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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-247 / 88-1718

340

MARIALICE McVEIGH,

Plaintiff-Appellant,

vs.

GREYHOUND LINES, INC.,

Defendant-Appellee.

Appeal from the Iowa District Court for Story County, Mark S. Cady, Judge.

The plaintiff, who sued Greyhound after she fell and broke her ankle during a stop on a long bus trip, appeals from an adverse verdict following a trial to the bench. She contends the trial court erred in finding: Greyhound did not breach its duty of care, her injuries were not proximately caused by any negligence on Greyhound's part, and she was more than fifty percent responsible for her own injuries. **AFFIRMED.**

James J. Katcher of Newbrough, Johnston, Brewer, Maddux & Nadler, Ames, for plaintiff-appellant.

Diane M. Stahle and Jeffrey M. Pierick of Davis, Hockenberg, Wine, Brown, Koehn & Shors, Des Moines, for defendant-appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

The plaintiff, Marialice McVeigh, who suffers from multiple sclerosis and has difficulty walking, boarded a Greyhound bus in Ames for a trip to Las Vegas. At Omaha, the bus took on a group of rowdies whose loud, intoxicated, and bothersome behavior during the rest of the trip, frightened the plaintiff and prevented her from sleeping. At Beaver, Utah, after the plaintiff had been traveling without sleep for about 30 hours, the bus made a stop to allow the passengers to obtain food and to change buses. The bus was parked at a location which required the passengers to walk approximately sixty feet across a gravel parking lot to the restaurant. While proceeding across this lot with the help of two companions, the plaintiff fell and broke her ankle. She subsequently brought suit against Greyhound alleging the bus company's negligence in not controlling the disruptive behavior of the rowdy passengers, had left her in a frightened and fatigued condition, which aggravated her preexisting condition of multiple sclerosis, and foreseeably led to her fall. After a bench trial, the district court found in favor of Greyhound.

On appeal, the plaintiff contends that the trial court erred in finding: 1) there was no breach of duty because the plaintiff's injuries were not reasonably foreseeable; 2) the rowdy behavior on the bus was not a proximate cause

of the injuries; and, 3) even assuming Greyhound was negligent and its negligence was a proximate cause of the injuries, the plaintiff's own fault exceeded fifty percent of the fault in this action. The court's scope of review is for correction of errors at law. Iowa R. App. P. 4.

I. **Standard of Care.** Plaintiff contends the trial court erred by applying only an ordinary standard of care to defendant. A common carrier is obligated to exercise a high degree of care for the safety of its passengers. Tiemeyer v. McIntosh, 176 N.W.2d 819, 822 (Iowa 1970).

> "The carrier's duty stops just short of insuring the safety of the passenger, and the common expressions of the law on the subject are that the carrier is bound to protect the passenger as far as human care and foresight will go, and that the carrier is liable for slight negligence."

Ravreby v. United Airlines, Inc., 293 N.W.2d 260, 264 (Iowa 1980), quoting Murray v. Cedar Rapids City Lines, 242 Iowa 794, 800, 48 N.W.2d 256, 260 (1951). This high degree of care must be exercised in foreseeing, as well as in guarding against, danger. Doser v. Interstate Power Company, 173 N.W.2d 556, 558 (Iowa 1970). A lower standard of care is often applied when the common carrier is involved in something other than the actual transit of passengers. 14 Am. Jur. 2d, Carriers § 922 (1964).

The trial court alluded to both of these standards of care and regardless of which it applied, it correctly found plaintiff's injury was neither foreseeable nor proximately caused by defendant's alleged negligence. Subject to the

high standard of care applied to common carriers, a carrier's liability extends only to dangers which reasonably and naturally may be anticipated. Murray, 242 Iowa at 800, 48 N.W.2d at 260.

Plaintiff argues that subject to the high degree of foresight which is to be exercised by a carrier, defendant should have foreseen the atmosphere on its bus would have caused stress, fear, and exhaustion to its passengers which would have impaired their ability to walk after they left the bus. Plaintiff claims the rowdy behavior of seven or eight other passengers frightened her and caused her a great deal of stress. She asserts this fear and stress prevented her from sleeping, and when she arrived at Beaver, Utah, this stress aggravated her preexisting condition of multiple sclerosis and caused her to fall during her walk between the bus and the restaurant.

