IN THE COURT OF APPEALS OF IOWA

No. 6-231 / 95-512

DIONNE M. SCOGGINS, As Administrator of the Estate of CHAD J. SCHEICHER, Deceased,

Plaintiff-Appellant,

vs.

WAL-MART STORES, INC.,

Defendant-Appellee.

FILED
SEP 30 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

In this wrongful death action, the administrator of the estate of Chad Scheicher challenges the order granting Wal-Mart's motion for directed verdict. **AFFIRMED.**

Charles C. Brown, Jr., of the Tom Riley Law Firm, P.C., Cedar Rapids, for appellant.

Stephen J. Powell and Samuel C. Anderson of Swisher & Cohrt, P.L.C., Waterloo, for appellee.

Decided en banc.

SACKETT, C.J.

Chad Scheicher was twenty years of age when he shot himself in the head with a handgun. The ammunition for the gun had been purchased earlier in the day from defendant-appellee Wal-Mart Stores, Inc.'s Waterloo, Iowa, store. Dionne M. Scoggins, the administrator of Chad's estate, sued defendant for wrongful death contending the negligence of its employee in selling Chad, then less than twenty-one years of age, nine millimeter Luger ammunition was the proximate cause of his death. The trial court directed a verdict for defendant, and this appeal follows. We affirm.

Chad shot himself with a gun owned by his girlfriend and loaded with the ammunition he purchased from defendant. Before the shooting, Chad had an argument with his girlfriend and drove away. With police officers in pursuit, Chad pulled into his grandmother's driveway. The officers left their cars and heard a gun shot. An officer approached Chad's vehicle to find his head bleeding and a gun in his lap. Chad died the following day from the gunshot wound.

The trial court directed a verdict for defendant at the close of plaintiff's evidence, concluding there was not substantial evidence defendant's actions were a proximate cause of Chad's death, and the undisputed evidence was that the intentional act of suicide was the superseding intervening cause of his death. Plaintiff on appeal contends the issue of proximate and superseding intervening cause should have been submitted to the jury.

*I. **Proximate Cause.*** In considering plaintiff's argument that there was substantial evidence the sale of the ammunition was a proximate cause of Chad's death, we view the evidence in the light most favorable to plaintiff. Iowa R. App. P. 14(f)(2). If any ground asserted in support of the motion for directed verdict is found, the trial court should be affirmed. *See Culbertson v. Anderson*, 251 Iowa 265, 273-74, 100 N.W.2d 633, 637 (1960). To reverse the trial court on this issue, we need to find there is sufficient evidence from which a jury might reasonably draw an inference defendant was negligent and that negligence was a proximate cause of Chad's death. *See Pieper v. Harmeyer*, 235 N.W.2d 122, 126 (Iowa 1975).

Proximate cause involves two tests. *State v. Caldwell*, 385 N.W.2d 553, 556 (Iowa 1986); *State v. Marti*, 290 N.W.2d 570, 584-85 (Iowa 1980). First, there must be a cause in fact. That is, but for defendant's conduct, the damage would not have occurred. *Id.* Second, there must be legal causation. That is, defendant's conduct must be a substantial factor in bringing about the harm. *Id.; see also Nachazel v. Mira Co. Mfg.*, 432 N.W.2d 158, 161 (Iowa 1988).

The focal question is whether plaintiff introduced evidence to meet the second test. That is, did plaintiff introduce substantial evidence showing defendant's conduct was a substantial factor in causing Chad's death.

It was agreed Chad purchased nine millimeter ammunition at defendant's store three weeks before his twenty-first birthday. It is also agreed defendant is a licensed

federal firearms sales establishment. Additionally, the trial court took judicial notice of 18 U.S.C. section 922, which prohibits the sale of ammunition for handguns to people less than twenty-one years of age. Our supreme court has said more is needed to support a showing defendant's conduct was a proximate cause of Chad's suicide, there being no direct evidence to connect defendant to Chad's killing himself. *See State v. Ayers*, 478 N.W.2d 606, 608 (Iowa 1991) (criminal and reckless conduct in selling a stolen gun to a minor was not a proximate cause of the minor accidentally shooting his friend with the gun).

There was no evidence Chad's suicide was foreseeable. The cause of his injuries was not the sale of the ammunition. The compulsive act, while remotely possible, is not usual or likely to happen and there is less reason to anticipate malicious acts as opposed to acts of negligence. *See also Poland v. Earhart*, 70 Iowa 285, 287 (1886). In *Poland*, the defendant sold a revolver to a minor in violation of a state statute prohibiting the sale of firearms to minors. The minor accidentally shot himself in the hand. In denying a claim for damages, the court said, "The immediate cause of the injuries was not the sale of the weapon, but the accident which subsequently occurred while it was being handled." The court said the defendant could not reasonably anticipate the accident would occur only from the fact the person to whom it was sold was a minor. *Id.*

We agree with the trial court's conclusion plaintiff failed to introduce substantial evidence of proximate cause.

