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CASENOTES

MSJ BY TRUCK COMPANY DENIED WHEN DRIVER RAN OVER MATTRESS IN ROADWAY, MATTRESS CAUGHT FIRE AND GAS TANK EXPLODED COURT HELD IT WAS FORESEEABLE A MAJOR TRUCK INCIDENT WOULD CAUSE A FREEWAY BACKUP RESULTING IN A REAR-END COLLISION BY VEHICLES MORE THAN A THOUSAND FEET AWAY

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Filed 2/22/18 Rajas Transport Co., LLC v. Superior Court CA5

MSJ BY TRUCK COMPANY DENIED WHEN DRIVER RAN OVER MATTRESS IN ROADWAY, MATTRESS CAUGHT FIRE AND GAS TANK EXPLODED COURT HELD IT WAS FORESEEABLE A MAJOR TRUCK INCIDENT WOULD CAUSE A FREEWAY BACKUP RESULTING IN A REAR-END COLLISION BY VEHICLES MORE THAN A THOUSAND FEET AWAY.

DRIVER OF TRUCK RAN OVER A MATTRESS. THE MATTRESS CAUGHT ON FIRE AND THE TRUCK EXPLODED. MOTORIST REAR-ENDED ANOTHER MOTORIST WHO SUES FOR SERIOUS INJURIES RESULTING FROM COLLISION.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

RAJAS TRANSPORT COMPANY, LLC et al.,

Petitioners,

v.

THE SUPERIOR COURT OF STANISLAUS COUNTY,

Respondent;

JEHREMY D. PHILLIPS et al.,

Real Parties in Interest.

F074895

(Super. Ct. No. 2010698)

OPINION

ORIGINAL PROCEEDING; Petition for Writ of Mandate. Timothy W. Salter, Judge.

Becherer Kannett & Schweitzer, Lori A. Schweitzer, Shahrad Milanfar and Alex P. Catalona for Petitioners.

No appearance for Respondent.

Law Offices of Steven A. Fabbro and Steven A. Fabbro for Real Parties in Interest.

-ooOoo-

Petitioner, Chander Shekher, was driving on a six-lane section of State Route 99 in a Peterbilt tractor and trailer owned by petitioner, Rajas Transport Company, LLC, and operated by petitioner, A-1 Transport, LLC. Shekher saw a mattress in the road directly ahead but was unable to stop and collided with it. The mattress became wedged under the truck and caught fire. Shekher pulled over to the side of the highway, got out of the cab, and ran away from the burning truck. Shortly thereafter, the truck's gas tank exploded.

Traffic behind the fire slowed and stopped. Plaintiffs and real parties in interest, Jehremy D. Phillips and Lucas A. Phillips (RPI), were in the last stopped vehicle in the middle lane approximately two-tenths of a mile from the burning truck. A Jeep Cherokee driven by Robert Schill ran into the back of the Phillips' vehicle, seriously injuring Jehremy Phillips.

RPI sued Schill and petitioners for negligence. Petitioners moved for summary judgment claiming that: they did not owe a duty of care to RPI; they did not breach any duty of care; and the truck fire was not a legal cause of RPI's accident. The trial court denied petitioners' motion.

Petitioners filed this petition for writ of mandate seeking an order directing the superior court to vacate its order denying their summary judgment motion and enter a new order granting summary judgment in petitioners' favor. According to petitioners, they did

not owe a duty of care to RPI as a matter of law because the truck fire and accident were not reasonably foreseeable. We issued an order to show cause to examine this issue.

Upon further review, we have determined that petitioners owed a duty of care to RPI and that there are triable issues of material fact regarding petitioners' potential liability. Therefore, we deny the petition for writ of mandate.

BACKGROUND

Shekher's big rig truck was loaded with 20 pallets of wine weighing approximately 43,000 pounds. Shekher admitted that, when he began driving north on State Route 99, he was tired and needed to sleep.

