2013 IL App (1st) 122685-U

THIRD DIVISION
March 27, 2013

No. 1-12-2685

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

CARLOS ANGULO, SR. and LUX ANGULO, Next of Kin of CARLOS ANGULO, JR.; CARLOS ANGULO, SR., as Special Administrator of the Estate of CARLOS ANGULO, JR.; and DAISY ANGULO,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellants	)	No. 07 L 63035
v.	)	Honorable Martin S. Agran, Judge Presiding.
ADRIAN SANTILLANES; SOURCELINK, INC.,	)	
Defendants-Appellees	)	
(Patricia Retzke, Special Administrator and Next of Kin of Daniel Retzke; Lukasz Nakoneczny, and Marek Nakoneczny,	)	
Defendants).	)	

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Neville and Justice Pierce concurred in the judgment.

ORDER

Held: The circuit court properly granted defendants' motion for summary judgment on

plaintiffs' negligence complaint where there was no issue of material fact as to either defendants' breach of duty or whether the actions of defendants proximately caused the death of plaintiffs' decedent.

¶ 1 Plaintiffs-appellees Carlos Angulo, Sr. and Luz Angulo as next of kin of their deceased son, Carlos Angulo, Jr.; Carlos Angulo, Sr. as special administrator of the estate of decedent; and Daisy Angulo, decedent's sister, filed a complaint against defendants-appellees Adrian Santillanes and Sourcelink, Inc., among others, alleging negligence in connection with a traffic accident. Defendants moved for summary judgment, which was granted. On appeal, plaintiffs contend the circuit court's decision to grant summary judgment was in error because: (1) defendant Sourcelink failed to preserve certain evidence, including driving and cell phone records of defendant Santillenes; (2) there was an issue of material fact as to whether defendants breached their duty of care in the operation of their vehicle; and (3) there was evidence that this breach proximately caused the death of plaintiffs' decedent. For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 This case arises out of a motor vehicle accident which occurred on a hot and dry day in August 2005, at approximately 3:00 p.m. The car in which plaintiffs' decedent was a passenger veered abruptly into oncoming traffic and collided with a truck driven by defendant Santillenes in the course of his employment with defendant Sourcelink, Inc. Both plaintiffs' decedent and the driver of the car were killed. Plaintiffs filed a seven-count complaint against both Santillenes and Sourcelink, among others, alleging negligence and loss of consortium. Specifically, plaintiffs alleged that defendants breached certain duties owed to decedent, including failing to

keep a proper lookout, failing to reduce speed, and failing to take other action to avoid the collision, and that these breaches proximately caused the decedent's death. Defendants moved for summary judgment based on the deposition testimony of several witnesses to the accident as well as defendant Santillenes.

¶ 4 Lukasz Nakoneczny testified both to the circumstances leading up to the accident and the accident itself. He stated that on August 1, 2005, plaintiffs' decedent and his friend Daniel Retzke were driving the decedent's car, a white Honda Civic, to a mechanic in Schaumburg. Nakoneczny was following them in a red Audi, in which Martina Sancen, Retzke's girlfriend, was a passenger. The foursome planned to drop off the Honda and then drive home in the Audi. According to Nakoneczny, Retzke was urging him to race during the drive to Schaumburg. Retzke would speed ahead, then slow at traffic lights to taunt Nakoneczny that he could not keep up. Nakoneczny responded that the reason he could not drive as fast as Retzke was because the Honda had been modified to perform like a race car and the Audi did not have the same capabilities.

¶ 5 Nakoneczny testified that the accident occurred on Thorndale Avenue near the Interstate 290 intersection in Itasca, Illinois. At that location, Thorndale has three westbound lanes and three eastbound lanes separated by a concrete median. There is a gap in the median nearing the ramp for Interstate 290. In the moments immediately before the accident, Nakoneczny and Retzke were driving westbound on Thorndale in the left lane, approaching the gap in the median. Nakoneczny was behind Retzke, who was driving approximately 65 to 70 miles per hour in a 45 mile per hour zone, when he saw a Mustang cut Retzke off. Retzke swerved hard across the gap

in the median and drove straight into the traffic heading east on Thorndale. Nakoneczny saw him collide head-on with a truck that was in the left lane. Nakoneczny testified that he doubted the truck had time to evade the Honda, and further stated that he did not see the truck do anything to cause the accident.

