Walker v. Jones

Court of Appeals of Indiana, First District

August 13, 1987, Filed

No. 41A01-8701-CV-16

Reporter
511 N.E.2d 507 *; 1987 Ind. App. LEXIS 2958 **

Michael WALKER, Defendant-Appellant v. Russell G. JONES, Edith Jones, William Province and Gene Province, Plaintiffs-Appellees

Prior History: [**1] Appeal from the Johnson Circuit Court, The Honorable Larry J. McKinney, Judge, Cause No. 34-025.

Disposition: Judgment reversed.

Core Terms

calf, proximate, cases, summary judgment, collision, median, intervening cause, tort-feasor, driver

Case Summary

Procedural Posture
Appellant sought review of the decision of the Johnson Circuit Court (Indiana), which corrected an error and set aside his previously granted motion for summary judgment in an action brought by appellees for personal injuries.

Overview
Appellant's cow was loose on the median of an interstate. A police officer and a motorist stopped to restrain the cow. While this was taking place on the side of the road, a car driven by an intoxicated individual slowed down and was struck in the rear by the appellees. The appellees were injured and sued both the driver of the automobile and appellant. The lower court granted summary disposition in favor of appellant, but later reversed itself. The court reversed, holding that there was not sufficient proximate cause, and the trial court erred in setting aside the summary judgment previously rendered. Appellant's negligence merely created a condition by which the subsequent injury-producing acts of another were made possible, the existence of the first condition could not be the proximate cause of the injuries, but was merely a remote cause.

Outcome
The court reversed the judgment of the lower court which reversed its earlier order of summary disposition for appellant in the action for personal injuries brought by the appellees.

LexisNexis® Headnotes

Torts > ... > Causation > Proximate Cause > General Overview

Torts > ... > Elements > Causation > General Overview

HN1[] A negligent act is the proximate cause of the injury if the injury is a natural and probable consequence which, in light of the circumstances, should reasonably have been foreseen and anticipated.

Torts > ... > Elements > Causation > Concurrent Causation

Torts > ... > Elements > Causation > Intervening Causation

Torts > ... > Elements > Causation > General Overview

Torts > ... > Causation > Proximate Cause > General Overview

HN2[] **Concurrent Causation**

An intervening cause may serve to cut off the liability of one whose original act sets in motion the chain of events leading to the injury. Such intervening cause is not a concurrent or contributory cause, but is a superseding cause. If the intervening cause is foreseeable, the original tort-feasor cannot escape liability because of it. Conversely, if the intervening cause is not foreseeable as a natural consequence of the original act, then the original tort-feasor cannot be held liable for injuries caused by the second collision.

Torts > ... > Causation > Proximate Cause > General Overview

Torts > ... > Elements > Causation > General Overview

HN3[] Where a defendant's negligence merely creates a condition by which the subsequent injury-producing acts of another are made possible, the existence of the first condition cannot be the proximate cause of the injuries, but is a remote cause.

Torts > ... > Causation > Proximate Cause > General Overview

Torts > ... > Elements > Causation > General Overview

HN4[] Tort liability is predicated upon proximate cause. Proximate does not mean approximate. It means the immediate, nearest; direct; next in order; and, in its legal sense, closest in causal connection.

Counsel: Attorneys for Appellant: C. Dickson Faires, Jr., ***Frederick*** D. ***Emhardt***, Miller, Faires, Hebert & Woddell.

Attorneys for Appellees: Tom G. Jones, Jack L. Bailey, Jones, Loveall, Johnson & Bailey.

Judges: Neal, J. Ratliff, C.J., and Conover, J., concur.

Opinion by: NEAL

Opinion

[*508] STATEMENT OF THE CASE

Defendant-appellant, Michael Walker (Walker), appeals the ruling of the Johnson Circuit Court in granting a motion to correct error setting aside a summary judgment previously entered in his favor and against plaintiff-appellees, Russell G. Jones, Edith Jones, William Province, and Gene Province, in their suit for damages for personal injuries.

We reverse.

STATEMENT OF THE FACTS

The undisputed facts before the court for purposes of summary judgment are as follows. At approximately 7:00 p.m., near dusk, on September 17, 1982, while driving northbound on Interstate 65, Indiana State Trooper J. D. Richards (Richards), saw a 500- to 700-pound black Angus heifer lying in the median near County Road 350 in Johnson County. For purposes of these proceedings, Walker **[**2]** concedes that the animal belonged to him and had escaped, wandering on to the interstate highway. Richards stopped his patrol car on the median to investigate, but left the emergency lights operating. When the calf bolted, Richards, assisted by Lt. Ted Settle of the Indiana State Police, and Charles Grissom, a passing motorcyclist, attempted to capture the Angus heifer. After fashioning a lasso from a rope found in his patrol car, Richards, Settle, and Grissom pursued the Angus calf south in the median. Neither the calf nor the pursuers ever left the 40-foot-wide median. When they finally had the calf surrounded, Richards observed a rear-end collision between two cars in the outside, or right-hand, lane of northbound Interstate 65 about 75-feet from where he, Settle, Grissom, and the calf were located. An automobile driven by Russell Jones, in which Edith Jones, William Province, and Gene Province were passengers, traveling at an estimated speed of 50 to 55 m.p.h., and without any evidence of evasive action or braking, ran into the rear of an automobile traveling at an estimated speed of 15 to 20 m.p.h., purportedly driven by Damon Woods. The occupants of Woods car were Woods, John **[**3]** T. Williams, and Stella Roberts, all of whom were intoxicated. Though Woods, who tested .21 on the breathalyzer, announced to Richards that he was the driver, there were later indications that he and Williams may have changed places, and Williams may have been driving at the time of the collision. The automobiles were extensively damaged, and the occupants of the Jones car were injured. Jones and the driver of the Woods vehicle were watching the activity involving the calf, and were inattentive to their driving. Richards was of the opinion that the causes of the accident were Jones's

inattention, the slow movement of the Woods car, and the intoxication of the individual operating the Woods car. The appellees sued Damon Woods, Trudy Woods, and Michael Walker. The complaint against Walker proceeded upon the theory that the escaped calf created traffic congestion.