Shekher was driving in the third lane, the lane closest to the shoulder. At approximately 10:00 p.m., Shekher saw a mattress he described as "really big" ahead of him. Shekher applied his brakes but was unable to stop and ran over the mattress. After colliding with the mattress, Shekher looked in his rearview mirror and noticed that the truck was on fire. He pulled to the side of the highway, got out of the cab, and saw the burning mattress lodged under the truck close to the gas tank. Shekher ran more than 50 feet away from the truck because of the danger posed by the fire. Within a few minutes, the gas tank exploded. The California Highway Patrol received a report of a big rig on fire at 10:06 p.m.

When the first California Highway Patrol officer arrived on the scene, he saw a big fire and a tall plume of black smoke. This fire caused traffic to come to a stop in all three lanes on northbound State Route 99. The officer observed two vehicles on the side of the road and pulled his patrol car behind them with his lights flashing. Approximately 30 seconds later, the officer heard a screeching sound and saw Schill's Jeep run into the back of RPI's vehicle. This collision occurred at 10:12 p.m., six minutes after the big rig fire was reported. The fire and collision were two-tenths of a mile apart.

Schill testified that he entered State Route 99 and proceeded to accelerate in the far right lane to between 50 and 60 miles per hour. When Schill saw the highway patrol

officer on the right-hand shoulder, he moved to the middle lane. Schill glanced back at the officer and then looked straight ahead. At that moment, Schill realized that traffic was at a stop in front of him and applied his brakes. However, Schill could not stop in time and collided with RPI's vehicle.

Jehremy Phillips was sleeping in the back of the vehicle when the collision occurred and suffered serious injuries rendering him a quadriplegic.

RPI filed the underlying complaint against petitioners and Schill alleging one cause of action for negligence. Petitioners moved for summary judgment arguing RPI could not establish the elements required for a negligence cause of action, i.e., legal duty, breach, and causation. Petitioners argued that Shekher could not have foreseen that running over a mattress could commence the chain of events that RPI alleges caused Schill to rear-end their vehicle.

The trial court denied petitioners' motion for failure to show the absence of triable disputes of material fact. Petitioners filed a petition for writ of mandate in this court arguing the trial court's order was insufficient under Code of Civil Procedure section 437c, subdivision (g). In response, this court invited the trial court to correct the order's deficiency by specifying one or more material facts raised by the motion as to which there exists a triable controversy. (Code Civ. Proc., § 437c, subd. (g).)

The trial court thereafter issued an amended minute order denying petitioners' summary judgment motion. The court stated:

> "The [petitioners'] Separate Statement of Undisputed Material Fact No. 4 cites, as evidence, Exhibit 54, which does not exist. There was no Exhibit 54. [RPI's] opposing separate statement disputed [petitioners'] Fact No. 4 on this basis, while [petitioners'] reply documents did not refer in any way to this issue. The Court deems [petitioners'] failure to respond to this issue on reply as an admission that no such evidence exists. Thus, [petitioners] failed to show the absence of triable disputes.
>
> "In addition, even if [petitioners] had carried that burden, [RPI's] Response to [petitioners'] Separate Statement of Undisputed Material Fact No. 3

> presents a triable issue of fact. [Petitioners'] Fact No. 3 states: '[RPI's] vehicle was completely stopped for more than 30 seconds when it was rear-ended.' [RPI's] response states: 'Disputed. The Phillips' Mazda (V-2 in the police report) had been stopped for only about 1.5 seconds before being rear-ended by the Schill Jeep Cherokee.' Cited as evidence are deposition excerpts set forth in the Fabbro Declaration …."

Petitioners' fact No. 4 was "Defendant Schill was driving 45 miles per hour when he collided with plaintiffs' vehicle."