¶ 6 Sancen echoed Nakoneczny's testimony at her deposition, though she stated she did not hear any of Retzke's taunts towards Nakoneczny. She was checking her phone immediately prior to the accident but looked up when she heard a noise. She then saw Retzke's car turn left in the opening in the median and collide head-on with a truck.

¶ 7 Wayne Walkowicz, an occurrence witness, also gave a deposition. On August 1, he was driving westbound on Thorndale near the Interstate 290 intersection and saw a red car and a white Honda in his rearview mirror. The Honda was weaving in and out of traffic and eventually passed him. At his deposition Walkowicz testified that it was difficult to detect the Honda's speed, but in the statement he gave to police, he estimated the Honda was traveling at 75 to 80 miles per hour. Shortly after the Honda passed him, he saw the car move from the center lane, cross the left lane, and continue to drive at an angle between the barriers at a speed of 70 to 80 miles per hour. Walkowicz testified that he did not see the Honda’s brake lights turn on until the moment of impact with the truck, with which the Honda collided head-on. Walkowicz testified that no Mustang was in the vicinity at the time of the accident, and he could not determine why the Honda crossed into oncoming traffic. It did not appear to Walkowicz that the truck driver could have done anything to avoid the accident.

¶ 8 The driver of the truck, defendant Adrian Santillenes, testified that he had been working

as a driver for defendant Sourcelink, Inc. for approximately 16 years without incident. On the day of the accident he began making deliveries at 8:00 a.m. At approximately 3:00 p.m., he was traveling eastbound on Thorndale in the vicinity of Interstate 290. Though the speed limit was 45 miles per hour, he was driving at 25 miles per hour in the extreme left lane closest to the median. He had been on Thorndale for almost one block when the front of a white car hit the front of his truck. Santillenes testified that he did not see the car until it was "on top of [him]." He estimated the car was traveling at a speed of 60 miles per hour, and that the accident occurred approximately one second after the car crossed the median. Santillenes did not have the chance to apply his brakes. He denied drinking or being under the influence of drugs at the time of the accident.

¶ 9 The circuit court granted defendants' motion for summary judgment on the basis that the collision was unavoidable as a matter of law, and therefore defendants did not proximately cause the death of plaintiffs' decedent. Plaintiffs timely filed this appeal.

¶ 10 ANALYSIS

¶ 11 On appeal, plaintiffs contend the circuit court improperly granted defendants' motion for summary judgment. Though defendants did not file a response brief with this court, we may consider the merits of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (where record is simple and claimed errors are such that they can be easily decided without the aid of an appellee's brief, reviewing courts should decide merits of appeal).

¶ 12 Summary judgment is proper when the pleadings, depositions, and affidavits demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *State Farm Mutual Automobile Insurance Co. v. Coe*, 367 Ill. App. 3d 604, 607 (2006). In making this determination, the record materials must be viewed in the light most favorable to the non-movant. *Federal Insurance Co. v. Lexington Insurance Co.*, 406 Ill. App. 3d 895, 897 (2011). We review *de novo* an order granting summary judgment. *Hall v. Henn*, 208 Ill. 2d 325, 328 (2003).

¶ 13 Plaintiffs begin by arguing that defendants breached their statutory duty to preserve evidence, including vehicle maintenance reports, personnel files, and cellular phone records. From what we can discern, this is an attempt to raise issues of fact regarding a spoliation claim. However, plaintiffs do not plead spoliation in their complaint. As such, defendants could not and did not seek summary judgment on this allegation, and we, in turn, will not reverse the circuit court's grant of summary judgment on the basis of this argument. Instead, we limit our analysis to plaintiffs' arguments regarding defendants' alleged negligence, which is the only cause of action pled against defendants in the complaint.

