REL: June 25, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1191074

Steve D. Lands

v.

Betty Ward d/b/a Lucky B's Trucking

Appeal from Morgan Circuit Court
(CV-16-900303)

MITCHELL, Justice.

Steve D. Lands appeals a summary judgment entered in favor of Betty Ward d/b/a Lucky B's Trucking ("Lucky B") in a suit he filed seeking

damages for injuries sustained on the job. The Morgan Circuit Court entered summary judgment in favor of Lucky B on both of Lands's claims against it -- negligence and wantonness -- because it held that Lucky B did not owe Lands a duty. We affirm the judgment as to the wantonness claim. But because Lands made a prima facie case of negligence and demonstrated genuine issues of material fact, we reverse the judgment as to that claim and remand the case for further proceedings.

Facts and Procedural History

Tennessee Valley Land and Timber, LLC ("TVL&T"), contracted with Lands to haul timber for processing at various locations in the Southeast. Kenneth Ward, the owner of TVL&T, provided Lands with a 1994 Peterbilt 379 Truck ("the truck") to make the deliveries. According to Lands, when Kenneth first provided the truck, he told Lands that it was sometimes difficult to start. If the truck would not start, Kenneth instructed Lands to use a "hot-wire" method, which required Lands to use a 12-inch piece of partially exposed wire to "jump" the truck while its ignition was left in the on position.

Although TVL&T allowed Lands to use the truck for work, the truck was owned by Lucky B. The truck bore the logo of Lucky B's Trucking and was registered by Lucky B with the United States Department of Transportation. Betty Ward, Kenneth Ward's wife, owns Lucky B's Trucking. Betty kept the truck garaged at her home and had an understanding with her husband regarding use of the truck. Despite this arrangement, there was no lease of the truck between the spouses or their respective businesses.

On the morning of September 25, 2015, Lands delivered logs to a sawmill for TVL&T using the truck. When he returned to Betty's home to garage the truck, Kenneth told Lands that he needed him to attach the truck to a trailer across the street and take it to another work site. After Lands drove the truck across the street, it died and would not restart. This was not the first time Lands had experienced this problem with the truck. On at least two prior occasions, he had to use the hot-wire procedure to start the truck after the engine died; he did so both times without incident.

Lands put the truck in neutral, engaged the parking brake, and got out of the truck to use the hot-wire method. With both feet on the front-wheel axle and a cigarette lighter in hand, he lifted the hood and connected the 12-inch piece of wire to the firewall solenoid. The truck jumped back to life and sent Lands to the ground. The truck then rolled over Lands, severing the muscles in the lower half of his leg.

Lands sued Lucky B, TVL&T, and other entities in the Morgan Circuit Court. Specifically, Lands sued Lucky B for negligence and wantonness. The essence of Lands's claims was that Lucky B, as the owner of the truck, had a duty under statute, regulation, and common law to inspect the truck and maintain it in safe condition. By failing to inspect and maintain it, he argued, the truck fell into disrepair and triggered the sequence of events that caused his injuries.

After a period of discovery, the defendants moved for summary judgment. Lands filed an opposition to the motion, which he supported with, among other things, the affidavit of Whitney Morgan, a specialist in commercial-motor-vehicle safety compliance; his own deposition testimony; Kenneth's deposition testimony; and Betty's deposition

testimony. The trial court granted the summary-judgment motion on the claims against Lucky B but denied it on the claims against the other defendants. In its order, the trial court explained that it was granting Lucky B's summary-judgment motion because Lucky B did not owe Lands a duty. Following disposal of the claims against the other defendants via settlement, Lands appealed.

Standard of Review

Lands appeals the summary judgment entered in favor of Lucky B. This Court reviews a summary judgment de novo. EBSCO Indus., Inc. v. Royal Ins. Co. of America, 775 So. 2d 128, 130 (Ala. 2000). We apply the same standard a trial court uses to determine if the evidence presented creates a genuine issue of material fact. Jefferson Cnty. Comm'n v. ECO Pres. Servs., L.L.C., 788 So. 2d 121, 126 (Ala. 2000) (quoting Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988)). Under that standard, if the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to present substantial evidence that a genuine issue of material fact exists. Bass v. SouthTrust Bank of Baldwin Cnty., 538 So. 2d 794, 797-98 (Ala. 1989). We have

defined "substantial evidence" as "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). Finally, " '[i]n determining whether a summary judgment was properly entered, [this Court] must view the evidence in the light most favorable to the nonmovant.' " Webb v. Henderson, 594 So. 2d 103, 103 (Ala. 1992) (citation omitted).

