Circuit Court for Frederick County
Case No. C-10-CV-18-000175

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1406

September Term, 2019

HASAN MUHAMMAD

v.

ANNIE LOUISE BOLYARD

Graeff,
Gould,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: July 29, 2021

Four drivers were involved in two successive automobile collisions on Interstate 70 ("I-70") in Frederick County. The first collision involved two of those motorists, Hasan Muhammad, appellant, and Annie Louise Bolyard, appellee, who thereafter filed negligence actions against each other in the Circuit Court for Frederick County. The second collision also involved Michael David Lebar and Kristen Rose Sanner, who were joined in those actions, which subsequently were consolidated.

A jury trial was held on the issue of liability only. At the beginning of trial, a stipulation was entered by all the other parties dismissing Mr. Lebar from the case. After the close of Mr. Muhammad's case, the circuit court granted judgment in favor of Ms. Sanner (and Ms. Bolyard), finding, as a matter of law, that Mr. Muhammad assumed the risk of the second collision. After the close of all the evidence, the circuit court entered judgment in favor of Mr. Muhammad as to the first collision, finding, as a matter of law, that Ms. Bolyard was negligent. The remaining claims went to the jury, which rendered a special verdict finding that both Mr. Muhammad and Ms. Bolyard were contributorily negligent as to the second collision.

Because Mr. Muhammad's medical expert had opined that his injuries were indivisible and attributable to what the expert regarded as a single event, Ms. Bolyard filed a motion for judgment, asserting that Mr. Muhammad's contributory negligence and assumption of the risk in the second collision barred him from any recovery. The circuit court granted that motion, and Mr. Muhammad now appeals from that judgment. He presents the following question for our review:

> Do the doctrines of contributory negligence and/or assumption of the risk preclude a Plaintiff from recovering for injuries sustained in an incident to which he did not contribute or assume any risk if the Plaintiff either contributed to or assumed the risk of injury from an independent incident that caused an indivisible injury?

We hold that Ms. Bolyard may not raise the defenses of contributory negligence or assumption of the risk, which applied only to the second collision, to bar recovery for the first collision. We, therefore, reverse and remand to the circuit court for further proceedings.

BACKGROUND

On a Monday evening in June 2017, during rush hour, Mr. Muhammad was traveling eastbound in the left lane (lane 1) on Interstate 70 ("I-70") near the interchange with southbound Interstate 270 ("I-270") in Frederick County. At the same time, Ms. Bolyard was traveling in the same direction on I-70 but in the next lane to the right (lane 2). As Ms. Bolyard attempted to change lanes to her left, her vehicle struck Mr. Muhammad's vehicle on its right side because she did not see it. Mr. Muhammad stopped abruptly, with part of his vehicle in travel lane 1.[1] Ms. Bolyard pulled over immediately behind him, with part of her vehicle also in lane 1.

[1] All parties appeared to agree that, at least initially, Mr. Muhammad stopped his vehicle in the left-most travel lane. He claimed that he subsequently moved it, prior to the second collision, so that its left wheels were on the shoulder but most of the vehicle remained in the roadway. Under the procedural posture of this appeal, we assume that is true.

While Mr. Muhammad and Ms. Bolyard were exchanging insurance information,[2] a third vehicle, driven by Michael David Lebar, approached but was able to stop without striking either of the other vehicles. Shortly after that, a vehicle driven by Kristen Rose Sanner approached but was unable to stop in time. Ms. Sanner's vehicle struck Mr. Lebar's vehicle at high speed, causing that vehicle to strike Ms. Bolyard, who, at that moment, was outside of her vehicle near its left rear quarter panel.[3]

Mr. Muhammad filed a complaint, in the Circuit Court for Frederick County, alleging that both Ms. Bolyard and Ms. Sanner had been negligent and demanding damages. Ms. Bolyard filed a complaint, alleging that both Mr. Muhammad and Mr. Lebar had been negligent and also demanding damages. Several weeks later, Ms. Bolyard filed an answer to Mr. Muhammad's complaint; and thereafter, she filed an amended complaint, adding Ms. Sanner as a defendant. Mr. Muhammad filed an answer to Ms. Bolyard's complaint as well as a cross claim against Mr. Lebar and Ms. Sanner. Mr. Lebar and Ms.