¶ 14 As a starting proposition, we note that the mere fact of an accident, standing alone, will not suffice as proof of negligence. *Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 10 (quoting *Payne v. Mroz*, 259 Ill. App. 3d 399, 403 (1994)). Indeed, courts have explicitly held that an "incursion of but a very few seconds into a driver's right-of-way by another vehicle approaching from an opposite lane does not warrant the conclusion that the offended driver must have been guilty of negligence for the accident to happen." *Williams v. Elkin*, 239 Ill. App. 3d

1094, 1099 (1992) (citing *Lesperance v. Wolff*, 79 Ill. App. 3d 136, 141 (1979)). Instead, in a negligence action, a plaintiff must establish that a defendant owed the plaintiff a duty, breached that duty, and an injury proximately caused by the breach resulted. *Ziemba v. Mierzwa*, 142 Ill. 2d 42, 45 (1991).

¶ 15 Certainly, a driver owes a duty of care to all vehicles with whom he shares the road, even those traveling on the wrong side.[1] *Rutter v. Gemmer*, 153 Ill. App. 3d 586, 594 (1987). That duty is breached if the driver failed to exercise that standard of care which a reasonably prudent person would have exercised under the circumstances exhibited by the evidence in the case. See *Long v. Illinois Power Co.*, 187 Ill. App. 3d 617, 623 (1998). Here, plaintiffs argue there is a question of fact as to whether defendants breached their duty by: (1) failing to keep a proper lookout; (2) failing to reduce speed; and/or (3) failing to otherwise avoid the collision. We disagree.

¶ 16 It has long been held that where a party gives another reasonable cause for alarm – for example, by swerving into oncoming traffic – that party " 'cannot complain that the person so alarmed has not exercised cool presence of mind, and thereby find protection from responsibility from damages resulting from the harm.' " *Wilmere v. Stibolt*, 152 Ill. App. 3d 642, 647 (1987) (quoting *Skala v. Lehon*, 258 Ill. App. 252, 258 (1930)). Accordingly, we do not use hindsight in

[1] Plaintiffs' repeated assertion that truck drivers owe a higher duty of care than drivers of passenger vehicles is not supported by any authority. While certain trucks may be subject to a higher degree of federal regulation than passenger vehicles, it does not follow from this that truck drivers have a higher duty of care than other drivers. See, *e.g.*, *Moore v. Swoboda*, 213 Ill. App. 3d 217, 236 (1991) (determining that trial court should have given jury instruction that held truck driver and minor dirt-bike driver to standard of ordinary care of an adult).

considering whether a party's actions were reasonable, but measure the actions against what a reasonably prudent person would do in the same circumstances. See *Eckel v. O'Keefe*, 254 Ill. App. 3d 702, 709 (1993) (citing *Williams*, 239 Ill. App. 3d at 1097).

¶ 17 *Turner v. Roesner*, 193 Ill. App. 3d 482 (1990), is instructive in its application of these principles. There, the plaintiff's car crossed the center line of a two lane road and collided with the defendant's vehicle. *Turner*, 193 Ill. App. 3d at 485. It was undisputed that the defendant had two seconds and 120 feet to react, and that in that time, he took his foot off the accelerator, but may not have applied the brakes. *Id.* at 487. The plaintiff argued that the defendant breached his duty of care by failing to reduce speed, keep a proper lookout, or take other evasive action. *Id.* at 487. The circuit court granted summary judgment in favor of the defendant. *Id.* at 486. This court agreed that the defendant's actions were reasonable as a matter of law in light of his short reaction time, finding that "the driver of a vehicle who is faced in a sudden emergency with imminent peril is not required to possess the same coolness and judgment as when there is no imminent peril." *Id.* at 488. In the instant case, defendant Santillenes had an even shorter time – one second – to respond to the car driving directly towards him in his right-of-way. He also had a shorter distance in which to take evasive action, as he testified he saw plaintiffs' decedents' vehicle only when it was "on top of [him]." Thus, just as in *Turner*, we conclude that defendants acted reasonably in the face of this "sudden emergency."