Analysis

The trial court granted Lucky B's summary-judgment motion because it held that Lucky B did not owe Lands a cognizable duty as a matter of law. We disagree. And while we may affirm the trial court's judgment for any reason supported by the record -- so long as the requirements of due process have been satisfied -- see Smith v. Mark Dodge, Inc., 934 So. 2d 375, 380 (Ala. 2006), there is no ground on which to affirm the summary judgment on the negligence claim. The wantonness claim, however, was properly disposed of.

A. Lands's Negligence Claim

Lands's first claim against Lucky B was for negligence. To make out a prima facie case of negligence, Lands needed to establish "a duty, a breach of that duty, causation, and damage." Armstrong Bus. Servs., Inc. v. AmSouth Bank, 817 So. 2d 665, 679 (Ala. 2001). To be entitled to summary judgment, Lucky B needed to show that there was no genuine issue of material fact and that it was entitled to judgment as a matter of law. See West, 547 So. 2d at 871. It failed to do so. Lands established a prima facie case of negligence against Lucky B -- including the duty element -- and demonstrated genuine issues of material fact necessitating jury resolution. The additional grounds argued by Lucky B on appeal lack merit.

1. Duty

Before the trial court and on appeal, Lands has argued that Lucky B owed him a duty imposed by statute, regulation, and common law. In essence, he argued that regulations promulgated by the Federal Motor Carrier Safety Administration ("FMCSA") and incorporated into the Alabama Code by reference, see § 32-9A-2(a)(1), Ala. Code 1975, imposed a duty on Lucky B to inspect the truck and maintain it in a safe condition.

The trial court disagreed and based its decision to grant Lucky B's summary-judgment motion on what it said was the lack of a duty owed by Lucky B to Lands.

a. Applicable Regulations and Statutes

In a negligence action, it is possible for a legal duty imposed by statute or regulation to inform the common-law standard of reasonable care or to supplant it entirely. See Parker Bldg. Servs. Co. v. Lightsey ex rel. Lightsey, 925 So. 2d 927, 930-931 (Ala. 2005). "A violation of [a safety] statute or ordinance can, therefore, be evidence of negligence under certain circumstances." Murray v. Alabama Power Co., 413 So. 2d 1109, 1114 (Ala. 1982). "The decision of whether a violation occurred, whether such violation was negligence, and whether such negligence was the proximate cause of the injuries complained of will ... be left ... to the jury." Id.[1]

[1]This is not to be confused with the doctrine of negligence per se, which is not argued by Lands. Here, Lands relies on a statute to make out a prima facie case of negligence as opposed to using a statutory violation to conclusively establish, as a matter of law, duty and breach. See Sparks v. Alabama Power Co., 679 So. 2d 678, 685 (Ala. 1996) (holding that the case "did not involve the concept of ... negligence per se .... Rather, the

Here, Lands argues that Lucky B's duties were informed by FMCSA regulations. Specifically, he cites 49 C.F.R. § 396.3(a), which provides: "Every motor carrier ... must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired or maintained, all motor vehicles ... subject to its control." As used in 49 C.F.R. § 396.3(a), a "motor carrier" includes the term "employer" as that term is defined elsewhere in the FMCSA regulations. 49 C.F.R. § 390.5. And "employer" means "any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business." Id. These regulations have been expressly incorporated into Alabama law by statute. § 32-9A-2(a)(1), Ala Code 1975 (providing that, subject to exceptions not applicable here, "no person may operate a commercial motor vehicle in this state, or fail to maintain required records or reports, in violation of the federal motor carrier safety regulations as prescribed by the U.S. Department of Transportation, 49 C.F.R. ... Parts 390-399 and

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trial judge simply informed the jury that it was to determine whether [the decedent] violated the statute, whether the violation was negligent behavior under the circumstances of the case, and, if so, whether the violation proximately caused his death.").

as they may be amended in the future"). Further, the FMCSA has promulgated an additional regulation declaring that "[a] motor vehicle shall not be operated in such a condition as to likely cause an accident or a breakdown of the vehicle." 49 C.F.R. § 369.7(a).