In this proceeding, petitioners have limited their argument to whether they owed a duty of care to RPI. According to petitioners, there is no legal duty because the fire and RPI's future accident were not foreseeable at the time Shekher ran over the mattress. Further, petitioners argue, even if RPI could establish that the truck fire was reasonably foreseeable, there is no liability in California for placing RPI " 'in a position to be acted upon by a negligent third party.' "

DISCUSSION

1. *Standard of review.*

A party moving for summary judgment bears the burden of persuading the trial court that there is no triable issue of material fact and that he or she is entitled to judgment as a matter of law. (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 525 (*Brown*).) Once the moving party meets this initial burden, the burden shifts to the opposing party to establish, through competent and admissible evidence, that a triable issue of material fact remains. If the moving party establishes the right to the entry of judgment as a matter of law, summary judgment will be granted. (*Ibid*.)

The reviewing court must assume the role of the trial court and reassess the merits of the motion. (*Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1601.) The appellate court applies the same legal standard as the trial court to determine whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law. The court must determine whether the moving party's showing satisfies his or her burden of proof and justifies a judgment in the moving party's favor. (*Brown,*

supra, 171 Cal.App.4th at p. 526.) In doing so, the appellate court must view the evidence and the reasonable inferences therefrom in the light most favorable to the party opposing the summary judgment motion. (*Essex Ins. Co. v. Heck* (2010) 186 Cal.App.4th 1513, 1522.)

2. *Petitioners owed a duty of care to RPI.*

a. The harm was generally foreseeable.

In general, " 'everyone is responsible … for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person . …' " (Civ. Code, § 1714, subd. (a); *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 771 (*Cabral*).) In other words, each person has a duty to use ordinary care and is liable for injuries caused by his or her failure to exercise reasonable care under the circumstances. (*Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 472.) This general duty of care includes a duty not to expose others to an unreasonable risk of injury at the hands of third parties. (*Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 717.)

Courts invoke the duty concept to limit the otherwise potentially infinite liability that would follow from every negligent act. (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1143 (*Kesner*).) "The conclusion that a defendant did not have a duty constitutes a determination by the court that public policy concerns outweigh, for a particular category of cases, the broad principle enacted by the Legislature that one's failure to exercise ordinary care incurs liability for all the harms that result." (*Ibid*.) However, courts should create such an exception to the general duty rule only where clearly supported by public policy. (*Ibid.*)

In *Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*), the California Supreme Court identified several considerations that, when balanced together, may justify a departure from the general duty rule set forth in Civil Code section 1714. (*Rowland*, at p. 113.) The first three considerations relate to foreseeability. These factors are " '[(1)] the foreseeability of harm to the plaintiff, [(2)] the degree of certainty that the plaintiff suffered

injury, [and] [(3)] the closeness of the connection between the defendant's conduct and the injury suffered.' " (*Cabral, supra,* 51 Cal.4th at p. 774.)

If the court determines the harm is generally foreseeable, the next step is to assess whether other public policies nevertheless militate against a duty. (*Pedeferri v. Seidner Enterprises* (2013) 216 Cal.App.4th 359, 368 (*Pedeferri*).) These public policy factors are " '[(1)] the moral blame attached to the defendant's conduct, [(2)] the policy of preventing future harm, [(3)] the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and [(4)] the availability, cost and prevalence of insurance for the risk involved.' " (*Cabral, supra,* 51 Cal.4th at p. 781.)

The chief factor in the duty analysis is foreseeability. (*Pedeferri, supra,* 216 Cal.App.4th at p. 366.) The court evaluates this factor at a relatively broad level of factual generality. (*Cabral, supra,* 51 Cal.4th at p. 772.) Accordingly, "the court's task in determining duty 'is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed ….' " (*Ibid*.) In contrast, in analyzing the proximate cause element of a negligence cause of action, the foreseeability factor "requires a 'more focused, fact-specific' inquiry that takes into account a particular plaintiff's injuries and the particular defendant's conduct [citations]." (*Laabs v. Southern California Edison Co.* (2009) 175 Cal.App.4th 1260, 1273.)

