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Proximate Causation

By Jay Sayes

Proximate causation may have some limitations, which are found in its definition. Proximate cause is defined as "a cause which, *in a natural and continuous sequence*, produced damages and *without with the damage would not have occurred*."[1] The cases cited in the comment to the jury instruction on proximate cause state that proximate cause exists when a negligent act leads to damages in a natural and continuance sequence, unbroken by any efficient intervening cause.[2] To establish a prima facie case of negligence, a plaintiff must demonstrate that the defendant breached a standard of care, that damages were sustained, and that the defendant's actions were a proximate cause of those damages.[3] The law defines negligence as "the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do".[4] However, the alleged negligent act must be weighed by the "circumstances similar to those shown by the evidence in [the] case."[5] In sum, proximate cause is arguably limited by the time and space in which the alleged negligent act occurred, and may be subject to summary judgment. It is well-settled that proximate causation is usually a question of fact for a jury. However, where reasonable minds cannot differ, a question of law is presented for determination by the court.[6]

Last summer, Judge Cara Connors in Pulaski County granted summary judgment for the defendant in an interesting case[7] in which the facts bearing on time and space were paramount to setting guardrails of what acts constitute proximate cause of an injury.

In that case, the defendant was attempting to turn across Maumelle Boulevard onto a side street when her vehicle began to slide due to wintery conditions that had been accumulating on the road. The defendant was unable to get across the Boulevard before being struck by the plaintiff. Both parties confirmed multiple times to each other that they were uninjured in the accident. Both parties walked around the scene, including getting in and out of their vehicles multiple times, without incident. The officers arrived on scene shortly after the accident and closed one lane of traffic on the Boulevard and directed traffic safely around and through the intersection. The officers investigated the accident without incident. The tow trucks loaded the vehicles without incident. The officers then effectively

[1] AMI 501; and *Cragar v. Jones*, 280 Ark. 549, 550, 660 S.W.2d 168, 169 (1983)) ("Before an act can be the proximate cause of an injury the injury must be the probable and natural consequence of that act.").

[2] *Id*. (citing *Kubik v. Igleheart*, 280 Ark. 310, 311–12, 657 S.W.2d 545, 546 (1983)).

[3] *Neal v. Sparks Reg'l Med. Ctr.*, 2012 Ark. 328, 422 S.W.3d 116 (2012).

[4] *See* AMI 302.

[5] *Id*.

[6] *Neal v. Sparks Reg'l Med. Ctr.*, *supra*.

[7] See *Terry v. Holderfield*, Case No. 60CV-23-2476.

released both drivers from the scene. The defendant left the scene. However, because the plaintiff's vehicle was disabled, she had to wait for a courtesy vehicle to take her to work. While waiting for the courtesy vehicle, and after gathering her belongings from her vehicle, the plaintiff's foot caught underneath her vehicle causing her to fall. The fall resulted in a fractured leg. According to the police department's dispatch log and the plaintiff's medical records, the fall occurred at least 45 minutes after the accident occurred.

Prior to the summary judgment hearing, the plaintiff moved to prevent the defense from arguing that the collision was over or completed before the plaintiff was injured. Interestingly, the plaintiff did not argue that this characterization was irrelevant or prejudicial. Instead, she argued that the characterization was "contrary to the evidence." However, the defendant, the investigating officer, and the plaintiff all testified in deposition that the accident was over, that the scene was under control and made safe, and had been for nearly an hour.

After the fall, the plaintiff was taken to the hospital by ambulance. Her EMS records revealed that she acknowledged that the motor vehicle accident did not cause her injury. Her emergency room records also revealed that she told her physicians that the accident did not cause her injuries. The plaintiff testified in deposition that she never told any of her medical care providers that she was injured in the motor vehicle accident, and she acknowledged that none of her providers told her that the accident caused her injuries.