[2] Mr. Muhammad acknowledged that he verbally abused Ms. Bolyard, yelling at her (in Ms. Bolyard's paraphrase) "what the f--- is wrong with you, you stupid bitch, didn't you f---ing see me." Ms. Bolyard testified that he reached into her car to attempt to seize her cell phone, and Mr. Lebar appeared to corroborate her, stating that he observed Mr. Muhammad make a hand motion toward her driver's side window.

[3] Mr. Muhammad claimed that he too was injured during the second collision. Ms. Sanner, however, testified that Mr. Muhammad was upright after the second collision and did not appear to be injured; instead, he was "jumping around" and screaming at her that she had "killed" Ms. Bolyard. She further testified that only after an ambulance had responded to the scene did Mr. Muhammad fall to the ground and claim that he was injured. Given the court's finding of assumption of the risk and the jury's verdict of contributory negligence with respect to the second accident, Mr. Muhammad is barred from any recovery for injuries he purportedly sustained in the second collision.

Sanner, in turn, filed, in addition to their answers, cross claims against Mr. Muhammad. The circuit court entered an order consolidating the two actions.

Notably, by the time discovery had been completed, Mr. Muhammad's designated expert, Joshua Macht, M.D., filed a statement opining that Mr. Muhammad had suffered a single, indivisible injury as a result of the "accident."

The parties agreed to bifurcate the proceedings, and a jury trial was held on the issue of liability only. At the beginning of trial, by agreement of all the other parties, a stipulation was entered dismissing Mr. Lebar from the case. At the close of Mr. Muhammad's case-in-chief, the circuit court granted Ms. Sanner's motion for judgment (in which Ms. Bolyard joined) as to the second accident, finding as a matter of law that Mr. Muhammad had assumed the risk. At the close of all the evidence, the circuit court granted a motion for judgment as to the first accident in favor of Mr. Muhammad and against Ms. Bolyard. At the same time, Ms. Bolyard moved for judgment, asserting that, because Mr. Muhammad had assumed the risk of the second accident, and his designated expert, Dr. Macht, opined that he had suffered a single, indivisible injury as a result of an accident, he was barred from recovery for the first accident. The circuit court denied that motion without prejudice.

The jury returned a special verdict finding both Mr. Muhammad and Ms. Bolyard negligent as to the second accident. Based upon that verdict, the circuit court rendered judgment in favor of Mr. Muhammad on Ms. Bolyard's claim and denied Mr. Muhammad's cross claim against Ms. Sanner. Finally, the circuit court declared that "the

sole remaining" issue was Mr. Muhammad's claim for damages against Ms. Bolyard for the first accident.

Ms. Bolyard renewed her prior motion for judgment, based upon Mr. Muhammad's claim that he had suffered a single, indivisible injury as a result of the two accidents but was contributorily negligent and had assumed the risk of the second accident. After Mr. Muhammad filed an opposition, the circuit court entered an order granting Ms. Bolyard's motion for judgment and dismissing Mr. Muhammad's remaining claims with prejudice. This timely appeal followed.

DISCUSSION

Standard of Review

"We review, without deference, the trial court's grant of a motion for judgment in a civil case." *District of Columbia v. Singleton*, 425 Md. 398, 406 (2012) (citations omitted). In other words, we review the circuit court's decision "to determine whether it was legally correct." *Barton v. Advanced Radiology P.A.*, 248 Md. App. 512, 523 (2020) (citation and quotation omitted).[4] "We conduct the same analysis that a trial court should make when considering the motion for judgment." *Singleton*, 425 Md. at 406-07. In doing so, we construe "the evidence and reasonable inferences drawn from the evidence in the light most favorable to the non-moving party." *Id.* at 407 (quoting *Thomas v. Panco Mgmt. of Md., LLC*, 423 Md. 387, 393 (2011)).

[4] Strictly speaking, *Barton* addressed the standard of review applicable to a trial court's ruling on a motion notwithstanding the verdict, but the same standard applies to review of a trial court's ruling on a motion for judgment. *Mahler v. Johns Hopkins Hosp., Inc.*, 170 Md. App. 293, 317 (2006).

Parties' Contentions

Mr. Muhammad contends that Ms. Bolyard and Ms. Sanner were concurrent tortfeasors. Therefore, he maintains, both Ms. Bolyard and Ms. Sanner are (or, in Ms. Sanner's case, would be) jointly and severally liable for his entire damages. Application of assumption of the risk and contributory negligence, as determined at trial, bars recovery from Ms. Sanner only. Accordingly, he concludes, Ms. Bolyard cannot avail herself of the shields that belong only to Ms. Sanner, and Ms. Bolyard is therefore liable for all Mr. Muhammad's damages. The circuit court's ruling to the contrary, he asserts, is an unwarranted expansion of the contributory negligence rule that is contrary to Maryland law.