¶ 18 Plaintiffs correctly point out that the *Turner* court ultimately reversed the circuit court's grant of summary judgment. However, the court did so after explicitly finding that the issue was not merely whether the defendant's response was reasonable, but "whether and to what extent the

defendant's conduct contributed to the very short time in which he could have responded to the emergency which confronted him." *Id.* at 489. Specifically, the plaintiff alleged that the defendant's speed of 40 to 45 miles per hour was too fast for the dark and foggy morning and icy roadway. *Id.* It was this narrow issue of fact that compelled us to reverse summary judgment in favor of the defendant. *Id.* at 490-93. See also *Sitowski v. Buck Brothers, Inc.*, 147 Ill. App. 3d 282 (1986) (no error to deny defendants' motion for directed verdict where some evidence suggested that defendant truck driver was traveling at 65 miles per hour on slick pavement when he collided with plaintiff's car that was in his right-of-way).

¶ 19 In contrast, there are no extenuating circumstances in the instant case that raise the question of whether defendant Santillenes' own conduct was the cause of his short reaction time. The accident took place in the middle of a hot, dry summer day, and defendant Santillenes was driving at least 20 miles per hour under the speed limit. Unlike the defendant in *Turner*, the lighting and weather conditions gave him no notice that a driver on the opposite side of the road would move into his right of way. Therefore, we hold there is no issue of fact as to whether defendants breached a duty owed to plaintiffs' decedent.

¶ 20 Nor is there a question of fact with regard to proximate cause. Courts have explicitly held that a driver's failure to reduce speed, maintain a proper lookout, or other acts or omissions, are not evidence of negligence unless those acts are the proximate cause of plaintiff's injuries. See, *e.g.*, *Guy v. Steurer*, 239 Ill. App. 3d 304, 309-10 (1992). Proximate cause encompasses both cause in fact and legal cause. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225-26 (2010). Cause in fact exists where there is a reasonable certainty that a defendant's acts caused

the injury. *Young v. Bryco Arms*, 213 Ill. 2d 433, 446 (2004). Stated differently, we must ask whether the injury would have occurred absent defendant's conduct. *Id.* Where multiple factors may have contributed to the injury, the question becomes whether the defendant's conduct was a material element and substantial factor in bringing about the injury. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 502 (1992). Legal cause, on the other hand, is established if the defendant's conduct is "so closely tied to the plaintiff's injury that he should be held legally responsible for it." *McCraw v. Cegielski*, 287 Ill. App. 3d 871, 873 (1996). Ordinarily, the question of proximate cause is one of fact for the jury, but it may be determined as a matter of law where the facts alleged show that the plaintiff would never be entitled to recover. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257-58 (2004).

¶ 21 The circumstances of this case present a quintessential example of an "unavoidable collision." This phrase has often been used to describe a scenario in which a defendant is confronted with a sudden swerve into his right-of-way by an approaching vehicle. *Chevrie v. Gruesen*, 208 Ill. App. 3d 881, 885-86 (1991) (citing *Walling v. Lingelbach*, 65 Ill. 2d 244 (1976); *Turner*, 193 Ill. App. 3d at 488; *Wilmere*, 152 Ill. App. 3d at 642). In such situations, there is no proximate cause, and a defendant's acts or omissions are not material. *Id.*

¶ 22 *Williams*, 239 Ill. App. 3d 1094 (1992), presented us with a factual situation strikingly similar to the one at bar. There, the plaintiff was injured after she drove across a double line into oncoming traffic and collided head-on with the defendant’s vehicle. *Williams*, 239 Ill. App. 3d at 1096. The defendant was killed and the plaintiff sued his estate for negligence. *Id.* at 1095. The circuit court granted summary judgment in favor of the defendant, and we affirmed based on the

fact that the witness testimony did not point to any evidence of negligence attributable to the defendant that caused the accident. *Id.* at 1095, 1099. Instead, the single witness to the accident stated that the plaintiff was driving at 40 to 45 miles per hour when she drove into oncoming traffic, and was in the wrong lane for only three to four seconds before the crash. *Id.* at 1096. Under these circumstances, we held that the sole cause of the accident was the plaintiff's "abrupt invasion of the opposite side of the highway." *Id.* at 1099. See also *Wilmere*, 152 Ill. App. 3d at 647-48 (where the evidence showed that the defendants were all traveling in their own lanes and at the posted speed limit at the time the plaintiff crossed a double yellow line into their right of way, circuit court properly granted summary judgment in favor of the defendants).