*II. **Superseding Cause.*** We also agree with the trial court's finding Chad's suicide was a superseding cause. A superseding cause is an act of a third person or some other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing it about. *Haumersen v. Ford Motor Co.*, 257 N.W.2d 7, 15 (Iowa 1977). In order for an intervening act or force to relieve an individual from liability, it must not have been a normal consequence of his acts and must not have been reasonably foreseeable. *Id.* If the intervening act is one which would ordinarily be expected to flow from the act of the first wrongdoer, the intervening act will not be a superseding cause relieving the first wrongdoer of liability. *Id.* An intervening cause which insulates the original actor must be (1) unforeseeable to a reasonably prudent person, and (2) of such magnitude that the incident would not have occurred without its intervention. *Walton v. Eckhart*, 354 F.2d 35, 38 (8th Cir. 1965). Chad's suicide was such an act.

We affirm.

AFFIRMED.

All judges concur, except Cady and Vogel, JJ., who dissent.

CADY, J. (dissenting)

I respectfully dissent.

The question presented in this case is whether liability may be imposed on a person who illegally sells firearm ammunition to another who uses the ammunition to commit suicide. The majority concludes the seller cannot be liable as a matter of law. They foreclose liability by finding the sale of the ammunition was not a proximate cause of the damages. Instead the majority finds the sole proximate cause of the death to be the buyer's voluntary act of triggering the firearm. I believe the issue cannot be decided as a matter of law, but should be left to the jury.

The majority correctly observes the imposition of liability hinges on the foreseeability component of proximate causation. Furthermore, I acknowledge ample authority exists from other courts to support the decision of the majority. *See e.g. Drake v. Wal-Mart, Inc.*, 876 P.2d 738, 740-42 (Okla. App. 1994) (illegal sale of firearm used to commit suicide cannot create liability when seller had no reason to expect the buyer would use the firearm for purpose of suicide); *Robinson v. Howard Bros. of Jackson, Inc.*, 372 So. 2d 1074 (Miss. 1979) (store which illegally sold gun and ammunition to minor was not liable for damages when minor used gun to shoot a woman). These courts generally conclude liability cannot be imposed without specific facts showing the seller could have foreseen the weapon and ammunition would be used to commit suicide. *Id.*

The flaw in the reasoning followed in these courts, and now by the majority in this case, is to confine the concept of foreseeability to the act of suicide. I agree there are no specific facts in this case to suggest to the seller the buyer would use the ammunition to commit suicide. However, the foreseeability of the suicide is not the critical inquiry. The foreseeability component of proximate causation does not require the actual consequences of the defendant's act to be foreseeable. *Kelly v. Sinclair Oil Corp.*, 476 N.W.2d 341, 349 (Iowa 1991); *Weems v. Hy-Vee Food Stores, Inc.*, 526 N.W.2d 571, 573 (Iowa App. 1994). It is only necessary that some injury be foreseeable. *Sumpter v. City of Moulton*, 519 N.W.2d 427, 435 (Iowa App. 1994).

The Federal Gun Control Act, among other things, makes it illegal to sell certain ammunition to anyone under twenty-one years of age. 18 U.S.C. § 922(b). The ammunition sold by Wal-Mart in this case was prohibited by this statute. *Id.* An acknowledged purpose of the statute is to keep certain firearms and ammunition away from persons Congress did not believe should possess them because of age, criminal background, or incompetency. *Barrett v. United States*, 423 U.S. 212, 220, 96 S. Ct. 498, 503, 46 L. Ed. 2d 450, 457 (1976). Thus, the statute expresses a legislative awareness that guns in the hands of certain classes of persons present a foreseeable risk of danger. *See Crown v. Raymond*, 764 P.2d 1146, 1149 (Ariz. App. 1988).

Chad fell within the ambit of the statute. Although it may not have been foreseeable he would use the ammunition to commit suicide, it was foreseeable the ammunition could be used to inflict some type of injury on himself or others, either

intentionally or negligently. *Crown*, 764 P.2d at 1149. Moreover, it is inconsistent for a court to declare consequences to be unforeseeable as a matter of law when a statute exists which was enacted to help guard against such consequences.

If Chad had been twenty-one years old at the time he purchased the ammunition, I would have no quarrel with the decision of the majority. He would have been outside the scope of the statute and there are no specific facts to show Wal-Mart otherwise should have foreseen Chad would use the ammunition to harm himself. However, as long as he was within the statute, we must acknowledge the potential foreseeability of some injury and allow the jury to determine the issue. *See Hetherton v. Sears Roebuck & Co.*, 593 F.2d 526, 531 (3rd Cir. 1979) (fact question existed whether selling rifle cartridges in violation of statute was proximate cause of plaintiff's injuries, precluding summary judgment).

Vogel, J., joins this dissent.