Ms. Bolyard counters that Mr. Muhammad, by his own expert's admission, sustained an indivisible injury. Therefore, she contends, because the court found that he had assumed the risk of the second accident, and the jury found that he had been contributorily negligent in the second accident, Mr. Muhammad is barred from any recovery whatsoever.

Analysis

The parties largely talk past each other. Mr. Muhammad fixates on the notion that Ms. Bolyard is a "joint tortfeasor" who cannot assert the shields of assumption of risk and contributory negligence to avoid liability to him for his indivisible damages sustained as a result of the accidents. Ms. Bolyard, for her part, insists that, because Mr. Muhammad was contributorily negligent and assumed the risk of the second collision, and his damages are concededly indivisible, he is barred from recovery for both the first and second collisions.

Each party, in effect, proceeds on the assumption that there was a single accident.[5] That leads us to consider the question of causation.

> There are four elements to a negligence claim:
>
> (1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.

Wash. Metro. Area Trans. Auth. v. Seymour, 387 Md. 217, 223 (2005) (citations and quotations omitted). We focus initially on the fourth element, proximate cause.

"It is a basic principle that negligence is not actionable unless it is a proximate cause of the harm alleged." *Pittway Corp. v. Collins*, 409 Md. 218, 243 (2009) (citation and quotation omitted) (cleaned up). "Proximate cause involves a conclusion that someone will be held legally responsible for the consequences of an act or omission." *Id.* (citation and quotation omitted). "To be a proximate cause for an injury, the negligence must be 1) a cause in fact, and 2) a legally cognizable cause." *Id.* (citation and quotation omitted). Thus, "before liability may be imposed upon an actor, we require a certain relationship between the defendant's conduct and the plaintiff's injuries." *Id.* at 243-44.

There are two steps in that analysis. First, we determine whether an actor's negligence is a cause-in-fact of the plaintiff's injury. *Id.* at 244. Second, we determine

[5] Mr. Muhammad notes in the question presented that the two accidents were "independent," but his analysis then shifts to an indivisible injury for which he claims the right to recover damages.

"whether the defendant's negligent actions constitute a legally cognizable cause of the complainant's injuries." *Id.* at 245.

"Causation-in-fact concerns the threshold inquiry of whether defendant's conduct actually produced an injury." *Id.* at 244 (citation and quotation omitted). There are two tests for causation-in-fact, depending upon whether a single negligent act is at issue or there are "two or more independent negligent acts" that may have contributed to the plaintiff's injury. *Id.* The "but for" test applies where there is a single negligent act at issue, whereas the substantial factor test applies where there are two or more independent negligent acts that may have contributed to the plaintiff's injury. *Id.* The "but for" test simply asks whether, but for the defendant's negligent act, the plaintiff would have sustained his or her injury. *Id.* The substantial factor test, on the other hand, asks, in circular fashion, whether "it is more likely than not that the defendant's conduct was a substantial factor in producing the plaintiff's injuries." *Id.* (citation and quotation omitted). That test, in turn, is based upon Restatement (Second) of Torts §§ 431 and 433 (1965), the latter of which sets forth a number of factors to be considered in determining "whether the actor's conduct is a substantial factor in bringing about harm to another." *Pittway*, 409 Md. at 244-45.

Section 433 provides:

> The following considerations are in themselves or in combination with one another important in determining whether the actor's conduct is a substantial factor in bringing about harm to another:
>
> (a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it;
>
> (b) whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has

> created a situation harmless unless acted upon by other forces of which the actor is not responsible;
>
> (c) lapse of time.

If causation-in-fact has been established, the analysis turns to the question of "whether the defendant's negligent actions constitute a legally cognizable cause of the complainant's injuries." *Pittway*, 409 Md. at 245. Legal causation "is a policy-oriented doctrine designed to be a method for limiting liability after cause-in-fact has been established." *Id.* (citations and footnote omitted). "The question of legal causation most often involves a determination of whether the injuries were a foreseeable result of the negligent conduct." *Id.* at 246. It also may involve other considerations such as "the remoteness of the injury from the negligence and the extent to which the injury is out of proportion to the negligent party's culpability." *Id.* (citation and quotation omitted) (cleaned up).