¶ 23 Likewise, here, there is no testimony that anything other than the "abrupt invasion" of the Honda onto eastbound Thorndale caused the accident.[2] Just as the defendants in *Wilmere*, defendant Santillenes was traveling in his own lane well within the posted speed limit when the accident occurred. Each witness testified that the Honda's movement into defendant's right of way occurred suddenly, at a speed of at least 60 miles per hour. Moreover, the facts here are even stronger than those in *Williams*, as the Honda was in the wrong lane for only one second – as opposed to three or four – before the crash. Given that one second is the minimum reaction time required to stop a vehicle (*Johnson v. May*, 223 Ill. App. 3d 477, 484 (1992)), a reduction in speed or a proper lookout would not have prevented the collision. See *Coole v. Central Area*

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[2] Plaintiffs' suggestion that Santillenes may have been distracted due to speaking on his cell phone at the time of the accident necessarily fails due to the lack of evidence in support of this contention. See *Sorce v. Naperville Jeep Eagle*, 309 Ill. App. 3d 313, 328 (1999) ("Mere speculation, conjecture or guess is insufficient to withstand summary judgment.").

Recycling, 384 Ill. App. 3d 390, 399-400 (where the defendant had only 177 feet and two to three seconds to stop after the plaintiff's car entered his right-of-way, collision was unavoidable as matter of law).

¶ 24 Nevertheless, plaintiffs suggest that because the Honda did not collide with other cars as it wove through traffic and changed lanes rapidly, defendant Santillenes should also have been able to avoid a collision. In support of this argument, plaintiffs cite *Chevrie*. This is not persuasive. In *Chevrie*, we held the unavoidable collision doctrine did not apply to an accident in which the plaintiff's vehicle was struck by a car exiting a driveway and spun across three eastbound lanes of traffic, across a median, and into the westbound lanes before colliding with the defendant's vehicle. *Chevrie*, 208 Ill. App. 3d at 883. In that case, the defendant was proceeding westbound behind two other cars, both of which were able to take effective evasive measures when the plaintiff's car crossed the median. *Id.* We reasoned that where two drivers with less time and distance to observe the plaintiff's car or react to the plaintiff's appearance in their right of way were able to avoid a serious collision, there was a factual question as to whether defendant could have done the same if he was keeping a proper lookout or had reduced his speed. *Id.* at 887.

¶ 25 No comparable facts exist in this case. There is no evidence that any vehicle other than Santiellenes' truck was in the path of the Honda when it crossed the median. Wayne Walkowicz, who plaintiffs contend was able to "avoid" a collision, was in fact traveling westbound, the same direction as the Honda. It is manifestly unreasonable to compare the actions of a westbound driver with Santillenes, who was proceeding east on Thorndale, and who had no indication that a

vehicle driving erratically on the opposite side of the road would suddenly cross a median and proceed into oncoming traffic. Additionally, there is no indication that Walkowicz and other drivers traveling westbound were in any danger of colliding with the Honda in the first place. A car that is weaving and changing lanes presents quite a different danger than one that is driving on the wrong side of the road. Because the circumstances in *Chevrie* that led us to find an issue of material fact as to causation are not present here, plaintiffs' reliance on this case fails to overcome the application of the unavoidable collision doctrine.

¶ 26 Ultimately, where there is no issue of fact as to whether defendants breached a duty, or whether a breach of duty proximately caused the death of plaintiffs' decedent, defendants are entitled to summary judgment. See *Coole*, 384 Ill. App. 3d at 400-01.

¶ 27 CONCLUSION

¶ 28 For the reasons stated, we affirm the circuit court's order granting summary judgment.

¶ 29 Affirmed.