0/a 5-8-86

IN THE SUPREME COURT OF FLORIDA

DEPARTMENT OF TRANSPORTATION,

Petitioner,

vs. CASE NO. 67,599

CLEOPATRA GAYLE ANGLIN, et vir., et al.,

Respondents.

SEABOARD COAST LINE RAILROAD COMPANY, now known as SEABOARD SYSTEM RAILROAD, INC.,

Petitioner,

vs. CASE NO. 67,600

CLEOPATRA GAYLE ANGLIN and THOMAS P. ANGLIN, her husband,

Respondents.

PETITIONER SEABOARD'S REPLY BRIEF

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

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SUMMARY OF THE ARGUMENT

The Answer Brief of Respondents fails to show any genuine issue of material fact. As in all cases, there may be some variance in factual perceptions of certain events; however, the factual differences in this record do not raise any "genuine issue" of any "material fact." The trial court recognized this and properly granted summary judgment. Together, or separately, the actions of the Anglins and the actions of the driver of the vehicle which ran into them constitute an efficient, independent, intervening cause of the accident as a matter of law.

ARGUMENT

THE TRIAL COURT PROPERLY GRANTED PETITIONERS SUMMARY JUDGMENT BECAUSE IT CORRECTLY FOUND THE ACTIONS OF THE ANGLINS AND OF EDWARD DUBOSE TO BE EFFICIENT, INDEPENDENT, INTERVENING CAUSES OF THE ACCIDENT AS A MATTER OF LAW.

In their Answer Brief, Respondents argue for the first time in this appeal that the trial court improperly granted SCL summary judgment because there are genuine issues of material fact as to the exact location of the Anglin truck when it was hit by the Dubose car and as to whether the Anglins' truck's lights were on at the time of the accident. For the reasons discussed below, these "issues" are not material to the summary judgment entered below.

The term "genuine issue" as used in Rule 1.510, Florida Rules of Civil Procedure, means a real as opposed to a false or

colorable issue. Byrd v. Leach, 226 So.2d 866 (Fla. 4th DCA 1969); Harrison v. Consumers Mortgage Co., 154 So.2d 194, 195 (Fla. 1st DCA 1963). The existence of a dispute as to matters not material to the disposition of a case will not preclude the entry of a summary judgment. Enes v. Baker, 58 So.2d 551 (Fla. 1952); Armstrong v. Southern Bell Tel. & Tel. Co., 366 So.2d 88 (Fla. 1st DCA 1979). A material fact is one that is "essential" to the result. Wells v. Wilkerson, 391 So.2d 266 (Fla. 4th DCA 1980).

The "issues" raised by the Anglins in their Answer Brief are not material to the summary judgment which was entered against them. Regardless of the exact location of the Anglin truck at the time of the accident, it is not disputed that the Anglin truck coasted to a complete stop after passing through the puddle of water, that the Anglins attempted to restart their truck on the side of the roadway, and, rather than leave their truck there, that the Anglins made the conscious choice to push their vehicle down the roadway. Based on these undisputed facts, the trial court properly found the actions of the Anglins to constitute an efficient, independent, intervening cause of the accident as a matter of law. Similarly, regardless of whether the rear lights on the Anglin truck were on, it is clear Mr. Dubose was fully aware of the location of the Anglin truck as he had already passed it from the opposite direction and was returning to assist the Anglins. Based on this fact, the trial court correctly found the negligence of Dubose to be an efficient,

independent, intervening cause of the accident as a matter of law. Thus, contrary to the Anglins' new-found assertions, the material facts are not in dispute and summary judgment was appropriate.

The cases cited by the Anglins in their Answer Brief also do not support a reversal of the trial court's ruling that the actions of the Anglins and of Mr. Dubose constitute two separate, efficient, independent, intervening causes of the accident. Braden v. Florida Power and Light Co., 413 So.2d 1291 (Fla. 5th DCA 1982), a suit arising out of the injuries sustained by a minor boy from a downed power line, is easily distinguishable on its facts. Indeed, the key to court's reversal of the summary judgment entered in that case was the failure of the power company's automatic safety equipment "to de-energize the line immediately as it should have." Id. at 1292.

The cases involving the foreseeability of criminal acts which are cited by the Anglins are particularly inappropriate. Ignoring the vast dissimilarities in facts, the Anglins argue that "[i]f the conduct of a criminal is not an independent intervening cause, a non-criminal act should be held not intervening." Respondents' Answer Brief at page 9. Under this rationale, a defendant would be held liable for all intervening causes regardless of whether they are foreseeable.

Salas v. Palm Beach County Board of County Commissioners, 11 FLW 602 (Fla. 4th DCA March 5, 1986) is also inapposite. In Salas, the court assumed for purpose of the motion for summary

judgment that the county was negligent in failing to warn motorists that a left hand turn was prohibited. Given that assumption, it was foreseeable that a driver may become confused and attempt to make such a turn when the light was green. 11 FLW at 604.

While the cases cited by the Anglins are easily distinguished, the Anglins strain credibility in trying to distinguish the cases cited by SCL in its Initial Brief. For example, the Anglins lamely try to distinguish Metropolitan Dade County v. Colina, 456 So.2d 1233 (Fla. 3d DCA 1984), review denied, 464 So.2d 554 (Fla. 1985), by stating:

> Obviously, the Anglins were not foolishly trying to cross in front of traffic, but merely trying to push start their truck.

Respondents' Answer Brief at page 9. However, the Anglins were foolish enough to continue pushing their truck down the roadway even after watching the Dubose car turn around and head towards them.

Stahl v. Metropolitan Dade County, 438 So.2d 14 (Fla. 3d 1983), and Melton v. Estes, 379 So.2d 961 (Fla. 1st DCA 1979), are also poorly distinguished. In Stahl, the Third District Court of Appeal distinguished its earlier opinion in Polk v. Cruise Boat Co., 380 So.2d 1151 (Fla. 3d DCA 1980), on the grounds that a bicyclist, unlike a pedestrian, has potential momentum problems which may cause the bicyclist "to detour quickly onto an adjoining street without being able to stop." 438 So.2d at 23. A pedestrian, on the other hand, has no momentum problem and can "easily come to a complete stop." Id. As the Anglin truck came to a

complete stop after passing through the puddle of water and as the Anglins made the conscious decision to push their truck down the highway rather than wait for help, the facts in the instant case more closely resemble the pedestrian in Polk than the bicyclist in Stahl.

Melton v. Estes, supra, is distinguished by the Anglins on the ground that the danger there was "open and obvious." However, failing to keep a safe look-out for approaching cars while pushing a truck down a roadway at night is also ignoring an obvious danger.

CONCLUSION

Respondents concluded their Answer Brief by stating "[t]he law of 1986 is a modern and new instrument" which has allowed the courts to reach "new result[s]." Respondents' Answer Brief at page 15. The law of proximate cause in 1986, however, is not without realistic limits. 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 Petitioners of any possible liability as a matter of law.

Respectfully submitted this 15th day of April, 1986.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply 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 Brooks 863 East Park Avenue, Tallahassee, Florida 32301, this 15th day of April, 1986.

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