We have held that the purpose of regulations like these is to eliminate the "'problem of a transfer of operating authority, with its attendant difficulties of enforcing safety requirements and fixing financial responsibility for damage and injuries to shippers and members of the public.'" Phillips v. J.H. Transp., Inc., 565 So. 2d 66, 70 (Ala. 1990) (quoting Transamerican Freight Lines v. Brada Miller Freight Sys., 423 U.S. 28, 37 (1975)). Simply put, the regulations are designed to prevent motor carriers from shirking responsibility if someone gets hurt in an accident involving a commercial motor vehicle.

To determine if the regulations apply to Lucky B -- and therefore inform its duty -- we must decide whether Lucky B is a "motor carrier" as defined by the FMCSA. It is. An entity qualifies as a "motor carrier" if, among other things, it falls under the definition of "employer." To be an "employer," an entity must: (1) be "engaged in a business affecting

interstate commerce" and (2) "own[] or lease[] a commercial motor vehicle in connection with that business." 49 C.F.R. § 390.5. Lands presented substantial evidence demonstrating that Lucky B meets both requirements.

Lucky B meets the first requirement because it engaged in a business affecting interstate commerce. It should be noted that, under the text of the pertinent regulation, Lucky B need not be directly involved in interstate commerce; it must merely be "engaged in a business affecting interstate commerce." 49 C.F.R. § 390.5 (emphasis added). Nevertheless, the scope of what qualifies as "interstate commerce" is broad. See, e.g., Wickard v. Filburn, 317 U.S. 111 (1942) (holding the regulation of purely intrastate production and consumption of wheat was within Congress's power to regulate interstate commerce because the covered subject exerted a substantial economic effect on interstate commerce). The United States Supreme Court has held that, under Congress's power to regulate interstate commerce, Congress may regulate (1) the channels of interstate commerce; (2) the instrumentalities, persons, or things in interstate commerce -- even if the threat sought to be remedied may come

from purely intrastate activities; and (3) activities having a substantial relation to interstate commerce. United States v. Morrison, 529 U.S. 598, 608-09 (2000) (citing United States v. Lopez, 514 U.S. 549 (1994)).

This Court, applying United States Supreme Court precedent, has identified factors that indicate whether an activity involves interstate commerce. Wolff Motor Co. v. White, 869 So. 2d 1129, 1132-35 (Ala. 2003) (citing and discussing, among other cases, Citizens Bank v. Alafabco, Inc., 539 U.S. 52 (2003)) (holding that purchase of a car hauler sufficiently affected interstate commerce to trigger the Federal Arbitration Act). The Wolff Motor Co. Court held that the transaction in that case involved interstate commerce for four reasons: (1) the commercial enterprise regularly dealt in interstate commerce; (2) the commercial enterprise purchased goods that had moved in interstate commerce; (3) the general type of transaction at issue was of the sort subject to Congress's commerce power; and (4) the item at the heart of the dispute -- a car hauler -- was an instrumentality of interstate commerce. Id.

The factors present in Wolff Motor Co. are present here. The record establishes that Lucky B's Trucking is a trucking business that routinely

allowed another company, TVL&T, to use the truck. TVL&T, using Lucky B's truck, made timber deliveries to the sawmills of companies incorporated in Delaware, New York, and Georgia, with principal places of business in Oregon, New York, and Georgia, respectively. Lucky B insured the truck through National Indemnity Company, which is headquartered and incorporated in Nebraska. These facts satisfy the first factor because Lucky B participated in and facilitated transactions throughout the country.

While there is no evidence that Lucky B purchased goods that moved in interstate commerce (factor two), the truck itself was actually used to move timber through interstate commerce (factor three). Specifically, on at least one occasion, TVL&T used the truck to deliver timber taken from Lincoln County, Tennessee, to a sawmill in Eva, Alabama. Additionally, under factor three, long-haul trucking of goods traveling through interstate commerce is an area that Congress is entitled to regulate. See Morrison, 529 U.S. at 608-09. And that is precisely what Lucky B facilitated when it allowed TVL&T to use the truck to haul timber cut in one state to another state.

Finally, under factor four, the truck is a textbook example of an instrumentality of interstate commerce. See Wolff Motor Co., 869 So. 2d at 1135 (quoting United States v. Bishop, 66 F.3d 569, 588-90 (3d Cir. 1995)) (" '[M]otor vehicles are "the quintessential instrumentalities of modern interstate commerce." ... Commuters, salespeople and haulers rely upon motor vehicles daily to maintain the flow of commerce ....' ").

