REL: October 26, 2018

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2170633

Belinda Dennis

v.

William Bernard Blackwell and City of Birmingham

Appeal from Jefferson Circuit Court
(CV-15-904969)

MOORE, Judge.

Belinda Dennis appeals from a summary judgment entered by the Jefferson Circuit Court ("the trial court") in favor of William Bernard Blackwell and the City of Birmingham ("the

City") with regard to her negligence claims against Blackwell and the City. We affirm the trial court's judgment.

Procedural History

On December 30, 2015, Dennis filed a complaint against Blackwell and the City asserting, among other things, that Blackwell, a police officer employed by the City, had negligently "caused or allowed the vehicle he was operating ... to suddenly and improperly collide with [Dennis's] vehicle" and that, "[a]s a proximate consequence, [Dennis] suffered severe and permanent injuries." Dennis further alleged that the vehicle operated by Blackwell was "owned, leased, or otherwise controlled" by the City. On January 26, 2016, Blackwell and the City jointly filed an answer to the complaint.

On November 7, 2017, Blackwell and the City filed a motion for a summary judgment and a brief and evidentiary materials in support thereof. They argued, with regard to the negligence claim, that Blackwell was not liable for negligence because, they said, the accident had resulted from an "act of God." On November 28, 2017, Dennis filed a response to the summary-judgment motion, arguing, with regard to the

negligence claim, that "[a]n Act of God [did] not preclude [Blackwell] from his responsibility to act reasonably." Specifically, she argued, in part:

> "When circumstances worsened to the point that traveling would make it too dangerous to proceed, [Blackwell] had a choice to avoid the roadways altogether. However, he chose instead to continue his trip back to his home precinct. He failed to check underneath his vehicle prior to putting [the vehicle] in gear and did not notice that the icy conditions had worsened. He was aware of the worsening conditions and simply did not do enough to ensure it was safe for him to attempt to drive down the [steep] terrain of this particular roadway."

On November 30, 2017, the trial court entered a summary judgment as to fewer than all the claims. The trial court subsequently entered a summary judgment on February 12, 2018, disposing of the remaining claims, including the negligence claim. The trial court specifically found that "Blackwell's actions [did] not constitute a breach in his duty of care owed to ... Dennis."

On March 26, 2018, Dennis filed her notice of appeal to this court. On May 2, 2018, this court transferred the appeal to the Alabama Supreme Court for lack of appellate jurisdiction; that court transferred the appeal back to this court, pursuant to § 12-2-7, Ala. Code 1975.

Facts

Blackwell testified in his deposition that, on January 18, 2014, he left the North Precinct of the Birmingham Police Department around lunchtime and drove to a restaurant. He testified that the weather had been cloudy at that time. According to Blackwell, he ate lunch at the restaurant and, when he left the restaurant, it was sleeting but no ice or snow had accumulated on the roadways. He testified that he drove from the restaurant to the South Precinct of the Birmingham Police Department to visit with other officers and that, upon completion of that meeting, he left that precinct en route back to the North Precinct. Blackwell testified that, at that time, it had just started snowing and "freezing up," but, he said, he had felt like it was safe to drive and that he had not had any concerns about driving on the roadways at that point.

Blackwell testified that, when en route to the North Precinct, he had encountered a citizen whose vehicle was stuck; according to Blackwell, he stopped his vehicle, parked it on the roadway in the middle of a hill, and exited the vehicle to assist the citizen. He testified that, after

assisting the citizen for approximately 5 to 10 minutes, the roadways were collecting with ice and snow. He testified that he reentered his vehicle and put the vehicle into gear, at which time, he said, his vehicle began to slide. According to Blackwell, his vehicle slid, striking the vehicle of the citizen that he had assisted, which caused that vehicle to strike another vehicle, and then, he said, his vehicle collided with Dennis's vehicle, which was parked on the side of the roadway. According to Blackwell, a sheet of ice had formed under his vehicle while he had been assisting the citizen whose vehicle had been stuck. Blackwell testified that, after the incident report was completed on the scene of the accident, he had driven away without incident.

