



issues of material fact and there are sufficient facts to establish that VanGorder breached a duty owed to the plaintiffs and that the plaintiffs were injured as a proximate result of the breach. We affirm.

As night fell, the defendant, William VanGorder, was driving a Ford Contour westbound on Herrin-Colp Road when a wild deer suddenly ran across the eastbound lane and into VanGorder's westbound lane of travel. The deer collided with the front corner of the driver's side of VanGorder's vehicle. Upon impact, the deer was flung back into the eastbound lane and bounced off the hood of an approaching, eastbound pickup truck and crashed through the windshield of the pickup. Plaintiff Donald Smelcer was the driver of the pickup truck. James Edwards and plaintiff Dustin Schoening were passengers in Smelcer's pickup. Smelcer and Schoening were injured when the deer penetrated the windshield and its legs entered the cab of the pickup truck.

Smelcer and Schoening filed a negligence action against VanGorder. They alleged that VanGorder had a duty to operate his vehicle in a safe manner and that he breached his duty in that he drove his vehicle at a rate of speed that was greater than reasonable when a special hazard existed with respect to other traffic, that he failed to reduce his speed to avoid a collision, and that he failed to keep a proper lookout to avoid a collision. The plaintiffs alleged that as a direct result of VanGorder's negligence, his vehicle struck a deer with such force that the deer became airborne and crashed through the windshield of the vehicle occupied by Smelcer and Schoening and injured them.

VanGorder moved for a summary judgment. He argued that under the facts and circumstances, the plaintiffs could not establish the existence of a duty because it was unforeseeable that a deer, upon impacting his vehicle, would be flung onto and crash through the windshield of an approaching vehicle in an oncoming lane and injure the occupants of that vehicle. He also argued that he did not breach any duty to the plaintiffs because he acted

as a reasonably prudent driver would when faced with a sudden emergency and imminent peril and that proximate cause could not be established because the plaintiffs' injuries were not of a type that a reasonable person would foresee as a result of his conduct. VanGorder attached and referred to his deposition testimony and Smelcer's deposition testimony in support of his arguments.

VanGorder testified that the incident occurred as he drove home after taking his sister to her Girl Scout meeting on January 16, 2004. VanGorder stated that he was traveling west on Herrin-Colp Road in a Ford Contour. It was around dusk. He had activated the headlights. There were a few cars behind his car in the westbound lane of travel. VanGorder testified that the speed limit was 45 miles per hour on the stretch of road that he was traveling. He was driving within the speed limit. VanGorder testified that he did not see the deer as it was darting across the eastbound lane of travel. He first saw the deer when it appeared near the front, driver's-side corner of his vehicle. He saw it a split second before it ran into his vehicle. VanGorder testified that when he saw the deer, he applied his brakes to slow his car down. He did not slam on the brakes because there were cars behind him. He felt that action would have been more dangerous. VanGorder testified that the deer went off toward his left after the impact. He did not see the deer go airborne. VanGorder testified that he pulled to the side of the road and called the police. VanGorder stated that his vehicle was damaged. The side lights on the driver's side were shattered, and there was a dent in the hood. VanGorder testified that he has a restriction on his driver's license. He is required to drive vehicles that have side mirrors and a rearview mirror. The restriction is imposed because he has a "lazy eye." It has been in effect since he was 16 years old. VanGorder testified that he had not been in an accident involving a deer strike prior to this accident but that, sometime thereafter, he clipped a deer while driving.

Donald Smelcer, a general contractor, testified that at the time of the incident he was

driving home after finishing a drywall job. He was driving a half-ton pickup truck. James Edwards and Dustin Schoening were passengers in his truck. Edwards and Schoening were independent contractors who had worked on the drywall job with Smelcer that day. Smelcer testified that he was traveling east on Herrin-Colp Road, and that the speed limit was 45 miles per hour on this stretch. He observed snow flurries, but nothing was sticking to the roads. Smelcer said that there were no other vehicles in his lane of travel. When Smelcer stopped at a stop sign, he observed VanGorder's vehicle in the oncoming lane of travel and five or six cars trailing VanGorder's vehicle. As Smelcer pulled away from the stop sign, one of his passengers said, "Deer." Smelcer glanced to his right. He saw two deer standing at the edge of the road. He had been driving at 35 miles per hour, but he slowed down after he saw the deer. Smelcer looked up the road in front of him. He observed another deer, a doe, standing in the westbound lane, approximately 100 feet ahead of his vehicle. Smelcer testified that he witnessed the doe strike VanGorder's vehicle, and then suddenly it bounced off the hood of his pickup truck and came through his windshield. Smelcer stated that the entire incident happened in about three seconds and that there was no time to react. Smelcer estimated that there was a one- to two-second interval between the moment he first observed the doe and the collision between the doe and VanGorder's vehicle. He estimated that at the time of that collision, the closing distance between his truck and VanGorder's vehicle was 100 feet. Smelcer felt that VanGorder could have done something to avoid the collision with the deer.

