become aware of the stopped car in a sufficient amount of time to stop. However, this Court did not hold that reasonable persons could conclude it creates the risk of a collision caused by an approaching driver who does become aware of the stopped car in a sufficient amount of time to stop yet nevertheless fails to do so. Indeed, in at least three cases Florida courts have found precisely such a result to be an unforeseeable intervening cause. McClain v. McDermott, 232 So.2d 161 (Fla. 1970); Atlantic Coast Line Railroad Co. v. Ponds, 156 So.2d 781 (Fla. 2d DCA 1963); Banat v. Armando, 430 So.2d 503 (Fla. 3d DCA 1983), pet. for rev. denied, 446 So.2d 99 (Fla. 1984).

The defendant in McClain v. McDermott, supra, was the driver

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[4]As the Legislature has not specified the type of harm that occurred in this case as a type for which a tortfeasor is liable, and as neither SCL nor DOT had actual knowledge that the same type harm had resulted in the past, it is the third part of the three-part Gibson test which is applicable to the facts of this case.

of a car who allegedly allowed the car to run out of gas and proceeded to park the empty car on the side of the street. The plaintiff's decedent volunteered to get gasoline from a nearby station and upon his return began pouring the gas in the tank. While pouring the gas into the car, a second automobile crashed into the rear of the parked car, fatally injuring the decedent. Finding no causal relationship between the negligence claimed by the plaintiff and the injuries sustained by the decedent, this Court reversed the Third District Court of Appeal and reinstated the summary judgment entered by the trial court. McClain v. McDermott, 232 So.2d at 162.

Atlantic Coast Line Railroad v. Ponds, supra, is a similar case. The plaintiff in Ponds brought suit against the defendant railroad company for damages arising out of her husband's death in a railway grade-crossing collision, alleging the company was negligent because the train failed to blow a whistle or bell indicating its approach. The Second District, however, found the actions of the car's driver constituted an efficient, independent cause of the collision because the driver became aware of the train in a sufficient amount of time to avoid the collision but did not do so because he misjudged the efficiency of his brakes.

Banat v. Armando, supra, is a third case where an approaching driver who became aware of a stopped vehicle in what should have been a sufficient amount of time to stop was found to be an unforeseeable intervening cause. In Banat, the plaintiff was a passenger in the front of a small car which crashed into the rear of a stopped truck because of a brake failure. The plaintiff

alleged the truck driver was liable for his injuries because a heavy metal lift at the truck's rear, designed to be folded while the truck was being operated in traffic, was left down, and upon impact tore through the windshield and roof of the car causing serious injury to the plaintiff. The Third District, noting the driver of the car saw the dangerous conditions well ahead of time and would have had plenty of time to stop were it not for the brake failure, affirmed the trial court's entry of summary judgment.

Like the drivers in McClain, Ponds and Banat, the approaching driver in the instant case was well aware of the stalled Anglin truck in sufficient time to avoid a collision. Indeed, the driver in the instant case was not only aware of the stalled truck, he had already passed it in the opposite lane. As noted by Judge Booth in her dissent, the actions of DuBose can only be considered gross negligence.

In Winn-Dixie Stores, Inc. v. Carn, 473 So.2d 742 (Fla. 4th DCA 1985), plaintiffs brought suit against a grocery store for injuries sustained when a car left the street and struck plaintiffs on the public sidewalk in front of the store. In ordering summary judgment for the store, the Fourth District Court of Appeal stated:

> . . . We are not unmindful of the obvious fact that at times operators lose control over the forward progress and direction of their vehicles either through negligence or as a result of defective mechanisms, which sometimes results in damage or injury to others. In a sense all such occurrences are foreseeable. They are not, however, incidents to ordinary operation of vehicles, and do not happen in the ordinary and normal course of

> events. When they happen, the consequences resulting therefrom are matters of chance and speculation. If as a matter of law such occurrences are held to be foreseeable and therefore to be guarded against, there would be no limitation on the duty owed. . .

Id. at 743, quoting Schatz v. 7-Eleven, 128 So.2d 901, 904 (Fla. 1st DCA 1961); accord, Jones v. Dowdy, 443 So.2d 467 (Fla. 2d DCA 1984).

DuBose's negligence, like that of the driver in Winn-Dixie, is not of the type that happens in the ordinary and normal course of events. It is one thing for a driver to be unable to avoid the collision on an interstate highway through the driver's failure to perceive the danger in a sufficient amount of time to stop; it is quite another for a driver on a rural two-lane road to become fully and completely aware of a stalled vehicle in a roadway in a sufficient amount of time to act, yet nonetheless fail to do so.

To hold SCL and DOT liable for the actions of Dubose would make them insurers of grossly negligent motorists acting in disregard of their own safety and that of others. Metropolitan Dade County v. Colina, supra. The trial court correctly granted summary judgment for SCL and DOT based on its finding that the actions of Dubose constituted an efficient, independent, intervening cause of the accident.

CONCLUSION

Under Florida law, a defendant is only liable for those injuries proximately caused by a negligent act. In the instant case, the actions of SCL and DOT are too remote to be the proximate

cause of the collision. Together, Edward Dubose's and the Anglins' negligence was so extraordinary and unforeseeable that they constitute an efficient, independent, intervening cause of Mrs. Anglin's injuries, relieving Defendants of any possible liability as a matter of law.

Respectfully submitted this 24th day of February, 1986.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petitioner Seaboard's Initial Brief has been furnished by U. S. Mail to Mr. William Whitaker and Mr. Karl O. Koepke, Whitaker and Koepke, Chartered, Post Office Box 1906, Orlando, Florida 32802; and Mr. Ronald W. Brooks, Brooks, Callahan & Phillips, 823 East Park Avenue, Tallahassee, Florida 32301, this 24th day of February, 1986.

ATTORNEY