STATE OF MICHIGAN

COURT OF APPEALS

DAVID DICICCO,

Plaintiff-Appellant,

v

CHRISTOPHER MARK JURKIW and RENAY JURKIW,

Defendants-Appellees,

and

STEFAN IONESCU,

Defendant.

UNPUBLISHED
December 27, 2002

No. 237319
Macomb Circuit Court
LC No. 2000-003175-NI

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff, David Dicicco, appeals as of right the trial court's grant of summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants, Christopher Jurkiw ("Jurkiw") and Renay Jurkiw[1], in this automobile-related personal injury claim. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This accident occurred at approximately 2:00 a.m. on December 5, 1999, on northbound 1-75 in Detroit. Defendant Ionescu was driving plaintiff's 1999 Jeep Cherokee. Plaintiff, a front seat passenger in the car, admitted that he had no personal recollection of the circumstances of the accident. Apparently, he had been drinking heavily that evening and had fallen asleep in the car. According to Ionescu, the accident occurred on a four lane portion of I-75 where the speed limit was 65 miles per hour. The traffic was moderate, with cars in all four lanes and the road was wet. Ionescu was going 66 miles per hour in the far left lane. Jurkiw drove past him on the right at a high rate of speed while swerving through traffic without using his turn signals. Jurkiw entered the left lane in front of Ionescu and then tried to cut back into the lane next to him.

[1] Renay Jurkiw was the owner of the automobile driven by Christopher Jurkiw but was not involved in the accident.

Jurkiw did not see that there was a car in that lane and was forced to try to return to the left lane. Jurkiw lost control and his car spun across the lanes and into the wall at the far right shoulder of the road. This occurred within 70 yards in front of Ionescu.

Ionescu took his foot from the gas pedal and tried to avoid the vehicles in front of him which were also slowing down. He began braking and tried to swerve when he saw the cars stopping in front of him but he began to slide. He was unable to keep from hitting the van in front of him. The van was moving when the impact occurred. Ionescu did not recall seeing either brake or tail lights illuminating the rear of the van. After he hit the rear end of the van, another individual hit the rear end of plaintiff's car. The driver of the van left the scene without waiting for the police. Plaintiff, who was not wearing his seatbelt at the time, suffered a fractured right wrist.

Plaintiff first argues that the trial court erred in granting defendants' motion for summary disposition on the ground that Jurkiw did not owe a duty to plaintiff because Jurkiw was not in a special relationship with plaintiff. See e.g., *Welke v Kuzilla*, 140 Mich App 658; 365 NW2d 205 (1985). Defendants essentially concede the trial court's error and admit that Jurkiw had "at least some basic duty to operate his vehicle in a reasonably safe manner." See *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 95; 485 NW2d 676 (1992); *Zarzecki v Hatch*, 347 Mich 138, 141; 79 NW2d 605 (1956).

Plaintiff next argues that the trial court erred in finding that reasonable minds could not differ as to whether Jurkiw's negligence was a proximate cause of plaintiff's injuries. We agree.

Proximate cause is an issue for the court only when the facts are not in dispute and reasonable minds could not differ about applying the legal concept of proximate cause to those facts. *Rogalski v Tavernier*, 208 Mich App 302, 306; 527 NW2d 73 (1995). Proving causation actually entails proof of both cause in fact and proximate cause. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). This Court has defined proximate cause as "that which operates to produce particular consequences without the intervention of any independent, unforeseen cause, without which the injuries would not have occurred." *Helmus v Dep't of Transportation*, 238 Mich App 250, 256; 604 NW2d 793 (1999).

There can be more than one proximate cause of an injury. However, when a number of factors contribute to produce an injury, one actor's negligence will not be considered a proximate cause of harm unless it was a substantial factor in producing the injury. *Hagerman v Gencorp Automotive*, 457 Mich 720, 737; 579 NW2d 347 (1998). Some factors to consider in determining whether an individual's negligence is a substantial factor of the injury are:

> (a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it;
>
> (b) whether the actor's conduct had created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible;

(c) the lapse of time. [*Poe v Detroit*, 179 Mich App 564, 576-577; 446 NW2d 523 (1989), citing 2 Restatement Torts, 2d, § 433, p 432.].

Thus, an intervening cause may sometimes relieve a defendant from liability. *Meek v Dep't of Transportation*, 240 Mich App 105, 120; 610 NW2d 250 (2000). An intervening cause is one which actively operates to produce harm to another after the negligence of the defendant. *Id*. However, an intervening cause is not a superseding cause relieving a defendant from liability if it was reasonably foreseeable. *Id*. Therefore, where the defendant's negligence consisted of enhancing the likelihood that the intervening cause would occur or consisted of failure to protect the plaintiff against the risk that occurred, the intervening cause is reasonably foreseeable. *Id*., 120-121.

In the instant case, although the negligence of Ionescu and the other drivers involved in the multi-car collision may have been intervening causes of plaintiff's injury, they were not, as a matter of law, superseding causes that relieved Jurkiw of liability. Ionescu's failure to operate plaintiff's vehicle at a safe rate of speed or to stop the car safely may have been part of the cause of the accident. Additionally, the jury may well believe Ionescu's statements that the van in front of plaintiff's car did not have properly working taillights and that this contributed to the accident as well. However, a reasonable juror could have found that it was foreseeable to Jurkiw that driving at a high rate of speed under wet conditions, on a crowded freeway, while weaving in and out of traffic, enhanced the likelihood of losing control and that this would cause others to take emergency action to avoid colliding with Jurkiw's car. Because a reasonable juror could find that it was reasonably foreseeable that Jurkiw's negligence enhanced the likelihood of an accident, any intervening negligence by Ionescu or the other drivers nearby were not superseding causes as a matter of law. Therefore, since plaintiff presented documentary evidence establishing the existence of a material factual dispute, defendants were not entitled to summary disposition. See *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh