

THIRD DIVISION  
DECEMBER 31, 2013

No. 1-12-1566

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

MARY P. O'NEILL and LIAM P. O'NEILL,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County.
	)	
v.	)	
	)	
GENERAL MOTORS CORPORATION, et al.,	)	
	)	
Defendants,	)	
	)	
DELPHI CORPORATION, a corporation, DELPHI	)	
DELCO ELECTRONIC SYSTEMS, INC., a corporation,	)	11 L 11068
DELPHI PACKARD ELECTRIC SYSTEMS,	)	
a corporation, COMMUNITY MOTORS, INC.,	)	
a corporation, individually and d/b/a COMMUNITY	)	
PONTIAC, GMC TRUCK,	)	Honorable
	)	Drella C. Savage,
Defendants-Appellees.	)	Judge Presiding.

---

JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Hyman and Justice Neville concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendants could not reasonably foresee that the failure of an electronic control

module, which caused plaintiffs' vehicle to stop on the road, would likely result in plaintiffs' being injured by an intoxicated driver.

¶ 2 The plaintiffs, Mary and Liam O'Neill, filed a complaint against the defendants, Delphi Corporation, Delphi Delco Electronic Systems Inc., Delphi Automotive Systems<sup>1</sup> (collectively, Delphi), Community Motors, Inc. d/b/a Community Pontiac, GMC Truck (Community Motors), General Motors Corporation<sup>2</sup> and Delco Remy International, Inc.,<sup>3</sup> alleging strict product liability, negligence and breach of express and implied warranties of merchantability. The plaintiffs alleged that their 2000 GMC Jimmy sport utility vehicle, purchased from Community Motors, suddenly and unexpectedly stopped on the road because of the failure of an electronic control module, which was manufactured by Delphi, and that as a result of plaintiffs' vehicle stopping on the road, plaintiffs were injured when a vehicle driven by an intoxicated driver ran into the rear of their vehicle. Delphi and Community Motors filed separate motions for summary judgment arguing that they were not the proximate cause of plaintiffs' injuries. The circuit court agreed with the defendants and granted the motions for summary judgment.

¶ 3 On appeal, the plaintiffs argue that the circuit court erred in granting defendants' motions for summary judgment because the defective electronic control module which caused their vehicle to stop on the road was the proximate cause of the accident and their resulting injuries.

---

<sup>1</sup>The complaint named Delphi Packard Electric Systems as a defendant. However, the record indicates that Delphi Automotive Systems is the correct defendant.

<sup>2</sup>General Motors Corporation is not a party to this appeal.

<sup>3</sup>On October 31, 2003, the plaintiffs filed a motion to voluntarily dismiss Delco Remy International, Inc. without prejudice pursuant to section 2-1009 of the Code of Civil Procedure. 735 ILCS 5/2-1009 (West 2010). The circuit court granted the motion.

No. 1-12-1566

We find that the defendants' conduct, manufacturing and selling a defective electronic control module did not furnish a condition making possible the injuries caused by the independent intervening act of an intoxicated driver. Accordingly, the circuit court did not err when it granted the defendants' motions for summary judgment.

¶ 4

#### BACKGROUND

¶ 5 The material facts in this case are not in dispute. Liam O'Neill purchased a 2000 GMC Jimmy sport utility vehicle in February of 2001 from Community Motors, a car dealership located in Oak Forest, Illinois. On July 3, 2001, Mary O'Neill, Liam O'Neill's wife, was driving the vehicle home from a volleyball game when the vehicle suddenly came to a stop in the eastbound lane of LaPorte Road in Mokena, Illinois. LaPorte Road is a paved two-lane road with a speed limit of 35 miles per hour. Mary made several attempts to restart the vehicle, but it would not start, so she called her husband, Liam. Liam told Mary to call the motor club and ask them to send a tow truck to remove the vehicle from the road. After Mary called the motor club, she called Liam again and he told her that he would come and stay with her until the tow truck arrived. Mary turned on the hazard lights and sat in the vehicle for approximately 10-20 minutes while she waited for Liam to arrive. Liam arrived on the scene and attempted to re-start the vehicle, but the vehicle did not start. Liam and Mary attempted to push the vehicle off the road into a nearby parking lot. Liam steered the vehicle and pushed it from the driver's side while Mary pushed the vehicle from behind. While Mary and Liam were pushing the vehicle off the road, a vehicle driven by Raymond Martin collided with the rear of plaintiffs' vehicle, knocking Liam to the ground and crushing Mary's legs between the two vehicles. Liam sustained bruises

