IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Carol Sallis,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 18 L 12197
	)	
Patrick G. Janicki, City of Chicago, and Anna M. Freemyer-Brown,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment is appropriate if there exists no question of material fact and the moving party is deserving of judgment as a matter of law. In this multi-vehicle collision, there remains a question of fact as to whether one or more of the defendants' vehicles was or were traveling too fast for conditions and given one of the defendant's prior dangerous driving. For those reasons, the defendant's summary judgment motion must be denied.

Facts

On November 10, 2017, Carol Sallis, Patrick Janicki, and Anna Freemyer-Brown were involved in a three-vehicle collision on the southbound Dan Ryan Expressway (Interstate 94) near 83rd Street in Chicago. On November 8, 2018, Sallis filed a complaint against the two individual defendants as well as Janicki's employer, the City of Chicago. The skeletal allegations are that the defendants negligently operated and controlled their vehicles by driving in an unsafe manner, failing to obey traffic signals, driving at excessive speed, and failing to have their vehicles under control.

The case proceeded to written and oral discovery that filled out many facts missing from the complaint. For example, Janicki was driving a City-owned van while Freemyer-Brown was driving a Jeep. According to Sallis, she saw the van in the furthest left lane swerve, regain control, but not slow down. A couple of blocks further south, the van began to swerve a second time. Sallis slowed her vehicle and eased it onto the shoulder. When the van swerved the second time, Sallis heard it collide first with the Jeep and then, almost instantaneously, saw and heard the Jeep strike her own car.

Freemyer-Brown testified that it was snowing hard at the time of the collision. She described the weather conditions as a blizzard and the pavement as slick and wet. Despite those conditions, she drove about 45 miles per hour. When she saw the van lose control and slide sideways, she moved her Jeep into the furthest left lane and applied the brakes. She did not lose control of her car. Freemyer-Brown testified that the van hit the front passenger side of her Jeep and caused it to spin counterclockwise. Her Jeep continued to spin until it collided with Sallis's car.

Janicki testified that he felt the back end of the van swerve out towards the center lane of traffic. Soon after, the van turned perpendicular to the road. Another vehicle struck the van's door, and the van went into the median.

Analysis

The Code of Civil Procedure authorizes the issuance of summary judgment "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 a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Ed. of the City of Chicago*, 202 Ill.2d 414, 421, 432 (2002).

A defendant moving for summary judgment may disprove a plaintiff's case by showing that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action; this is the so-called "*Celotex* test." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only when the record indicates that the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate that he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spays, Inc.*, 2012 IL App (2d) 110624, ¶ 33. If the defendant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). To determine whether a genuine issue as to any material fact exists, a court is to construe the record strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *See Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20.

Freemyer-Brown argues that there exists no evidence that she had any role in proximately causing the accident. Proximate cause contains two elements: (1) cause in fact; and (2) legal cause. *See Krywin v. Chicago Trans. Auth.*, 238 Ill. 2d 215, 225-26 (2010). Cause in fact requires that the defendant's conduct be a material and substantial factor in bringing about the plaintiff's injury, or that, in the absence of the defendant's conduct, the injury would not have occurred. *Id.* at 226. If a plaintiff's injury results from a third person's independent conduct, the issue is whether that intervening cause is a type that a reasonable person would see as a likely result of the complained-of conduct. *See Young v. Bryco Arms*, 213 Ill. 2d 433, 449 (2004). Proximate cause is generally a question of fact to be decided by the trier of fact. *Fenton v. City of Chicago*, 2013 IL App (1st) 111596, ¶ 27.

When considering cause in fact, courts generally employ either the traditional "but for" test or the "substantial factor" test. *See Nolan v. Weil-McLain*, 233 Ill. 2d 416, 431 (2009). Under the "but for" test, "'a defendant's conduct is not the cause of an event if the event would have occurred without it.'" *Id.* (quoting *Thacker v. UNR Industries, Inc.*, 151 Ill. 2d 343, 354 (1992)). Under the "substantial factor" test, "the defendant's conduct is said to be a cause of an event if it was a material element and a substantial factor in bringing the event about." *Id.* (internal quotation marks omitted). The supreme court has clarified that if an injury results from the subsequent, independent act of a third party, the defendant's conduct may nevertheless remain a material and substantial element of the injury if the intervening cause was of a type that a reasonable person would see as likely or foreseeable based on the defendant's conduct. *See City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 407 (2004).

As to the second element, legal cause is present if the injury is of the type that a reasonable person would see as a likely result of his or her conduct. *First Springfield Bk. & Trust v. Galman*, 188 Ill. 2d 252, 257-58 (1999); *Simmons v. Garces*, 198 Ill. 2d 541, 558 (2002); *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004). In other words, legal cause involves an assessment of foreseeability. *Lee v. Chicago Trans. Auth.*, 152 Ill. 2d 432, 456 (1992). Courts ask whether the injury is the type that a reasonable person would see as a "likely result" of his or her conduct, or whether the injury is so "highly extraordinary" that imposing liability is not justified. *See id.*; *see also City of Chicago*, 213 Ill. 2d at 395 (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" (internal quotation marks omitted)).

As to cause in fact, Freemyer-Brown argues that Sallis has failed to establish any evidence that Freemyer-Brown's conduct caused the accident. Specifically, she argues there is nothing to show that driving slower would have prevented the accident. In support of that argument, Freemyer-Brown cites to *Turner v.*

Roesner. That case is off point, however, because the defendant in *Turner* had no advance warning of a co-defendant's dangerous driving. *Cf.* 193 Ill. App. 3d 482, 489 (2d Dist. 1990). Further, the court reversed a grant of summary judgment because an issue of fact existed as to whether the defendant drove too fast for conditions despite evidence that he drove 10-15 miles per hour below the posted speed limit. *See id.*

In contrast, here, Sallis testified that Janicki's van swerved twice. Had Freemyer-Brown slowed down after the first swerve, a reasonable inference could be drawn that her Jeep would have been further away from the van and, therefore, avoided the initial collision. Even if Freemyer-Brown did not see Janicki's van swerve the first time, had she been driving her Jeep slower than Janicki's van, the Jeep would not have been as physically close to the van, regardless of the weather and road conditions and regardless of whether the van went out of control.

As to foreseeability, it is reasonable to infer that driving at 45 miles per hour during blizzard conditions on a wet and slick pavement could have at least contributed to the accident. Again, had Freemyer-Brown not been driving as fast as the van or near it, a fact finder could infer that the accident would not have occurred at all or at least in a different way. That is enough to defeat summary judgment.

Conclusion

For the reasons stated above, it is ordered that:

1. Defendant Freemyer-Brown's summary judgment motion is denied; and
2. A case management conference in this matter will be held on Tuesday, June 16, 2020 at 9:00 a.m. in courtroom 2209.

Judge John H. Ehrlich

MAY 05 2020

Circuit Court 2075

John H. Ehrlich, Circuit Court Judge