STATE OF MICHIGAN

COURT OF APPEALS

ROBERT J. COATES II, Individually and as Personal Representative of the Estate of ROBERT J. COATES, Deceased, DE ANN MARIE NICHOLAS and OLHSA GUARDIAN SERVICES, Conservator of the Estates of JENNIFER LYNN COATES and EVERETT EUGENE COATES, Minors,

Plaintiffs-Appellees,

v

CONTINENTAL VINYL WINDOW COMPANY, INC., CONTINENTAL VINYL PRODUCTS COMPANY, INC., and JEFFREY D. SCHNEIDER,

Defendants-Appellants,

and

DONALD J. YORK, KATHLEEN YORK, D.V.A. AMBULANCE, INC., LEROY E. EVERETT, CONNIE L. KRUPP, JERRY WIDNER, KEN-N.K., INC., and OUR 206 BAR, INC.,

Defendants.

UNPUBLISHED
July 8, 2003

No. 235400
Shiawassee Circuit Court
LC No. 99-002952-NI

LEROY E. EVERETT, CONNIE L. KRUPP and JERRY WIDNER,

Plaintiffs-Appellees,

v

CONTINENTAL VINYL WINDOW COMPANY, INC., CONTINENTAL VINYL PRODUCTS COMPANY, INC., and JEFFREY D. SCHNEIDER,

No. 235438
Shiawassee Circuit Court
LC No. 99-004244-NI

Defendants-Appellants,

and

DONALD J. YORK, KATHLEEN YORK, KEN-N.K., INC., OUR 206 BAR, INC., and DURAND FORMS,

Defendants.

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

In these consolidated matters, defendants Continental Vinyl Window Company, Inc., Continental Vinyl Products Company, Inc. and Jeffrey D. Schneider[1] (the Schneider defendants) sought leave to appeal a decision of the lower court granting summary disposition to plaintiffs on the proximate cause issue. In lieu of granting leave to appeal, this Court issued orders reversing the trial court's grant of summary disposition and directing that the proximate cause issue be decided by the fact-finder. *Coates v Continental Vinyl Window Co, Inc*, unpublished order of the Court of Appeals, entered August 22, 2001 (Docket No. 235400); *Everett v York*, unpublished order of the Court of Appeals, entered August 22, 2001 (Docket No. 235438). Our Court's orders in this regard were vacated by the Supreme Court in an order remanding this matter back for plenary consideration. *Coates v Continental Vinyl Window Co, Inc*, 466 Mich 851; 143 NW2d 513 (2002). We again reverse the trial court's grant of summary disposition to plaintiffs, but remand for entry of an order granting summary disposition to the Schneider defendants.

The material facts here are not in dispute. While intoxicated, Schneider ran a stop sign and collided with a vehicle which was being driven by Robert J. Coates and in which his children were passengers (the Coates plaintiffs). As a result, the Coates plaintiffs received various minor injuries. An ambulance staffed by emergency medical technicians Leroy E. Everett, Connie L. Krupp and Jerry Widner (the EMT plaintiffs) was summoned to transport the Coates plaintiffs for medical care. Some forty minutes after the Schneider accident, the ambulance was struck by a second drunk driver, Donald J. York, about one mile away from the Schneider accident. The question raised in this appeal is whether Schneider proximately caused the more significant injuries resulting from this second accident (the York accident) to the Coates and EMT plaintiffs.

The trial court granted summary disposition against the Schneider defendants on this issue, a decision we review de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d

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[1] Schneider was employed by Continental Vinyl and was driving a Continental Vinyl van at the time of the accident. The Continental Vinyl defendants were not otherwise involved.

351 (2000). On appeal, both the Schneider defendants and plaintiffs argue that they are entitled to summary disposition; neither argues that the matter should be submitted to the fact-finder.[2]

The question presented is whether Schneider proximately caused the injuries resulting from the York accident or, instead, whether York's negligence was a "superseding cause" which absolves the Schneider defendants from any liability for those injuries. See, generally, 2 Restatement Torts, 2d, § 440, p 465; Prosser and Keeton, Torts (5th ed), § 44, pp 301-319. The answer to this question depends "'in part on foreseeability – whether it is foreseeable that the actor's conduct may create a risk of harm to the victim, and whether the result of that conduct and intervening causes were foreseeable.'" *McMillan v State Highway Comm*, 426 Mich 46, 61-62; 393 NW2d 332 (1986), quoting *Moning v Alfano*, 400 Mich 425, 439; 254 NW2d 759 (1977).

> If the defendant can foresee neither any danger of direct injury, nor any risk from an intervening cause, he is simply not negligent. . . .
>
> The courts have exhibited a more or less instinctive feeling that it would be unfair to hold the defendant liable. The virtually unanimous agreement that the liability must be limited to cover only those intervening causes which lie within the scope of the foreseeable risk, or have at least some reasonable connection with it, is based upon a recognition of the fact that the independent causes which may intervene to change the situation created by the defendant are infinite, and that as a practical matter responsibility simply cannot be carried to such lengths. [Prosser and Keeton, *supra* at 311-312.]