No. 1-12-1566

while Mary's two legs were amputated above the knee.

¶ 6 Mary and Liam testified in their depositions that other cars had passed them without incident, that the pavement was dry and smooth, that the weather was clear, and that there was no road construction or any obstacle on the road. According to Mary's testimony, there were two street lamps, about 300 feet apart, on LaPorte road in the vicinity of the accident.

¶ 7 Martin testified in his deposition that prior to the accident, he had consumed ten bottles of beer between 8:30 p.m. and 10:30 p.m. in the clubhouse at Sanctuary golf course, a municipal golf course operated by the city of New Lenox, Illinois. The Mokena police department prepared an "Alcohol And/Or Drug Influence Report" which stated that Martin's face was flush, his eyes were bloodshot and watery, and there was a strong odor of alcohol on his breath. A blood alcohol test was performed on Martin and the test revealed that Martin had a blood alcohol concentration of 0.165. Martin later pled guilty to aggravated driving under the influence and received 36 months probation, which included a sentence of 180 days in jail.

¶ 8 In 2002, Mary and Liam filed suit against Martin and the New Lenox park district under theories of negligence and Dram Shop Act liability, respectively. The parties later agreed to a settlement.

¶ 9 On June 27, 2003, Mary and Liam filed a 12 count complaint against Delphi, Community Motors and the other parties named herein, alleging strict product liability, negligence and breach of express and implied warranties of merchantability. The plaintiffs alleged that their vehicle suddenly and unexpectedly stalled because of the failure of one of its component parts, an electronic control module, manufactured by Delphi, installed by General Motors and sold by

No. 1-12-1566

Community, that the design and manufacture of the vehicle rendered it unsafe, that failure of the electronic control module caused the vehicle to stall placing the plaintiffs in danger, and that as a proximate result of the stopped vehicle, plaintiffs were injured after they were struck by another vehicle.

¶ 10 On February 9, 2009, Delphi filed a motion for summary judgment and argued that the failure of the electronic control module and the resultant stalling of the vehicle supplied a mere condition for the accident, but it was not the proximate cause of plaintiffs' injuries. Delphi also argued that it had no duty to protect others from the criminal acts of third parties and that the harm plaintiffs suffered was not legally foreseeable. Community Motors also filed a motion for summary judgment raising arguments similar to Delphi's.

¶ 11 On May 10, 2012, the circuit court held a hearing on defendants' motions for summary judgment. The circuit court did not decide the duty issue because it found that the disposition of the case hinged on the question of proximate cause. The court found that the defendants' conduct created the cause and may have been the cause in fact but not the legal cause of plaintiffs' injuries. Accordingly, the circuit court granted defendants' motions for summary judgment.

¶ 12 On May 24, 2010, the court entered a Rule 304(a) finding (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)). Plaintiffs filed this appeal.

¶ 13 ANALYSIS

¶ 14 A trial court is permitted to grant summary judgment only if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law.

No. 1-12-1566

*Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). We review a trial court's order that grants a motion for summary judgment *de novo*. *Thompson*, 241 Ill. 2d at 438.

