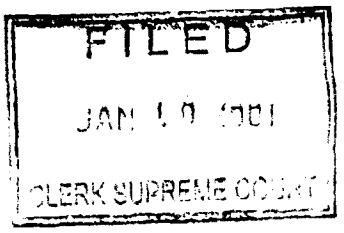
IN THE COURT OF APPEALS OF IOWA

No. 0-647 / 00-0251
Filed January 10, 2001

JAMES HOOD and CYNDY HOOD,
Plaintiffs-Appellants,

vs.

ALICE M. SPITLER, ANNA MARIE GOODPASTER and MIDAS COUNCIL OF GOVERNMENTS,
Defendants-Appellees.



Appeal from the Iowa District Court for Hamilton County, David R. Danilson, Judge.

Plaintiffs appeal from a grant of partial summary judgment in favor of the defendants. **AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

Pete Leehey and Matthew D. Dake of Wertz & Leehey, Cedar Rapids, for appellants.

Mark S. Brownlee of Kersten, Brownlee, Hendricks, L.L.P., Fort Dodge, for appellee-Spitler.

Michael F. Lacey, Jr. and Michael S. Jones of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker, & Ordway, L.L.P., Des Moines, for appellees-Goodpaster and Midas.

Heard by Sackett, C.J., and Mahan, J., and Habhab, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

MAHAN, J.

Plaintiffs appeal from a grant of partial summary judgment in favor of the defendants. We affirm in part, reverse in part and remand to the district court.

On January 12, 1998, defendant Goodpaster, an employee of MIDAS Council of Governments (MIDAS), was driving a bus owned by MIDAS. Defendant Spitler's vehicle collided with defendant Goodpaster's bus at an intersection. After the collision, Goodpaster lost control of the bus, which crashed into a telephone pole, crossed the street, and struck Hood's house. The bus disturbed a gas line when it struck Hood's house, thereby creating a gas leak and odor. Plaintiff James Hood was asleep in his home when the accident occurred. The loud noise of the bus hitting his home awakened him, and he heard his wife yell, "we've got to get out of here, there's gas, smell of gas in the house." As he rushed to help his wife get the children out of the house, James ran down the stairs and caught his hand in the stairway railing, breaking a bone in his hand.

Hoods filed a negligence suit against defendants, claiming damages for personal injuries and property damage. Defendants Spitler and Goodpaster/MIDAS filed separate motions for partial summary judgment, seeking dismissal of Hoods' personal injury claims. The district court granted both defendants' motions for partial summary judgment, dismissing the personal injury claim of James Hood and the consortium claim of Cyndy Hood with prejudice.[1] Hoods appeal.

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[1] The parties settled the property damage claim, which is not part of this appeal.

Standard of Review. We review a summary judgment ruling for errors at law. Iowa R. App. P. 4; *St. Ansgar Mills, Inc. v. Streit*, 613 N.W.2d 289, 292 (Iowa 2000). Summary judgment is appropriate where the moving party shows no genuine issue of material fact exists and it is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 649 (Iowa 2000). We examine the record before the district court to determine whether any genuine issue of material fact exists and whether the court correctly applied the law. *Schoff v. Combined Ins. Co. of America*, 604 N.W.2d 43, 45 (Iowa 1999). We view the facts in the light most favorable to the party opposing the motion for summary judgment. *Id.*

Proximate Cause. Although questions of negligence and proximate cause generally are for the jury, they may be decided as matters of law in exceptional cases. Iowa R. App. P. 14(f)(10); *Hollingsworth v. Schminkey*, 553 N.W.2d 591, 597 (Iowa 1996). The causation element has two components: (1) the defendant's conduct must have *in fact caused* the plaintiff's damages (generally a factual inquiry) and (2) the policy of the law must require the defendant to be *legally responsible for* the injury (generally a legal question). *Gerst v. Marshall*, 549 N.W.2d 810, 815 (Iowa 1996) (emphasis in original).

In conducting the factual inquiry, also referred to as a determination of proximate cause, we look to two components: (1) whether the harm would not have occurred but for the negligence of the defendant, and (2) whether the negligence of the defendant was a substantial factor in bringing about the harm. *Scoggins v. Wal-Mart Stores, Inc.*, 560 N.W.2d 564, 567 (Iowa 1997). The

parties agree the injury to James Hood meets the "but for" test of proximate cause. Therefore, we must address the issue of whether the conduct of these defendants satisfies the "substantial factor" test.

In determining whether conduct meets the substantial factor test, we look to the "proximity and foreseeability of the harm flowing from the actor's conduct, although it is not necessary that the actual consequences of a defendant's negligence should have been foreseen." *Scoggins*, 560 N.W.2d at 567 (quoting *Kelly v. Sinclair Oil Corp.*, 476 N.W.2d 341, 349 (Iowa 1991)). As our supreme court has stated:

> If upon looking back from the injury, the connection between the negligence and the injury appears unnatural, unreasonable, and improbable in the light of common experience, such negligence would be a remote rather than a proximate cause. If, however, by a fair consideration of the facts based upon common human experience and logic, there is nothing particularly unnatural or unreasonable in connecting the injury with the negligence, a jury question would be created.

Hollingsworth, 553 N.W.2d at 597 (quoting *Henneman v. McCalla*, 260 Iowa 60, 66-67, 148 N.W.2d 447, 451 (1967)).

We agree with the district court, as to defendant Spitler, the facts reflect an "indirect and remote occurrence rather than a natural, reasonable and probable result" of Spitler's negligent acts. Spitler could not have foreseen the chain of events occurring after the intersection collision. Therefore, we affirm the district court's ruling insofar as it pertains to defendant Spitler.

The alleged negligence of defendant Goodpaster did not end at the intersection collision. After the collision, the bus driven by Goodpaster veered out of control and hit the Hood's home. A gas line to, or near, the house was

affected. After being awakened by the collision, James Hood rushed out of bed and down the stairs to help his wife evacuate their children from the home. While fleeing the home, he caught his hand in the stairway railing and broke a bone in his hand. Goodpaster's conduct in losing control of the bus and veering into the Hood's house increased the risk someone inside the house would be injured. It is unnecessary the actual consequences of Goodpaster's negligence should have been foreseen. Goodpaster may not have foreseen exactly how James Hood would injure himself, but the risk of harm to someone in the house as a result of Goodpaster's actions was foreseeable. Accordingly, we reverse the district court's ruling as it pertains to defendants Goodpaster and MIDAS and remand to the district court for proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.