Dennis testified in her deposition that she had driven her vehicle down a steep hill and, that, while driving, she had noticed that the road was a little icy. She testified that she found a place to park her vehicle, that she parked her vehicle, and that she then put her head down to pray. According to Dennis, while she was praying, Blackwell's vehicle struck her vehicle.

Standard of Review

> "We review the trial court's grant or denial of a summary-judgment motion de novo, and we use the same standard used by the trial court to determine whether the evidence presented to the trial court presents a genuine issue of material fact. Bockman v. WCH, L.L.C., 943 So. 2d 789 (Ala. 2006). Once the summary-judgment movant shows there is no genuine issue of material fact, the nonmovant must then present substantial evidence creating a genuine issue of material fact. Id. 'We review the evidence in a light most favorable to the nonmovant.' 943 So. 2d at 795. We review questions of law de novo. Davis v. Hanson Aggregates Southeast, Inc., 952 So. 2d 330 (Ala. 2006)."

Smith v. State Farm Mut. Auto. Ins. Co., 952 So. 2d 342, 346 (Ala. 2006).

Discussion

On appeal, Dennis argues that the trial court erred in entering a summary judgment in favor of Blackwell and the City on her negligence claims because, she says, "[t]here are genuine issues of material fact as to whether the motor-vehicle accident was caused by an 'Act of God'" and because "[t]here is substantial evidence that the ... accident occurred due to Blackwell's lack of ordinary care."

"In its legal sense an 'act of God' applies only to events in nature so extraordinary that the history of climatic variations and other conditions in the particular locality

affords no reasonable warning of them." Bradford v. Stanley, 355 So. 2d 328, 330 (Ala. 1978). "'To be considered an "act of God," the force of nature causing the injury must have been the proximate cause of the injury, such that no other act could have prevented the result.'" Alabama Dep't of Pub. Health v. Lee, 236 So. 3d 863, 869 (Ala. Civ. App. 2017) (quoting hearing officer's findings of fact and conclusions of law, citing, in turn, Hill Air of Gadsden, Inc. v. Marshall, 526 So. 2d 15, 16-17 (Ala. 1988), and Bradford v. Universal Constr. Co., 644 So. 2d 864, 866 (Ala. 1994)). In National Biscuit Co. v. Wilson, 256 Ala. 241, 54 So. 2d 492 (1951), a case quoted by Dennis in her brief to this court, our supreme court discussed the issue of negligence in the context of driving on slippery roadways; the supreme court reasoned:

> "In 113 American Law Reports, on page 1002, is an extensive annotation on the subject of 'liability for damages or injuries by skidding motor vehicle.' It will be found by reading it that the courts generally hold that accidents produced exclusively by skidding on an ice-covered surface of a road, and which are not contributed to by nonobservance of some other precautionary requirement, will not support a cause of action based on negligence.
>
> "But it is also the general rule that one driving on a slippery highway must take that condition into consideration and if there is evidence tending to show that the skidding was

superinduced or accelerated by him, then it is for the jury to determine whether [or] not the skidding resulted from the driver's negligence. Hewitt's Adm'r v. Central Truckaway System, 302 Ky. 459, 194 S.W.2d 999 [(1946)]; Vunak v. Walters, 157 Pa. Super. 660, 43 A.2d 536 [(1945)]; Hill v. Bardis, 96 N.H. 14, 69 A.2d 1 [(1949)]; Brown v. Arnold, 303 Mich. 616, 6 N.W.2d 914 [(1942)]; Humphries v. Complete Auto Transit, Inc., 305 Mich 188, 9 N.W.2d 55 [(1943)]; Zeinemann v. Gasser, 251 Wis. 238, 29 N.W.2d 49 [(1947)]; Stanford v. Holloway, 25 Tenn. App. 379, 157 S.W.2d 864 [(1941)]; De Antonio v. New Haven Dairy Co., 105 Conn. 663, 136 A. 567 [(1927)]; Sigmon v. Mundy, 125 W.Va. 591, 25 S.E.2d 636 [(1943)]; Barret v. Caddo Transfer & Warehouse Co., 165 La. 1075, 116 So. 563, 58 A.L.R. 261 [(1928)]; Tutewiler v. Shannon, 8 Wash. 2d 23, 111 P.2d 215 [(1941)]; Zeigler v. Ryan, 65 S.D. 110, 271 N.W. 767 [(1937)]; 5 Am. Jur. 654, § 273; 1 Blashfield, Cyc. of Automobile Law and Procedure (Part 2), § 653, p. 518.