¶ 15 The primary issue raised by the plaintiffs on appeal is whether the defective electronic control module which caused plaintiffs' vehicle to stop on the road was the proximate cause of the injuries they sustained when Martin, an intoxicated driver, collided with their vehicle as they attempted to push the vehicle off the road. The plaintiffs also argue on appeal that because the determination of proximate cause is usually a question of fact for the jury to decide, this court should, at the very least, vacate the order granting defendants' motion for summary judgment and remand to the circuit court for a jury to decide whether the defendants' actions were the proximate cause of their injuries.

¶ 16 To recover damages based on negligence, the plaintiff must allege and prove that the defendant owed a duty to the plaintiff, that defendant breached that duty, and that the breach was the proximate cause of plaintiff's injuries. *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 256 (1999). The circuit court did not address the duty issue because it found that the disposition of the case rested on the issue of proximate cause. We may assume the existence of a duty and its breach for the sake of discussion in order to address the proximate cause issue.

*Abrams v. City of Chicago*, 211 Ill. 2d 251, 257 (2004). While the issue of proximate cause is ordinarily a question for the jury to decide, it is well settled that the lack of proximate cause may be determined as a matter of law by the court where the facts as alleged do not sufficiently demonstrate both cause in fact and legal cause. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 395-96 (2004).

¶ 17 The term proximate cause describes two distinct requirements: cause in fact and legal cause, and both requirements must be met in order to establish proximate cause. *Simmons v. Garces*, 198 Ill. 2d 541, 558 (2002). "A defendant's conduct is a 'cause in fact' of the plaintiff's injuries only if that conduct is a material element and a substantial factor in bringing about the injury. *Abrams*, 211 Ill. 2d at 258. A defendant's conduct is a material element and a substantial factor in bringing about injury if, absent that conduct, the injury would not have occurred. *Galman*, 188 Ill. 2d at 258. Legal cause, by contrast is largely a question of foreseeability. *Abrams*, 211 Ill. 2d at 258. The relevant inquiry is whether the injury is of a type that a reasonable person would see *as a likely result* of his or her conduct. (Emphasis in original.) *Galman*, 188 Ill. 2d at 260 (citing *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 456 (1992)). Legal cause is established only if the defendant's conduct is so closely tied to the plaintiff's injury that he should be held legally responsible for it. *Simmons*, 198 Ill. 2d at 558. As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. *Young v. Bryco Arms*, 213 Ill. 2d 433, 446 (2004).

¶ 18 The *Galman* court reconciled the above-stated proximate cause precepts of *Lee* with a special subset of proximate cause cases involving injuries caused by the intervening acts of third persons. *Abrams*, 211 Ill. 2d at 259. In a negligence action where the plaintiff's injury results not from the defendant's negligence directly but from the subsequent, independent act of a third person, the test for proximate cause is whether the first wrongdoer reasonably might have anticipated the intervening efficient cause as a natural and probable result of the first party's own

negligence. *Galman*, 188 Ill. 2d at 257. The *Galman* court explained:

"If the negligence charged does nothing more than furnish a condition by which the injury is made possible, and that condition causes an injury by the subsequent, independent act of a third person, the creation of the condition is not the proximate cause of the injury. The test that should be applied in all proximate cause cases is whether the first wrongdoer reasonably might have anticipated the intervening efficient cause as a natural and probable result of the first party's own negligence." *Galman*, 188 Ill. 2d at 257.

¶ 19 The defendants essentially concede that the defective electronic control module was a cause in fact of the accident. But they argue that their conduct can in no way be considered the legal cause of the plaintiffs' injuries. Defendants maintain that Martin's criminal conduct of driving while intoxicated was the intervening cause that broke the casual connection between their conduct and the injury suffered.

¶ 20 A criminal act is an intervening, superseding cause of a plaintiff's injury and relieves the originally negligent defendant of liability, except where the defendant's acts or omissions create a condition conducive to a reasonably foreseeable intervening criminal act. *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 224 (1988). One ordinarily may presume that others will conduct themselves in a law abiding manner. *Beretta U.S.A. Corp.*, 213 Ill. 2d at 410.

