IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

JONATHAN SMITH, Plaintiff	: :	
v.	:	NO. 99-00,817
SHANNON MARIE SHELEMAN, Defendant	: :	

OPINION and ORDER

The plaintiff, Jonathan Smith, a firefighter for the Williamsport Fire Department, has sued Shannon Marie Sheleman, who lost control of her car and struck a tree while traveling on Mulberry Street in the city of Williamsport. Mr. Smith, called to the scene of the accident, was injured when he opened the hood of Ms. Sheleman's car to disconnect the battery. Ms. Sheleman, claiming that there is no proximate cause, has asked this court to dismiss the case against her despite the possibility that the injury resulted from her negligence.

Any child lucky enough to have skipped stones upon the surface of a lake or pond has known the delight of seeing how the smallest pebble can create concentric circles that alter forever a body of water. Human actions are like that too. The consequences of our slightest movement can potentially extend forever–as far as our scientific knowledge and imagination can take us.

Fortunately, tort law does not permit that to happen. Through the doctrine of proximate cause a court can mercifully step in and put an end to one's liability for the consequences of his or her actions. The court is called upon to do that in this case.

Factual Background

The defendant has filed preliminary objections in the nature of a demurrer, claiming

that even if the plaintiff proves everything in the complaint, she will still lose because she cannot prove the element of proximate cause. Therefore, for the purposes of deciding the preliminary objections we will assume that the following facts are true.

On 3 September 1997 Ms. Sheleman was driving her 1990 Pointiac Gran Am north on Mulberry Street in Williamsport. While attempting to negotiate a right hand turn onto Washington Boulevard she lost control of her car, ran onto the sidewalk, and crashed into a tree. Fortunately, neither Ms. Sheleman nor anyone else was injured by the accident–at least at that time.

Mr. Smith was dispatched to the scene. Following standard operating procedure he examined the vehicle, found an antifreeze leak, and attempted to disconnect the battery by opening the hood of the car. At that moment Ms. Sheleman's luck ran out and the hood latch malfunctioned, causing a serious laceration to Mr. Smith's hand.

DISCUSSION

A. Proximate Cause

The basic principle underlying tort law is to hold an individual responsible for the consequences of his or her actions. Nonetheless, our society recognizes what scientists and philosophers have told us for ages: such consequences can extend on forever. We have therefore wisely decided to limit liability at some point, through the concept of proximate cause.

Proximate cause is one of the murkiest doctrines in our legal system. Dozens of tests, formula, and standards have been proposed in various jurisdictions, but none have

ultimately been very satisfactory. Everyone seems to agree that at some point liability should end, but no one can say exactly when. Perhaps we should not be surprised by this difficulty, however, for the beauty of the doctrine is that it is highly flexible and very fact specific. It allows a court to respond on a somewhat instinctual level to the circumstances of each individual case.

The clearest expression of the philosophy underlying proximate cause this court has found in Pennsylvania law is the following:

> Even where harm to a particular plaintiff may be reasonably foreseeable from the defendant's conduct, and that conduct is the cause-in-fact of the plaintiff's harm, the law makes a determination that, at some point along the causal chain, liability will be limited. The term "proximate cause", or "legal cause" is applied by courts to those considerations which limit liability, even where the fact of causation can be demonstrated. Because of convenience, public policy, or a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point, as no longer a "proximate" or "legal" consequence naturally flowing from the wrongdoer's misconduct. . . . To put it simply, at a certain point, negligent conduct will be viewed as too remote from the harm arising to the plaintiff and thus not a substantial factor in bringing about the plaintiff's harm.

Alumni Ass'n v. Sullivan, 369 Pa. Super. 596, 535 A.2d 1095 (1987), *aff'd*, 524 Pa. 356, 572 A.2d 1207.

Turning to the specific application of proximate cause, the court first notes that Pennsylvania has adopted the definition of proximate cause set forth in the Restatement (Second) of Torts § 431 (1965), which states that negative conduct is the proximate, or legal, cause of harm if it is a substantial factor in bringing about the harm and if there is no rule of law relieving the actor from liability because the manner in which the negligence resulted in the harm. Ford v. Jeffries, 474 Pa. 588, 379 A.2d 111 (1977); Hicks v.