Further, the duty analysis does not measure foreseeability by what is more probable than not. Rather, foreseeability includes whatever is likely enough in the setting of modern life that a reasonably thoughtful person would take account of it in guiding practical conduct. (*Kesner, supra,* 1 Cal.5th at p. 1145.) Moreover, "[w]hile the court deciding duty assesses the foreseeability of injury from 'the category of negligent conduct at

issue,' if the defendant did owe the plaintiff a duty of ordinary care the jury 'may consider the likelihood or foreseeability of injury in determining whether, in fact, the particular defendant's conduct was negligent in the first place.' " (*Cabral, supra,* 51 Cal.4th at p. 773.)

Here, RPI alleges Shekher was negligent when he ran over the mattress rather than go around it. Petitioners respond that Shekher owed no duty of care to RPI because there is no evidence to suggest that Shekher could have expected running over the mattress would cause Schill to crash into RPI's vehicle several minutes later and 1,100 feet away. Petitioners further argue there was no reason for Shekher to think that running over the mattress would cause his truck to catch fire.

However, the analytical framework requires us to evaluate whether the general category of alleged negligent conduct, i.e., running over a large obstacle in the roadway, is sufficiently likely to result in the kind of harm experienced, i.e., a rear-end collision due to traffic slowing and stopping. We are not required to find it was foreseeable that Shekher's truck would catch fire and that Jehremy Phillips would suffer a particular injury.

With this analysis in mind, we conclude it is generally foreseeable that running over a large obstacle could harm others on the roadway. It could damage the truck or cause the driver to lose control of the truck in various ways and thereby create a hazard of some kind. Shekher declared that he tried to avoid running over the mattress but was unable to do so. He also knew that running over a large obstacle, such as the mattress, could damage the truck. Shekher testified that when he was rolling over the mattress, he knew that he had to stop somewhere and "check it out." It was not necessary for Shekher to anticipate that running over a mattress could cause the truck to catch fire.

It is also reasonably foreseeable that a major truck incident will cause a freeway backup and a resulting rear-end collision. Negligent driving by third parties is foreseeable. (*Pedeferri, supra,* 216 Cal.App.4th at p. 367.) As explained by V. Paul Herbert,

RPI's expert witness, "[r]ear-end collisions are common in traffic backups especially on freeways, and rear end collisions are often caused by distracted drivers. Vehicles at the end of a freeway backup queue are in an especially vulnerable position from being hit by a vehicle approaching the queue."[9]

Further, this chain of foreseeability is both short and direct. The rear-end collision occurred within approximately six minutes of the truck's gas tank exploding, an event that one would expect to cause traffic to come to a standstill, and two-tenths of a mile away. A big fire and tall plume of black smoke were clearly visible from the accident site. Thus, the second accident occurred almost immediately after, and in the vicinity of, the truck explosion and fire. Accordingly, the connection between Shekher's conduct and the injury suffered was close enough to find petitioners owed RPI a duty. Petitioners do not dispute that Jehremy Phillips was injured.

While petitioners raised the issue of proximate cause in the trial court, their focus on appeal is limited to the issue of duty. Regarding duty, we conclude that the harm here was generally foreseeable. It will be up to the jury to perform the more focused, fact-specific inquiries required by the elements of breach of duty and proximate cause.

b. Public policy considerations do not weigh against finding a duty.

The next step is to assess whether other public policies nevertheless militate against finding a duty. " 'A duty of care will not be held to exist even as to foreseeable injuries … where the social utility of the activity concerned is so great, and avoidance of the injuries so burdensome to society, as to outweigh the compensatory and cost-internalization values of negligence liability. [Citations.]' " (*Kesner, supra,* 1 Cal.5th at p. 1150.) As noted above, in weighing the public policies, we consider the moral blame attached to the defendant's conduct, the prevention of future harm, the extent of the burden on the

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[9] While petitioners objected to certain of Herbert's opinions as being irrelevant and without foundation, they did not object to this general conclusion.

defendant and consequences to the community, and the availability and cost of insurance for the risk involved.