Plaintiffs direct our attention to a number of foreign precedents holding that a defendant causing a vehicular accident is liable for injuries that result from negligent medical care or treatment rendered to the victims of that accident. We recognize that this is basic hornbook law, as reflected in the Restatement:

> If the negligent actor is liable for another's bodily injury, he is also subject to liability for any additional bodily harm resulting from normal efforts of third persons in rendering aid which the other's injury reasonably requires, irrespective of whether such acts are done in a proper or a negligent manner. [Restatement, *supra* at § 457, p 496.]

Further, we agree with plaintiffs that liability should extend under this principle not only to injuries resulting from negligent medical care but also to injuries resulting from negligent

[2] The parties' position in this regard is consistent with the Supreme Court's order vacating this Court's previous order remanding the issue for determination by the fact-finder. Further, while the issue of proximate cause is usually a factual question to be decided by the jury, the trial court may decide it when there is no issue of material fact. *Helmus v Dep't of Transportation*, 238 Mich App 250, 256; 604 NW2d 793 (1999). "If the facts are undisputed, it is usually the duty of the court to apply to them any rule which determines the existence or extent of the negligent actor's liability." 2 Restatement Torts, 2d, § 453, comment b, p 491.

transportation of persons needing medical care. Both the need for medical care (potentially negligent) and transportation for that care (also potentially negligent) are foreseeable to a person causing a traffic accident. They are a "normal consequence" of an accident. See *Rogers v Detroit*, 457 Mich 125, 143-144; 579 NW2d 840 (1998), overruled on other grounds *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000).

However, that is not the issue presented here. There is no allegation that the EMT vehicle was driven negligently, resulting in the York accident and the ensuing injuries to plaintiffs. Instead, it is uncontested that the York accident resulted from York's negligent driving. Thus, the question presented is whether York's negligent driving was foreseeable by Schneider and thus not a superseding cause that absolves him of liability for injuries resulting from the York accident.

We have been provided no Michigan precedent presenting this factual scenario but find useful the analysis resulting from this Court's decision in *Brown v Michigan Bell Telephone, Inc (On Remand)*, 225 Mich App 617; 572 NW2d 33 (1997). There, the plaintiffs were injured while using a public telephone. The telephone had been placed near a street upon which an intoxicated individual fleeing the scene of a robbery lost control of her car, causing the injuries. Michigan Bell sought summary disposition arguing that it owed no duty to plaintiffs arising from the placement of the phone, because the accident was unforeseeable and the intoxicated individual's reckless driving was a superseding cause of plaintiffs' injuries. *Id*. at 619-620. Our Court affirmed the denial of this motion, reasoning that because substantially similar accidents had occurred at or near the intersection it was foreseeable that an automobile could run off the road and hit someone using the telephone. *Id*. at 624. This decision was reversed by the Supreme Court, which reasoned:

> The allegations within the plaintiffs' complaint, which focused on the general likelihood of a motor vehicle accident in the vicinity, failed to make a showing of the foreseeability of an accident involving defendant's phone stand. Defendants did not owe plaintiffs a duty to protect them from the unusual chain of events that led to their injury. [*Brown v Michigan Bell Telephone, Inc*, 459 Mich 874, 874-875; 585 NW2d 302 (1998) (citations omitted).]

On the basis of the general principles discussed above, as well as *Brown*, we conclude that the Schneider defendants were entitled to summary disposition with respect to claims arising out of the injuries caused by the York accident. Plaintiffs have come forward with no evidence to show that Schneider should have foreseen that a second drunk driver would collide with the ambulance as it transported the victims of the accident Schneider caused. Although plaintiffs have presented evidence regarding the "general likelihood" that an emergency vehicle might become involved in an accident, this evidence does nothing to suggest the likelihood of an accident where, as here, an emergency vehicle is not being operated in an emergency capacity, there being no need to transport the injured persons quickly to a medical facility.[3] See *id*. at 874.

[3] It is not disputed that the EMT plaintiffs had determined that the injuries suffered by the Coates plaintiffs as a result of the collision with Schneider were not so significant as to warrant operating the ambulance in an emergency capacity and that, therefore, at the time of the York
(continued…)

More to the point, it is certainly insufficient to suggest that a second accident, like that which occurred here, resulting from the negligent operation of another vehicle operated by a second drunk driver, was foreseeable. *Id*.

Schneider is clearly liable to the Coates plaintiffs for injuries they suffered as a direct result of his drunk driving. He would also be liable for further injuries resulting from foreseeable medical care or transport resulting from his accident. However, he could not foresee and had no duty to protect any of the plaintiffs from the "unusual chain of events," i.e., an encounter with a second drunk driver, that culminated in the York accident. *Id*. at 874-875. That conclusion applies to the rescue doctrine claims raised by the EMT plaintiffs as well as the general negligence liability claims raised by the Coates plaintiffs.

We reverse and remand for entry of an order granting summary disposition to the Schneider defendants with respect to claims brought by plaintiffs for injuries resulting from the York accident. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Bill Schuette

(…continued)

accident the ambulance was being operated within the speed limit and without the assistance of emergency lights or sirens.