¶ 21 The case of *Thompson v. The County of Cook*, 154 Ill. 2d 374 (1993) provides support for the defendants' argument that their conduct was not the proximate cause of plaintiffs' injuries. In *Thompson*, the driver of an automobile was driving while drunk, speeding, eluding the police and

No. 1-12-1566

disregarding traffic signs when he left the road at a curve killing the passenger in his car. The decedent's wife brought a negligence action against the county for failing to warn motorists adequately of the curve on the road where the accident occurred. *Thompson*, 154 Ill. 2d at 379.

The *Thompson* court noted that the "cause of the injury is that which actually produces it, while the occasion is that which provides an opportunity for causal agencies to act. If a defendant's negligence does nothing more than furnish the condition by which the injury is made possible, that negligence is not the proximate cause of the injury." *Thompson*, 154 Ill. 2d at 383. The

*Thompson* court also noted that proximate cause is absent where the independent acts of a third person breaks the causal connection between the alleged original wrong and the injury. When

the causal connection between the alleged original wrong and the injury is broken, the

independent act itself becomes a proximate or immediate cause. *Thompson*, 154 Ill. 2d at 383.

Thus, the *Thompson* court held, as a matter of law, that the county's failure to maintain a sign warning of the curve was not the proximate cause of the accident. Rather, the driver's

intervening acts were the sole proximate cause of the accident. *Thompson*, 154 Ill. 2d at 383.

¶ 22 Similarly in *Abrams*, the court concluded that proximate cause was lacking as a matter of law. In *Abrams*, the plaintiffs brought a negligence action against the city of Chicago to recover for injuries sustained in an automobile accident. The plaintiff, who was pregnant at the time of the occurrence, was experiencing labor pains 10 minutes apart and called 911 requesting an ambulance to take her to the hospital. *Abrams*, 211 Ill. 2d at 251. When the city refused to send an ambulance, Young, plaintiff's friend, agreed to take her to the hospital. While Young was driving to the hospital, she failed to stop at a red light at an intersection, held down her horn, and

went through the red light. *Abrams*, 211 Ill. 2d at 255. Young's car collided in the intersection with another vehicle driven by Jones. Jones was speeding and admitted that he had a beer, two double shots of rum, and crack cocaine before getting behind the wheel of his car. Jones also admitted that he was driving on a suspended license. Plaintiff was seriously injured in the collision and her baby died after delivery. The *Abrams* court found, as a matter of law, that the city could not have reasonably anticipated that its refusal to send an ambulance when plaintiff's labor pains were 10 minutes apart would likely result in plaintiff's friend running a red light at the same time that a substance-impaired driver was speeding through the intersection on a suspended license. *Abrams*, 211 Ill. 2d at 261-62. Accordingly, the court held that the city's refusal to send an ambulance was not the proximate cause of plaintiff's injuries. *Abrams*, 211 Ill. 2d at 262. See also *Briske v. Village of Burnham*, 379 Ill. 193, 199 (1942) (holding that the village's placement of a barricade across a vacated street was a condition, not the legal cause of an automobile colliding with a barricade, where the intervening efficient cause was the driver's negligence).

¶ 23 In this case, the undisputed facts reveal that on the night of the accident, there were lights on the street where the plaintiffs' car stopped, the hazard lights on plaintiffs' car were activated, the weather was clear, the road was free of obstructions, the pavement was dry, other drivers had passed plaintiffs' car without incident, but the driver who collided with the plaintiffs' car was driving while intoxicated. Martin's blood alcohol concentration was more than twice the statutory minimum for a person presumed to be under the influence of alcohol. See 625 ILCS 5/11-501 (West 2010) (stating that an individual is presumed to be under the influence when his or her blood alcohol concentration is 0.08 or greater). We note that while all traffic accidents are

to some extent remotely foreseeable (*Abrams*, 211 Ill. 2d at 262), the injuries suffered in this case were not the kind of injuries that were sufficiently foreseeable, because of the failure of an electronic control module, to satisfy the proximate cause analysis in *Abrams* and *Thompson*.