By allowing the truck to carry lumber for the purpose of transacting with companies throughout the country, Lucky B surely "engaged" in the business in which the truck was being used. TVL&T never assumed exclusive possession or control of the truck through any contract or lease, leaving the responsibility for the truck, under federal regulations, with Lucky B. Viewed in totality, Lucky B engaged in a business that affected interstate commerce.

We turn to the second requirement for constituting an "employer": owning or leasing a commercial motor vehicle in connection with the business engaged in interstate commerce. It is undisputed that Lucky B owned the truck. The truck bore the logo and the United States Department of Transportation number of Lucky B's Trucking. And the

truck was undoubtedly "connected" to the lumber-hauling business because it was the very truck used by Lands to make the deliveries. Cf. Phillips, 565 So. 2d at 66 (holding that the presence of the defendant's federally required decal on the side of a truck was sufficient evidence to establish that the defendant maintained control of the truck). Lucky B therefore satisfies the second requirement, making it an "employer" and bringing it within the definition of "motor carrier," thus triggering the application of the federal regulations.

Lucky B was required under both federal regulations and Alabama statute to "systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles ... subject to its control." 49 C.F.R. § 396.3(a); § 32-9A-2(a)(1). Lands is entitled to use the regulations and the statute incorporating them into Alabama law to establish his prima facie case for negligence.

b. Common-Law Duty to Inspect and Maintain

Lands also points to the common-law duty of vehicle owners to inspect their vehicles and maintain them in safe condition. This Court has held that "[i]f the use of [an] instrumentality threatens serious danger

to others unless it is in good condition, there is a duty to take reasonable care to ascertain its condition by inspection." Motor Terminal & Transp. Co. v. Millican, 244 Ala. 39, 43, 12 So. 2d 96, 99 (1943). More specifically, in discussing motor vehicles, the Millican Court noted:

> " '[T]he owner or operator of a motor vehicle must exercise reasonable care in the inspection of the machine, and is chargeable with notice of everything that such inspection would disclose. This rule applies where the operator is the owner of the vehicle or rents it from another, or permits another to use it, or lets it to another for hire. But in the absence of anything to show that the appliances were defective, the owner or driver is not required to inspect them before using the car or permitting it to be used.' "

Id. (quoting Huddy Automobile Law, Vol. 3-4, p. 127 et seq). These statements bolster what the regulations and statute already established.

c. Foreseeability

Lucky B, on the other hand, primarily rests its appellate argument on foreseeability. It argues that it was not foreseeable to Lucky B that Lands would exit the truck after it broke down, stand on the axle with a cigarette lighter in hand, and attempt to restart the engine via a piece of loose, exposed wire. But this conception of foreseeability is too narrow based on the alleged duty and breach.

"'Foreseeability does not require that the particular consequence should have been anticipated, but rather that some general harm or consequence should have been anticipated.'" City of Birmingham v. Benson, 631 So. 2d 902, 907 (Ala. 1993) (quoting Thetford v. City of Clanton, 605 So. 2d 835, 840 (Ala. 1992)). "[T]he test is not what [the defendant] in fact knew, but whether it was reasonably foreseeable that a failure to maintain the [device] in a safe condition could cause injury to a third party." Lance, Inc. v. Ramanauskas, 731 So. 2d 1204, 1209 (Ala. 1999). Here, it is certainly foreseeable that a failure to maintain a long-haul truck according to safety regulations would result in an injury to a third party -- especially the driver of that vehicle. Protecting the public and the driver is precisely the reason trucking safety regulations exist. See Phillips., 565 So. 2d at 70 (quoting Transamerican Freight Lines, 423 U.S. at 37) ("'"The purpose of the [automotive] rules is to protect the industry from practices detrimental to the maintenance of sound transportation services ..." and to assure safety of operation.'").

The facts of this case pose a stark contrast to one of our more recent cases, DeKalb-Cherokee Counties Gas District v. Raughton, 257 So. 3d

845 (Ala. 2018) (plurality opinion), in which a plurality of this Court held that there was insufficient evidence of foreseeability. In Raughton, the plaintiff sued for negligence relating to injuries he had sustained when a gas-district employee was dumping refuse at a city landfill. Id. at 846. The plurality specifically noted in its analysis that "[t]here was no testimony or other evidence indicating that performing the maneuver violated any formal safety standards." Id. at 848. See also Butler v. AAA Warehousing & Moving Co., 686 So. 2d 291 (Ala. Civ. App. 1996) (affirming summary judgment for a defendant because, among other reasons, a forensic engineer testified that the hazard at issue did not violate any applicable safety standards).