A summary judgment is proper only where the pleadings, together with any depositions, admissions, and affidavits on file, when taken in a light most favorable to the opposing party, demonstrate that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008). A trial court's decision to grant a summary judgment is reviewed *de novo*. *Jones v.*

*Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291, 730 N.E.2d 1119, 1127 (2000).

In this case, there appears to be no dispute among the parties in regard to the basic facts of the accident. The parties agree that a deer suddenly darted across Herrin-Colp Road, that the deer struck the front corner on the driver's side of VanGorder's vehicle, and that upon impact, the deer was flung onto the hood and through the windshield of Smelcer's pickup. Both VanGorder and Smelcer testified that there was a one- or two-second interval between the first observation of the deer on the road and the collision between the deer and VanGorder's vehicle. Smelcer stated that the deer came through his windshield within an instant after it collided with VanGorder's vehicle and that it happened so quickly he had no time to react. The headlights on VanGorder's vehicle were illuminated. Road conditions were good. VanGorder was driving within the speed limit. Smelcer was traveling about 10 miles an hour under the speed limit. After reviewing the record, we find that the trial court correctly concluded that there are no genuine disputes regarding the material facts.

We next consider whether the plaintiff can establish the existence of a duty, a breach of that duty, and proximate cause under the facts of the case. In order to sustain a cause of action for negligence, a plaintiff must establish the existence of a duty owed by the defendant to the plaintiff, a breach of the duty, and an injury proximately caused by the breach. *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 227, 665 N.E.2d 1260, 1267 (1996). Whether a duty exists is a question of law for the court to decide. *Washington v. City of Chicago*, 188 Ill. 2d 235, 239, 720 N.E.2d 1030, 1032 (1999). In considering whether a duty exists, a court must determine whether there is a relationship between the parties requiring that a legal obligation be imposed upon one for the benefit of the other. *Washington*, 188 Ill. 2d at 239, 720 N.E.2d at 1033. The court considers the foreseeability of the injury, the likelihood of the injury, the magnitude of guarding against the injury, and the consequences of placing the burden on the defendant. *Washington*, 188 Ill. 2d at 239, 720 N.E.2d at 1033. In order for

a duty to be imposed, the occurrence at issue must have been reasonably foreseeable. *Washington*, 188 Ill. 2d at 240, 720 N.E.2d at 1033; *Cunis v. Brennan*, 56 Ill. 2d 372, 375-76, 308 N.E.2d 617, 619 (1974). Where the injury results from freakish, bizarre, or fantastic circumstances, no duty is present and no negligence claim can be asserted. *Washington*, 188 Ill. 2d at 240, 720 N.E.2d at 1033.

In this case, VanGorder was driving within the speed limit. His vehicle's headlights were on. There is no evidence that adverse weather or road conditions were present. VanGorder was attentive and watching the road before him. A deer suddenly appeared in VanGorder's lane of travel. VanGorder activated his brakes when he saw the deer at the front corner of his vehicle. He did not jam on his brakes because there were cars behind him. He made a judgment that stopping abruptly would pose a greater hazard to the other motorists on the road. The parties agree that all the events in this episode occurred over a period of about three seconds.

Where one cannot reasonably foresee any injury as the result of one's act or if one's conduct was reasonable in light of what one could anticipate, there is no negligence and no liability. *Washington*, 188 Ill. 2d at 241, 720 N.E.2d at 1034. In this case, the plaintiffs' injuries resulted from the intervening act of a wild deer darting across the road. That the stricken deer then bounced onto the hood and through the windshield of an approaching vehicle and injured the occupants is a bizarre and freak occurrence. VanGorder was presented with a sudden emergency. Courts will assess a party's action not with the clarity of hindsight, but by the standard of what a reasonably prudent person would do under the same circumstances. *Cunis*, 56 Ill. 2d at 376, 308 N.E.2d at 619; *Yates v. Shackelford*, 336 Ill. App. 3d 796, 805, 784 N.E.2d 330, 338 (2002). A motorist who is faced with a sudden emergency and imminent peril is not required to possess the same coolness and judgment as when there is no imminent peril. *Yates*, 336 Ill. App. 3d at 805, 784 N.E.2d at 338.

VanGorder was attentive and watching the road before him. This is not a case where VanGorder could be said to have been looking with an unseeing eye. See *Grass v. Hill*, 94 Ill. App. 3d 709, 714-15, 418 N.E.2d 1133, 1137 (1981). VanGorder acted as a reasonably careful driver would under the same circumstances.

After reviewing the record, we find that a summary judgment was properly entered in favor of the defendant, William VanGorder, and against the plaintiffs, Donald Smelcer and Dustin Schoening. Accordingly, the judgment of the circuit court is affirmed.

Affirmed.