The briefs proceed on the assumption that there were facts in the record which **[*509]** indicated that the driver of the Woods car passed the Jones car and then applied the brakes so hard as to cause the Jones car to run into it. These allegations were only contained in the complaint. We are considering only the facts contained **[**4]** in Richards' deposition used in support of the motion for summary judgment. No other evidentiary materials are cited by either party.

Walker's Motion for Summary Judgment was granted. However, the trial court later granted the appellees' Motion to Correct Error, from which ruling Walker appealed.

ISSUE

Though other issues are raised, we will address only one. Restated, that issue is as follows:

I. Was the escape of Walker's calf and its presence in the median of the interstate the proximate cause of the accident.

DISCUSSION AND DECISION

This case is analogous to the numerous second-collision cases existing in Indiana where the courts of review have held that the tort-feasor defendant in the first collision is not responsible for damages caused by the tort-feasor defendant of the second accident because of the absence of proximate cause. One of the latest cases, *Havert v. Caldwell* (1983), Ind., 452 N.E.2d 154, is illustrative. Havert, a policeman, and his partner stopped a patrol car on a street to search for a prowler. Hook stopped his car behind Havert. Caldwell then ran his car into Hook's car. While Havert and Hook were surveying the damage, Warren drove his **[**5]** car into Caldwell's car. Havert and Hook were injured and sued Caldwell and Warren. The trial court granted Caldwell's motion for summary judgment and the supreme court affirmed that decision, noting that the act complained of must be the proximate cause of the injury.

HN1[↑] A negligent act is the proximate cause of the injury if the injury is a natural and probable consequence which, in light of the circumstances, should reasonably have been foreseen and anticipated. *Bridges v. Kentucky Stone Co., Inc.* (1981), Ind., 425 N.E.2d 125. This requirement of foreseeability is directly related to the rule that HN2[↑] an intervening cause may serve to cut off the liability of one whose original act sets in motion the chain of events leading to the injury. *Havert, supra.* Such intervening cause is not a concurrent or contributory cause, but is a superseding cause. If the intervening cause is foreseeable, the original tort-feasor cannot escape liability because of it. *Id.* Conversely, if the intervening cause is not foreseeable as a natural consequence of the original act, then the original tort-feasor cannot be held liable for injuries caused by the second collision. *Id.*

Applying the above **[**6]** principles, *Havert* held that Warren's negligence was the effective intervening cause. In doing so, the supreme court relied upon 21 *I.L.E. Negligence* §§ 64, 65, and 67 (1959), and *Slinkard v. Babb (1954), 125 Ind. App. 79, 112 N.E.2d 876, reh. denied, 125 Ind. App. 87, 117 N.E.2d 564, trans. denied.* Slinkard v. Babb was also a second-collision situation, similar to *Havert.* Other cases have reached the same result on similar facts. Peck v. Ford Motor Co. (7th Cir. 1979), 603 F.2d 1240, an Indiana case; Schroer v. Funk & Sons, Inc. (1968), 142 Ind. App. 223, 233 N.E.2d 680.

It is well settled that HN3[↑] where a defendant's negligence merely creates a condition by which the subsequent injury-producing acts of another are made possible, the existence of the first condition cannot be the proximate cause of the injuries, but is a remote cause. *Crull v. Platt* (1984), Ind. App., 471 N.E.2d 1211. The cases treat the original act in the second-collision cases as the remote cause and not the proximate cause. HN4[↑] Tort liability is predicated upon proximate cause. Proximate does not mean approximate. It means the immediate, nearest; direct; next in order; and, in its **[**7]** legal sense, closest in causal connection. *Blacks Law Dictionary* 1391 (Rev. 4th Ed. 1968).

[*510] The causation here is even more remote and less foreseeable than in the second-collision cases, for at least in those cases, a physical obstruction was created by the first tort-feasor which became instrumental in causing the second accident. Here there was none. There was no evidence that the calf caused any traffic congestion. Throughout the incident the calf, as well as her pursuers, were in the median. There was no collision or near collision with the calf, nor was there any evasive action taken to avoid it which caused the accident. Instead, the accident was caused by the

intoxicated driver of the Woods car slowing down to view the spectacle of three men trying to catch a black Angus calf, only to be struck in the rear by the inattentive driver of the Jones car, who was likewise watching the show. The appellees have cited no case holding that the existence of some attraction or event, either deliberately or negligently created along the side of the road, which diverts the attention of an operator of a motor vehicle, is either negligence or proximate causation rendering the **[**8]** creator of the attraction liable. Indeed, the highways abound in such bizarre creations carefully designed to draw the attention of motorists.

We hold that there was not sufficient proximate cause, and the trial court erred in setting aside the summary judgment previously rendered. We direct the trial court to vacate the ruling on the motion to correct error and enter an order denying the same.

Judgment reversed.

RATLIFF, C.J. and CONOVER, J., CONCUR.

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