Metropolitan Edison Co., 665 A.2d 529 (Pa. Cmwlth. 1995). The Restatement gives three factors to consider in determining whether the conduct is a substantial factor: (1) the number of other factors that contribute to producing the harm and the extent of the effect they have in producing it, (2) whether the actor's conduct 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, and (3) the lapse of time between the negligent conduct and the injury. With these principles in mind, we examine the case before the court. The chain of causation here is as follows: Ms. Sheleman's negligence caused the crash, which caused the hood to malfunction,[1] which caused the laceration of Mr. Smith's hand. This clearly constitutes cause-in-fact, for without Ms. Sheleman's negligence the injury would not have happened. Proximate cause, however, is another matter.

Initially, we note that the case of Bell v. Irace, 422 Pa. Super. 298, 619 A.2d 365 (1993), is factually similar, but not dispositive. In that case the Superior Court affirmed a trial court's finding of no proximate cause when an emergency medical technician was injured while administering aid to a victim (also a defendant) who apparently lashed out at the technician. The Superior Court affirmed the trial court's finding of no proximate cause. However, this court recognizes that the deliberate and independent action of another person, especially when it is itself tortious in nature, frequently breaks the chain of causation initially created by a negligent act. In the case before this court, however, there

[1] The complaint alleges, in the alternative, that Ms. Sheleman was negligent in not maintaining the hood in proper condition before the accident. At argument, however, counsel for the plaintiff stated that allegation would be withdrawn for lack of evidence.

is only the act of the plaintiff himself, which makes this case much more difficult and problematic than Bell.

We start our analysis by considering the three factors suggested in the Restatement and Hicks, supra. First, the number of additional contributing factors in producing harm and the extent of their effect in producing that harm. In addition to Ms. Sheleman's negligence, we have the conduct of Mr. Smith himself, who opened the hood. Although this conduct was prompted by the accident, which was the direct result of Ms. Sheleman's negligence, Mr. Smith's own act was the most direct and immediate cause of his injury.

Secondly, the court must consider whether Ms. Sheleman's negligence created a force or series of forces continuously and actively operating up to the time of harm, or created a situation which was harmless unless acted on by additional forces for which the actor lacked responsibility. Ms. Sheleman's negligence caused the crash and the hood was damaged as a result. At that point, however, the situation was stable, and would have remained harmless if Mr. Smith had not opened the hood.[2] All damage directly caused by her negligence had been done. Although Mr. Smith responded because of the accident, his appearance at the scene and subsequent actions were not a result of a continuous force emanating from her negligence. Whatever happened after her negligence–although prompted by the accident–did not arise directly and automatically from her negligence. Mr. Smith's actions were taken on his own initiative, after the accident had occurred.

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[2] The argument that he did so to prevent harm in an emergency will be dealt with in the latter portion of the opinion.

The third consideration is the lapse of time between the negligence and the injury. This factor is problematic because the complaint does not indicate when Mr. Smith arrived at the scene nor when his hand was injured. Even assuming, however, that the injury occurred within an hour of the accident, we would receive little guidance. Viewed in the context of an entire day, one hour seems a short period of time. Viewed in the context of a car accident, when every second seems to stretch into eternity, even an hour seems a very long time.

The purpose of the lapse of time consideration, as well as the other factors discussed above, is surely to help determine the remoteness of the injury to the negligence. From the above analysis, the court concludes that Mr. Smith's injury is too remote from the car accident. Rather than resulting immediately and directly from the negligence, the injury occurred after the accident was over. In short, the injury was a by-product of the accident, and therefore Ms. Sheleman's negligence was not a substantial factor in bringing about the harm.

Finally, the court will consider the foreseeability of the injury. For some reason, Pennsylvania appellate courts have occasionally insisted that foreseeability has nothing to do with proximate cause. See Com., Penn. Dept. of Transp. v. Phillips, 87 Pa. Cmwlth. 504, 488 A.2d 77, 85 (1985); Little v. York Cty. Earned Income Tax Bureau, 333 Pa. Super. 8, 481 A.2d 1194, 1197 (1984). However, this court places its bet on the winning team of Prosser and Keeton, who wrote: "It is quite possible to state every question which arises from "proximate cause" in the form of a single question: was the defendant under a duty to protect the plaintiff against the event which did in fact occur?"