"In applying the test of foreseeability . . . it is well to keep in mind that it is simply intended to reflect current societal standards with respect to an acceptable nexus between the negligent act and the ensuing harm, and to avoid the attachment of liability where, in the language of Section 435(2) of the Restatement (Second) of Torts (1965), it appears 'highly extraordinary' that the negligent conduct should have brought about the harm." *Henley v. Prince George's Cnty.*, 305 Md. 320, 334 (1986). Section 435(2) provides:

> The actor's conduct may be held not to be a legal cause of harm to another where after the event and looking back from the harm to the actor's negligent conduct, it appears to the court highly extraordinary that it should have brought about the harm.

Comment c to that section further explains:

> Where it appears to the court in retrospect that it is highly extraordinary that an intervening cause has come into operation, the court may declare such a force to be a superseding cause. Analytically, the highly extraordinary nature of the result which has followed from the actor's conduct (with or without the aid of an intervening force) indicates that the hazard which brought about or assisted in bringing about that result was not among the hazards with respect to which the conduct was negligent.

(Citations omitted).

Neither party disputes (and in fact the jury apparently found) that Ms. Bolyard's negligent act, sideswiping Mr. Muhammad's vehicle while attempting to change lanes, was the sole legal cause of the first accident. But that negligent act was neither a substantial factor in bringing about the second collision, nor was it a legal cause of that collision. Rather, the chain of events resulting in the second collision began when Mr. Muhammad abruptly stopped his vehicle in the fast lane of I-70.[6] Ms. Bolyard's initial negligent act was not "in continuous and active operation up to the time of the" second collision; rather, with respect to the second collision, the situation was harmless until "acted upon by other forces of which the actor is not responsible," namely, Mr. Muhammad's negligent act of stopping abruptly in the fast lane of I-70.[7] Restatement (Second) of Torts § 433(b).

[6] It was disputed whether Mr. Muhammad thereafter moved his vehicle prior to the second collision. But even if we assume that he did, he acknowledged that only the two left wheels were over the yellow line and thus off the roadway. Although he claimed that it was unsafe to move any further off the road, photographs taken shortly after the accident depict several other vehicles, all of which were able to move entirely off the roadway. And, in any event, the jury found that Mr. Muhammad was contributorily negligent in leaving his vehicle where he did.

[7] Ms. Bolyard committed a second negligent act that contributed to the second accident (leaving her vehicle on the roadway), as the jury found, but that has no bearing on (continued)

Moreover, even if Ms. Bolyard's initial negligent act were assumed to be a substantial factor in bring about the second collision, it was not a legally cognizable cause of that collision. Mr. Muhammad's negligent act of stopping in the fast lane of I-70 was not reasonably foreseeable and was, therefore, a superseding cause, breaking the chain of causality between the first and second collisions.

Thus, although the damages arising from the overall incident are inextricably bound together (at least on the state of this record), there were, nonetheless, two separate accidents, as Mr. Muhammad acknowledges. The court's ruling, that Mr. Muhammad assumed the risk of the second accident, and the jury's verdict, that he was contributorily negligent in contributing to that accident, bar him from recovery for that accident.

All that remains is the first accident, for which the jury found Ms. Bolyard liable. Mr. Muhammad's assumption of the risk and contributory negligence in the second accident have no bearing on the first accident, and Ms. Bolyard cannot raise them as a shield. But Mr. Muhammad bears the burden of proving his damages. Given his expert's opinion, that may prove to be a difficult burden as to his medical damages, but there may be other damages attributable solely to the first accident (for example, property or nominal[8] damage). We reverse the judgment of the circuit court and remand for further proceedings.

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the analysis. By the time she stopped her vehicle on the roadway, the chain of causality between the first and second collisions already had been broken.

[8] It might seem that because damages are an element of a negligence claim, *Washington Metro. v. Seymour*, 387 Md. at 228, we should, given the absence of evidence of damages, affirm the judgment. In the second half of this bifurcated trial, however, the court or jury could award nominal damages. *See Mason v. Wrightson*, 205 Md. 481, 488-
(continued)

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

89 (1954), which cites two cases, *Coca Cola Bottling Works v. Carton*, 186 Md. 156 (1946), and *Salisbury Coca-Cola Bottling Co. v. Lower*, 176 Md. 230 (1939), applying the same rule in negligence cases.