The defendant moved for summary judgment on the proximate causation issue, contending that her alleged negligence in causing the motor vehicle accident could not be causally linked to the plaintiff's fall and injury occurring some 45 minutes after the dust from the collision had settled. The defendant relied on a single case that was factually on point.[8] In *Cragar*, Jones' automobile crossed the center line and collided with the truck driven by Cragar. Jones admitted that his negligence caused the accident and Cragar also admitted that she was not injured in the collision. After the accident, Cragar exited her vehicle and walked to Jones' home. While walking to Jones' home, Cragar slipped and fell on ice. Cragar sued Jones for personal injuries that occurred when she slipped and fell. Jones moved for summary judgment. The trial court granted Jones' motion on the pleadings and the legal question of proximate causation: "*Did the negligence of Jones in driving her automobile cause the injuries sustained in the slip and fall*?" The trial court held that there was no proximate causation. Cragar urged below and on appeal that it was a jury question as to whether the original negligence conduct causing the motor vehicle accident caused the ultimate injury. The Arkansas Supreme Court disagreed (albeit in a divided decision) and affirmed the trial court's ruling holding that there was no issue for the jury presented since Jones' original negligence in causing the motor vehicle accident did not lead in natural sequence, without an intervening cause, to Cragar's injuries. *Cragar* has not been overturned or questioned in Arkansas on these specific facts.

In response to the defendant's summary judgment motion, the plaintiff argued that remoteness in time was an issue in dispute

[8] *Cragar v. Jones*, 280 Ark. 549, 660 S.W.2d 168 (1983).

that needed to be resolved by the jury to determine causation, citing to an insurance coverage case.[9] The plaintiff argued that the passage of time was not sufficient, by itself, to relieve the defendant of liability for an injury that occurred subsequent to her negligent act in causing the motor vehicle accident. Aside from being an insurance coverage case that concerned a causation theory, the court in the case cited by the plaintiff found that causation in insurance coverage cases was "unworkable" in a traditional causation case. The court in that case also noted that a serious question of fact existed because there was no firm evidence of the time between the wreck and the plaintiff-insured's injuries. In *Terry v. Holderfield*, the evidence demonstrated an undisputed specific block of time that had elapsed between the collision and the plaintiff's injury.

Interestingly, the court in the insurance coverage case relied upon by the plaintiff also stated that remoteness in time between an accident and one's injury had a "*significant bearing*" on the causation issue. In *Terry v. Holderfield*, the defendant was able to successfully enlarge the amount of time that had elapsed between the collision (from which neither party claimed injury) and the plaintiff's fall and subsequent injury. The undisputed facts demonstrated that the hazard created by the defendant was static, not active, at the time the plaintiff slipped and fell. In other words, the events and conduct causing the collision had settled and were not operating at the time the plaintiff sustained her injuries.

The defendant also urged that her duty to the plaintiff was not without its boundaries and was limited to the risk of harm that is foreseeable. Stated another way, liability cannot be imposed upon proof of negligence in the abstract. The defendant argued that the plaintiff was not entitled to have her facts based on *post hoc* logic declared a reality. While it was possible or even conceivable that the plaintiff might fall due to the wintery conditions on the road, or for some other reason, correlation does not imply causation. Thus, the defendant argued that neither the possibility nor the conceivability the plaintiff might fall were equal to legal foreseeability (i.e., the probable consequence of the defendant's conduct) because the law and public policy require some just and sensible point where a defendant's liability ceases.[10] Otherwise, the connection between the defendant's negligence and the injury can be based on any series of antecedent events leading up to the injury. That has long been held impermissible.[11] In agreeing with the defendant's motion, Judge Connors added that the facts also failed to remove the case from the sphere of conjecture and speculation.[12]

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[9] *Hisaw v. State Farm Mut. Auto. Ins. Co.*, 353 Ark. 668, 122 S.W.3d 1 (2003).

[10] *Boren v. Worthen Nat. Bank*, 324 Ark. 416, 921 S.W.2d 934 (1996) (harm that is merely possible is not necessarily foreseeable); *Coca-Cola Bottling Co. v. Gill,* 352 Ark. 240, 100 S.W.3d 715 (2003) ("conceivability is not the equivalent of foreseeability").

[11] *Pittsburg Reduction Co. v. Horton*, 87 Ark. 576, 579, 113 S.W. 647, 648 (1908) (the law requires "a direct connection between the neglect of the defendant and the injury. That its connection *must be something more than one of a series of antecedent events* without which the injury would not have happened").

[12] *Mangrum v. Pigue*, 359 Ark. 373, 198 S.W.3d 496 (2004) (conjecture and speculation are never permitted to supply the place of proof).

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