The moral blame factor can be difficult to assess in the absence of a complete factual record. (*Kesner, supra,* 1 Cal.5th at p. 1151.) Nevertheless, even if a jury finds Shekher was negligent, the moral blame that is generally involved in such an accident would not weigh in favor of finding a duty.

Regarding prevention of future harm, imposing the costs of negligent conduct upon those responsible ordinarily serves that policy. (*Cabral, supra,* 51 Cal.4th at p. 781.) "The policy question is whether that consideration is outweighed, for a category of negligent conduct, by laws or mores indicating approval of the conduct or by the undesirable consequences of allowing potential liability." (*Id.* at pp. 781-782.) There are certainly no laws or mores that encourage negligent driving. Thus, this policy weighs in favor of finding a duty.

With respect to the burdens on the defendant and the community, petitioners argue the potential financial burden on them is extraordinarily large because of the nature and extent of Jehremy Phillips's injuries. However, duty does not depend on the defendant's ability to respond to damages. Rather, in tort, the plaintiff is entitled to damages in the amount that will compensate for all the detriment proximately caused by the defendant's breach, whether or not it could have been anticipated. (Civ. Code, § 3333.) Further, the burden on the community does not weigh against establishing a duty. Liability, if any, for a secondary accident caused by the "vehicular flow response" to a driver's negligence will be determined based on the facts and circumstances of that particular case.

Finally, the availability of insurance is satisfied. "Insurance for operation of motor vehicles is generally available and, indeed, required." (*Cabral, supra,* 51 Cal.4th at p. 784, fn. 12.) Again, the facts of each individual "vehicular flow response" accident will determine liability, if any. Thus, contrary to petitioners' argument, there is no indication that imposing liability here would cause insurance costs to "skyrocket."

In sum, application of the *Rowland* factors supports the conclusion that petitioners owed a duty of care to RPI. Accordingly, there remains a triable issue of material fact. It is for a jury to determine whether Shekher acted reasonably under the circumstances. (*Cabral, supra,* 51 Cal.4th at p. 773.)

c. Schill's negligent act did not break the chain of causation.

Petitioners argue that, even if the truck fire was reasonably foreseeable, they are not liable because, at most, all they did was place RPI "in the wrong place at the wrong time." In other words, petitioners assert Schill's negligence constituted a superseding cause that cut off their responsibility.

As noted above, the general duty of care includes not exposing others to an unreasonable risk of harm at the hands of third parties. (*Lugtu, supra,* 26 Cal.4th at p. 717.) Thus, when a defendant is negligent because he or she exposed the plaintiff to an unreasonable risk of harm at the hands of third parties, the conduct of those third parties cannot properly constitute a superseding cause that relieves the defendant of any responsibility for the plaintiff's injuries. (*Id.* at p. 725.) In other words, if the particular intervening force was within the scope of the risks that the duty of care is intended to protect against, that intervening force is not a superseding cause. (*Ibid*.) A third party's negligence (or even recklessness) is not a superseding cause if it is a " 'normal response to a situation created by the defendant's conduct.' " (*Pedeferri, supra,* 216 Cal.App.4th at p. 373.) Rather, "[a] cause is superseding only when the third party's intervening negligence is ' "highly unusual or extraordinary" ' [citation], and ' "far beyond the risk the original tortfeasor should have foreseen." ' [Citation]." (*Ibid*.)

Schill's failing to stop in time in response to a freeway backup is not highly unusual or extraordinary. As outlined above, such negligent driving by a third party is within the scope of the risks that Shekher's duty of care is intended to protect against and therefore is foreseeable under these circumstances. Accordingly, Schill's conduct was not a superseding cause of RPI's injuries.