"In Kaczmarek v. Murphy, 78 Ohio App. 449, 70 N.E.2d 784, 786 [(1946)], the rule is stated as follows:

> "'The mere skidding of an automobile on an icy street does not necessarily prove negligence of the driver of the car. Kohn, Adm'x v. B.F. Goodrich Co., 139 Ohio St. 141, 38 N.E.2d 592 [(1941)]; Satterthwaite v. Morgan, Jr., 141 Ohio St. 447, at page 453, 48 N.E.2d 653 [(1943)].
>
> "'Skidding, however, may so occur in connection with acts or omissions of the operator as to warrant a finding of negligence in the operation of a car. And if there is evidence showing or tending to show that an automobile skidded into a collision with another car, lawfully operated on a highway, because of a lack of

> ordinary care of the driver of the skidding car in the operation thereof, such circumstances make a case for the jury. For, while proof that the car skidded is not necessarily proof of its negligent operation, proof of circumstances which so connect the skidding with such operation that reasonable minds could reach different conclusions as to whether the car was operated properly, makes a case for a jury. If the negligent operation of an automobile caused a car to skid, and damage to others from such skidding results, such negligence, if established, has the same consequences as to liability as negligence of any other character.'
>
> "The rule is stated in 5 Am. Jur. 654: 'The inquiry in cases of skidding is as to the driver's conduct previous to such skidding. The speed of the automobile prior to the skidding and the care in handling the automobile, particularly in the application of brakes, are factors to be considered in determining whether or not there was an exercise of due care....'"

256 Ala. at 245-46, 54 So. 2d at 495-96.

In the present case, there was no evidence indicating that Blackwell's conduct leading up to his vehicle's skidding on the icy roadway was negligent. There was no evidence indicating that Blackwell was driving too fast, that he was inattentive, or that he negligently applied the brakes of his vehicle. In fact, the evidence indicated that he had merely placed his vehicle in gear before it began sliding down the

hill. Furthermore, there is no evidence indicating that, before he placed his vehicle into gear, Blackwell knew or should have known that a sheet of ice had formed under his vehicle while he had been assisting the citizen whose vehicle had become stuck. Additionally, Dennis cites no law indicating that a motorist is liable for negligence merely for driving in weather conditions such as those existing on the day of the accident at issue in this case. Because Dennis has shown only "'[t]he mere skidding of an automobile on an icy street[, which] does not necessarily prove negligence of the driver of the car,'" Wilson, 256 Ala. at 246, 54 So. 2d at 495, we conclude that she has failed to demonstrate the existence of a genuine issue of material fact with regard to whether Blackwell acted negligently.

Regardless of whether the weather conditions could properly be deemed an "act of God" under Alabama law, pursuant to the caselaw cited by Dennis, "accidents produced exclusively by skidding on an ice-covered surface of a road, and which are not contributed to by nonobservance of some other precautionary requirement, will not support a cause of action based on negligence." Wilson, 256 Ala. at 245, 54 So.

2d at 495. Therefore, we conclude that Blackwell and the City were entitled to a summary judgment on the issue of Blackwell's negligence.

Conclusion

Based on the foregoing, the summary judgment entered by the trial court on Dennis's negligence claims is affirmed.

AFFIRMED.

Pittman, Thomas, and Donaldson, JJ., concur.

Thompson, P.J., concurs in the result, without writing.