The same cannot be said here. Lands presented the affidavit of Whitney Morgan, who provides consulting services to entities about commercial-motor-vehicle safety compliance -- specifically, compliance with FMCSA regulations. His work includes inspections of trucks for compliance with relevant safety standards and regulations. In his affidavit presented to the trial court, Morgan stated that, in his opinion, which was formed after reviewing the evidence, "Lucky B was in violation

of the [safety regulations] for requiring or permitting the vehicle to be operated, which caused and/or contributed to the cause of Mr. Lands's injuries." This, combined with the other testimony Lands supplied, established an absence of compliance with the safety regulations.

d. Responsibility Not Shifted by a Lease

In its order, the trial court relied on its finding of fact that the truck was leased by Lucky B to TVL&T to relieve Lucky B of liability. This finding was clearly erroneous. The FMCSA regulations permit authorized carriers to use vehicles they do not own only when there is "a written lease granting the use of the equipment and meeting the requirements contained in [49 C.F.R.] § 376.12." 49 C.F.R. § 376.11(a) (emphasis added). This comports with the regulations' overall goal of apportioning responsibility among motor carriers. To comply with the FMCSA regulations, a written lease must contain language providing that "the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the

lease." 49 C.F.R. § 376.12(c)(1). There is no written lease between Lucky B and TVL&T in the record. And testimony in the record confirms the absence of a lease -- Betty testified that she did not know if the truck was leased, and Kenneth testified that TVL&T did not lease any trucks.

In sum, Lands met his burden of providing substantial evidence that Lucky B owed a duty to him. The trial court erred by holding otherwise.

2. Breach

Contrary to what Lucky B argues, Lands presented substantial evidence that Lucky B breached a duty owed to him. Lands's argument is that Lucky B's failure to inspect and maintain the truck in compliance with federal regulations and a state statute constituted the breach. To support this argument, Lands submitted Morgan's affidavit to the trial court as part of his response to the defendants' summary-judgment motions. As reflected in his affidavit, Morgan reviewed the testimony of Betty, the testimony of Lands, and a photograph of the truck. After his review of those materials, he testified:

> "[I]t is my opinion (to a reasonable degree of certainty) that the Peterbilt truck tractor owned and operated by [Lucky B] ... and provided to Steve Lands to drive at the time he was injured on

> September 25, 2015 was in such a condition that it should not have been in service because it was in violation of the applicable safety regulations and standards, due to the fact that it was not properly inspected, repaired and maintained as required."

This was the only evidence before the trial court regarding Lucky B's compliance with FMCSA regulations.

There is no evidence in the record that Lucky B even attempted to inspect, maintain, or repair the truck as required by Alabama law. In fact, the evidence, viewed in the light most favorable to Lands, indicates the opposite. See Webb, 594 So. 2d at 103. Thus, we cannot say, as a matter of law, that Lucky B did not breach a duty in the manner in which it maintained the truck.

3. Proximate Cause

Lucky B also raises the possibility that a lack of proximate cause supports the trial court's judgment. Although the sequence of events in this case is unusual, the resulting injury here is not the kind that takes the question of proximate cause away from the jury.

It is well established that proximate cause is generally a jury question. Giles v. Gardner, 287 Ala. 166, 169, 249 So. 2d 824, 826 (1971).

"[I]t is only when the facts are such that reasonable men must draw the same conclusion that the question of proximate cause is one of law for the courts." Id. Like the duty analysis, proximate cause accounts for foreseeability, which has been labeled "the cornerstone of proximate cause." Alabama Power Co. v. Taylor, 293 Ala. 484, 498, 306 So. 2d 236, 249 (1975). An injury is deemed foreseeable if it is the "'"'"natural, although not the necessary and inevitable, result of the negligent fault."'"'" Looney v. Davis, 721 So. 2d 152, 162 (Ala. 1998) (quoting Lawson v. General Tel. Co. of Alabama, 289 Ala. 283, 289, 267 So. 2d 132, 138 (Ala. 1972)). "Thus, generally a defendant may be found liable if some physical injury of the general type the plaintiff sustained was a foreseeable consequence of the defendant's negligent conduct, even though the extent of the physical injuries may have been quite unforeseeable." Id. (emphasis added).