W.P. Keeton, Prosser and Keeton on Torts (5th ed. 1984) at 274. An analysis of duty always involves the question of whether the injury to the plaintiff was foreseeable. Our Superior Court explicitly included a reasonable foreseeability analysis in Reilly v. Tiergarten Inc., 430 Pa. Super. 10, 633 A.2d 208, 210 (1993), when it stated that the "court must determine whether the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of." Similarly, in Bellv. Irace, supra, at 368, the Superior Court refused to find proximate cause, explaining, "Appellees can be held liable only for those risks which persons in their positions could reasonably foresee."

Foreseeability also enters into the picture when appellate courts routinely examine, as part of their proximate cause analysis, whether the injury is "a natural and probable consequence" of the negligence. See Amarhanov v. Fassel, 442 Pa. Super. 111, 658 A.2d 808 (1995). That, clearly, is nothing more than another way of determining whether the injury could have reasonably been foreseen.

The foreseeability analysis makes much sense to this court, for a person should only be held liable for conduct he or she should have known was risky, and should be responsible only for injuries that are within the risk that made the conduct negligent.[3] Here, Ms. Sheleman should have known that if she drove negligently she might crash her car and hurt others in the process. She could have hit another car, injuring its passengers. She could have struck pedestrians. But who would ever have guessed that her negligent

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[3] The court notes, however, that foreseeability and proximate cause are not the same, for even when an injury is reasonably foreseeable, a court may still find the injury too remote to be a substantial factor. See Alumni, supra, at 1098.

driving would result in the lacerated hand of a fireman opening her hood? *That injury* was not a natural and probable consequence of her action, nor was it reasonably foreseeable.

B. The Rescue Doctrine

Our legal system, eager to encourage Good Samaritans and reward heros, has created an exception to the proximate cause barrier. When a person is injured during a noble effort to save another from imminent death of bodily harm, the law will permit recovery and refuse to enforce the strict legal principles that might otherwise thwart his or her lawsuit. See Corbin v. City of Philadelphia, 195 Pa. 461, 45 A. 1070 (1900) (Officially adopting the "rescue doctrine."). This establishes a fictional causal connection, giving the rescuer a favored status in the eyes of the law. Pachesky v. Getz, 353 Pa. Super. 505, 510 A.2d 776 (1986).

As admirable as Mr. Smith's actions might have been, he cannot be considered a "rescuer" because he was not attempting to prevent another person from suffering serious injury or death. Bell, supra, at 369. Our Superior Court has explicitly stated, "[T]he situation precipitating the 'rescue' must warrant a reasonable belief that the peril facing the object of the rescue was urgent and imminent. There can be no reasonable belief of continued peril if the rescuer has knowledge that the victim's condition is stable, requiring only medical attention." Id., citing 57A Am.Jur.2d, Negligence § 1087 (1989).

The complaint in this case states that Mr. Smith inspected the vehicle only after he "determined that there were no injuries to the Defendant." Therefore, he cannot be

considered a rescuer, and cannot be rescued by the rescue doctrine.[4]

Conclusion

Because Mr. Smith's injury was too remote from Ms. Sheleman's negligence, he cannot successfully recover in this lawsuit against her. His injury was a remote wave on the distant shore of a lake into which Ms. Sheleman had thrown a pebble. It may seem harsh to prevent him from recovering for his injury, but certainly Mr. Smith is not without remedies. As an employee of the City of Williamsport, he undoubtedly is covered under a health insurance policy, and he could also be eligible for Workers' Compensation. Those avenues, in addition to being more legally appropriate, are also based on sound public policy considerations. Firefighters such as Mr. Smith have willingly taken on an important and hazardous job that benefits all citizens, and they should be compensated for their injuries by the taxpaying citizens whom they serve–not the individuals who happen to need their services at any given moment.

[4] The court also notes that the very existence of the rescue doctrine indicates that in most cases rescuers would be barred by the proximate cause element. That is precisely why they need to be awarded a privileged status. This reinforces our decision on lack of proximate cause in this case.

O R D E R

AND NOW, this _____ day of August, 1999, for the reasons stated in the above opinion, the Preliminary Objections filed by the defendant are sustained and the complaint in the above-captioned matter is dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
G. Scott Gardner, Esq.
Christopher Reeser, Esq.
Gary Weber, Esq., Lycoming Reporter