In arguing they are not liable for placing RPI "in the wrong place at the wrong time," petitioners rely on *Bryant v. Glastetter* (1995) 32 Cal.App.4th 770 (*Bryant*). In *Bryant*, highway patrol officers pulled the defendant over and arrested her for driving while intoxicated. The officers then called upon decedent, a tow truck driver, to tow defendant's vehicle from the side of the freeway. While decedent was working to remove defendant's vehicle, a vehicle driven by a third party struck decedent. (*Bryant, supra,* 32 Cal.App.4th at p. 774.)

The *Bryant* court held that the defendant did not owe a duty of care to decedent's surviving wife and children. The court determined that, while the defendant owed a duty to decedent not to drive under the influence, the harm suffered by the decedent was not of a kind normally to be expected as a consequence of negligent driving. (*Bryant, supra,* 32 Cal.App.4th at p. 779.) The court noted that the defendant might well have ended up by the side of the road and in need of a tow truck for any number of reasons that might have involved varying degrees of negligence. (*Id*. at pp. 779-780.) The court concluded that "while [the defendant] might have foreseen that her consumption of alcohol would result in her being stopped by the side of the road, as a matter of policy we decline to hold that [the defendant] should have foreseen that her consumption of alcohol would result in the harm actually suffered by decedent." (*Id.* at p. 780.) In other words, the connection between the defendant's conduct and decedent's injury was not sufficiently close. As the court observed, the defendant was not even directly responsible for having brought decedent to the place where he was injured because he had been contacted by the police officers. (*Id.* at pp. 781-782.)

In contrast here, the connection between Shekher's conduct and the injury suffered is close enough to find petitioners owed RPI a duty. As discussed above, it is foreseeable that a truck running over a large obstacle will create a major truck incident that, in turn will cause a freeway backup and a resulting rear-end collision. Thus, unlike *Bryant,* the

harm suffered here is of a kind normally to be expected from petitioners' alleged negligence.

Other cases relied on by petitioners are also inapposite. In *Victor v. Hedges* (1999) 77 Cal.App.4th 229, the court concluded that being struck by an errant vehicle jumping a curb was not a foreseeable result of standing on a public sidewalk. (*Id.* at pp. 243-244.)

The court in *Capolungo v. Bondi* (1986) 179 Cal.App.3d 346 did not discuss foreseeability and duty. Rather, the court held that a car parked in a loading zone for more than the legally permitted 24 minutes did not proximately cause the accident where a bicyclist had to swerve into traffic to avoid that car. (*Id.* at pp. 348, 355.)

Finally, the court in *Schrimscher v. Bryson* (1976) 58 Cal.App.3d 660 relied primarily on policy considerations. There the plaintiff, a highway patrol officer, had stopped and arrested one drunk driver and was injured when hit by a second drunk driver. The court concluded the second drunk driver was an independent intervening act that broke the chain of causation because the conduct was "criminal in nature" and not a natural or ordinary consequence of the situation created by the first drunk driver. (*Id.* at pp. 664-665.) More importantly, the court held, "[i]t would be an unwarranted extension of liability to hold that when a traffic officer, who is issuing a citation, investigating an accident or performing other of his duties, is injured as a result of the negligence or criminal conduct of one person, liability may be imposed on the original traffic violator whose conduct brought the officer to the scene." (*Id.* at p. 665.)

3. *The trial court's procedural error does not warrant writ relief.*

The trial court denied petitioners' summary judgment motion based on factual disputes regarding the speed of Schill's Jeep at the time of the impact and the length of time RPI was stopped before the accident. As asserted by petitioners, these facts are irrelevant to petitioners' potential liability.

Nevertheless, any such errors are moot. The trial court's reasons for denial of the motion are not binding on this court. (*Burgueno v. Regents of University of California*

(2015) 243 Cal.App.4th 1052, 1057.) Further, we have independently reviewed and re-assessed the merits of the motion.

DISPOSITION

The petition for writ of mandate is denied. Real parties in interest are awarded their costs.

_____
LEVY, Acting P.J.

WE CONCUR:

_____
POOCHIGIAN, J.

_____
SMITH, J.