What is foreseeable can be broader than what the defendant actually knew. Lance, 731 So. 2d at 1209. Foreseeability encompasses "'all consequences which a prudent and experienced person, fully acquainted with all the circumstances, at the time of his negligent act, would have

thought reasonably possible to follow that act, including the negligence of others.' " Looney, 721 So. 2d at 159 (internal citation omitted).

The record contains substantial evidence of proximate cause that requires jury resolution. Lands presented the affidavit of Morgan, who said that the truck was, in his opinion, not compliant with FMCSA regulations and unsafe to drive. Lands also supplied his own testimony that he was taught the hot-wire method by Kenneth and that he had used it on at least two prior occasions before the accident. Under our proximate-cause framework, which presumes Lucky B was " 'fully acquainted with all [these] circumstances, at the time of [its] negligent act,' " Looney 721 So. 2d at 159, it cannot be said, as a matter of law, that Lucky B is not responsible for "some physical injury of the general type [Lands] sustained." Id. at 162. A reasonable person, aware that the truck was noncompliant with safety regulations, that the truck had broken down on multiple occasions while being used by TVL&T, and that TVL&T's agents hot-wired the truck on those occasions to restart it, could have foreseen a resulting injury. Lands satisfied his burden to the point where a jury should be allowed to resolve the issue.

4. Contributory Negligence As a Matter of Law

In several sections of its brief, Lucky B contends that the judgment below can stand because Lands was contributorily negligent as a matter of law. That is a high hurdle that Lucky B cannot clear at this stage based on the record before us.

The question of contributory negligence is "normally one for the jury" to decide. Wyser v. Ray Sumlin Constr. Co., 680 So. 2d 235, 238 (Ala. 1996). To obtain summary judgment based on contributory negligence, the moving party must show two things: (1) that the plaintiff put himself in danger's way and (2) that the plaintiff had a conscious appreciation of the danger at the moment the incident in question occurred. Hannah v. Gregg, Bland & Berry, Inc., 840 So. 2d 839, 860 (Ala. 2002). Further, "[w]e protect against the inappropriate use of a summary judgment to establish contributory negligence as a matter of law by requiring the defendant on such a motion to establish by undisputed evidence a plaintiff's conscious appreciation of the danger." Id. at 861 (emphasis added).

Here, there is no evidence -- let alone undisputed evidence -- that Lands consciously appreciated the risk when he attempted to hot-wire the truck after it broke down. Looking at the evidence in the light most favorable to Lands, see Webb, 594 So. 2d at 103, he used a method that he had used twice before without incident -- and this method was shown to him and endorsed by his employer. While a jury may be entitled to find that Lands's use of the hot-wire method was contributory negligence that bars his recovery, Lucky B was required at the summary-judgment stage to present "undisputed evidence [of the] plaintiff's conscious appreciation of the danger." Id. Lucky B did not make that showing. Therefore, the summary judgment cannot stand on that basis.

B. Lands's Wantonness Claim

The trial court granted Lucky B's summary-judgment motion regarding Lands's wantonness claim. This was correct.

The evidence required to prove a negligence claim is distinct from the evidence required to prove wantonness. Armstrong v. Hill, 290 So. 3d 411, 418 (Ala. 2019). "'"Negligence is usually characterized as an inattention, thoughtlessness, or heedlessness, a lack of due care; whereas

wantonness is characterized as ... a conscious ... act." ' " Tolbert v. Tolbert, 903 So. 2d 103, 114-15 (Ala. 2004) (quoting Ex parte Anderson, 682 So. 2d 467, 470 (Ala. 1996)). We have held that wantonness involves "the conscious doing of some act or the omission of some duty while knowing of the existing conditions and being conscious that, from doing or omitting to do an act, injury will likely or probably result." Ex parte Essary, 992 So. 2d 5, 9 (Ala. 2007).

In this case, Lands did not present substantial evidence demonstrating that Lucky B acted "knowing of the existing conditions" of the truck "while ... being conscious that, from doing or omitting to do an act, injury [would] likely or probably result." Id. In the absence of such evidence, Lucky B is entitled to summary judgment on the wantonness claim.

Conclusion

Lands has made out a prima facie case of negligence. While questions about causation and his own possible negligence remain, Lands is entitled to have those questions answered by a jury. We therefore reverse the trial court's summary judgment on that claim and remand the

case for further proceedings. The same, however, cannot be said for Lands's wantonness claim. Even viewed in the light most favorable to Lands, see Webb, 594 So. 2d at 103, the record lacks the evidence of heightened culpability required to prove wantonness. The judgment as to that claim is accordingly affirmed.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.