¶ 24 The defective electronic control module, which caused plaintiffs' vehicle to stop on the road, provided nothing more than a location where Martin's negligence came to fruition. See *Thompson*, 154 Ill. 2d at 383. We find that Martin's driving while intoxicated was the proximate cause of this accident. Therefore, we hold that the defendants could not reasonably foresee that the failure of the electronic control module would likely result in the plaintiffs being injured by Martin, an intoxicated driver.

¶ 25 Plaintiffs cite *Mack v. Ford Motor Co.*, 283 Ill. App. 3d 52 (1996) to support their position that the issue of proximate cause should be determined by a jury. We find the facts in *Mack* distinguishable from the facts in this case. In *Mack*, Cynthia Brettschneider, one of the plaintiffs, purchased a 1987 Ford Mustang from Wil-Shore Motor Sales, Inc. The vehicle came with an owner's manual which explained that the vehicle was equipped with a fuel inertia switch located in the baggage compartment/trunk which shuts off the electric fuel pump and fuel flow to the engine in the event of a major collision. To restart the vehicle the switch had to be manually reset. *Mack*, 283 Ill. App. 3d at 53-54. The Brettschneider family was traveling in a three car caravan on an interstate highway when Brian Brettschneider, who was driving the Mustang, attempted to pass a salt truck, lost traction on the slippery highway, and collided with another family vehicle. After Brian was unable to restart the Mustang, Brian and Penny pushed the Mustang on to the right shoulder. While Brian and Penny were standing on the highway near the

No. 1-12-1566

Mustang, a bus hit a Camaro, which spun out-of-control and landed on Penny causing her death. The Brettschneiders filed suit against Ford alleging products liability and negligence, relating to its design and location of the fuel cut-off switch, and against both Ford and Wil-Shore for their failure to warn of the existence and location of the fuel shut off switch and their failure to instruct the purchaser on how to disengage it. *Mack*, 283 Ill. App. 3d at 55. The *Mack* court found that Ford must be deemed to have designed the vehicle for the very fact situation presented in the case: the car becomes disabled after a collision that leaves the driver unable to start it and he is required to exit the vehicle on a highway and open the trunk before he can restart the vehicle. *Mack*, 283 Ill. App. 3d at 58. The *Mack* court found that the Ford owner's manual "anticipated a major collision." *Mack*, 283 Ill. App. 3d at 59. Therefore, the *Mack* court held that the trial court erred when it found that the collision disabling the 1987 Mustang was unforeseeable as a matter of law, and it reversed the trial court's order granting defendants' motion for summary. *Mack*, 283 Ill. App. 3d at 61.

¶ 26 Here, the defendants did not provide plaintiffs with a written manual which anticipated a collision or which explained the procedure plaintiffs should follow if their vehicle would not start because the electronic control module failed. Because there was no manual which explained the procedure to follow if the electronic control module failed, the accident in this case was not reasonably foreseeable to the defendants, and the defendants' conduct in manufacturing and selling a defective control module was not the legal cause of plaintiffs' injuries. Accordingly, we will not follow *Mack*.

¶ 27 Therefore, because our resolution of the proximate cause issue disposes of the entire

No. 1-12-1566

claim against the defendants, we need not address the parties' remaining argument of whether the defendants had a duty to protect the plaintiffs against the criminal acts of third parties.

¶ 28

#### CONCLUSION

¶ 29 We find that the defective electronic control module in plaintiffs' vehicle, manufactured by Delphi and sold by Community Motors, that caused plaintiffs' vehicle to stop on the road was not the proximate cause of the accident or of the plaintiffs' injuries. Therefore, we affirm the order of the circuit court that granted the defendants' motions for summary judgment.

¶ 30 Affirmed.