Defendant was aware plaintiff was traveling pursuant to its "Helping Hand" program, and a prerequisite for this travel was plaintiff's submission to defendant of a statement from her doctor declaring she needed a companion for physical assistance in bus travel. Contrary to plaintiff's assertion, the fact that she was traveling under the "Helping Hand" program did not make it certainly foreseeable she would have difficulty walking after the commotion on the bus. Defendant was aware plaintiff would need assistance while traveling; it was not aware, however,

plaintiff's balance and ability to walk would be impaired by stress and tiredness.

While many risks of harm could be anticipated as a result of defendant's failure to control the conduct of its passengers, the alleged event causing injury in this case is not one. Plaintiff had disembarked from the bus and was approximately forty feet away from the bus when she fell. It simply was not reasonably foreseeable that the disturbing atmosphere on the bus would later cause plaintiff to turn her ankle and fall when walking towards a restaurant.

Plaintiff also contends Greyhound failed to exercise a high degree of care in foreseeing that parking its bus sixty feet from the restaurant would unnecessarily force the passengers to travel a greater distance, and due to their exhausted condition, would increase the probability of a fall. Plaintiff's mere claim that the bus "could have" parked closer, falls short of establishing as a matter of law that defendant was negligent. The trial court did not err in not finding defendant was negligent.

II. **Proximate Cause.** The trial court was also correct in finding defendant's failure to reasonably control the loud and bothersome conduct of its passengers was not the proximate cause of plaintiff's fall. "Proximate cause" is any cause which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the

result complained of and without which the result would not have occurred. Koeller v. Reynolds, 344 N.W.2d 556, 559 (Iowa App. 1983). To constitute a proximate cause of harm to another, a party's conduct must have been a substantial factor in bringing about the harm. Iowa Elec. Light and Power Co. v. General Elec. Co., 352 N.W.2d 231, 234 (Iowa 1984).

When the trial court has found a party has failed to carry her burden on an issue, we will not interfere on appeal unless we find the party carried her burden as a matter of law. Anthony v. State, 374 N.W.2d 662, 664 (Iowa 1985). The issue of proximate cause can only be decided as a matter of law when the facts are so clear and undisputed, and the relation of cause and effect is so apparent to every candid mind, that but one conclusion can be fairly drawn therefrom. Berhow v. Kraack, 195 N.W.2d 379, 385 (Iowa 1972).

The trial court found plaintiff had failed to prove by a preponderance of evidence that defendant's conduct in failing to control the passengers was a proximate cause of the injury. The circumstances of plaintiff's fall: she was disembarking from a bus after approximately thirty hours of travel; it was 2:30 a.m.; the surface she was to walk across was partially gravel in nature; and she suffered from multiple sclerosis, are all more likely to have contributed to her fall than the prior behavior of her

fellow passengers. We cannot find the trial court erred as a matter of law, in finding no proximate cause in this case.

III. **Apportionment of Fault.** Finally, though the trial court's findings with regard to foreseeability and proximate cause made it unnecessary for it to consider comparative fault, it did offer an alternative basis for its decision by finding plaintiff's fault exceeded fifty percent of the fault in this action. Plaintiff testified various drivers had been available to give her assistance at the various stops, but she had not used their services. She was aware of the gravel surface she had to cross in Beaver, Utah, and that she had difficulty in walking across such a surface. Despite this, plaintiff did not ask the driver to remove her wheelchair from the cargo compartment of the bus; rather she attempted to cross this surface on foot.

Plaintiff contends she should not, as a matter of law, be assessed more than fifty percent of the fault in this action. Our review of a fact finder's apportionment of fault is for substantial evidence. Cook v. State, 431 N.W.2d 800, 801 (Iowa 1988). Findings are supported by substantial evidence when a reasonable mind would accept it as adequate to reach a conclusion. Id.

Substantial evidence existed from which the trial court could have found plaintiff responsible for more than fifty

percent of her injuries. The decision of the trial court is affirmed.

AFFIRMED.