

NO. A11-0187

State of Minnesota
In Court of Appeals

Angelique Marie Curtis,

Respondent,

vs.

Timothy William Klauster and City of Lakeville,

Appellants.

RESPONDENT'S BRIEF, ADDENDUM AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

1. Does the wild animal immunity statute, Minn. Stat. § 3.736, subd. 3(e) apply when Defendant Timothy Klausler failed to maintain a proper lookout resulting in a collision with a vehicle driven by Respondent Angelique Marie Curtis?

The district court properly held that Appellants City of Lakeville and Timothy Klausler were not entitled to immunity under Minn. Stat. §3.736, subd. 3(e) because factual issues of proximate causation and negligence exist as to whether Appellant Klausler maintained a proper lookout while driving his vehicle.

1. *Woller v. City of Granite Falls*, No. CO-94-2616, 1995 WL 434455 (Minn. Ct. App. July 25, 1995) *rev. denied* (Minn. Sept. 19, 1995).
2. Minn. Stat. § 3.736
3. Minn. Stat. § 466.03

STATEMENT OF THE FACTS

On October 21, 2009, Respondent Angelique Marie Curtis (“Curtis”) was traveling northbound on Highway 5 in the City of Burnsville when she observed a deer ahead of her vehicle. (App. 16-17.)¹ The deer came from an open area alongside the road to Curtis’ right. (App. 19.) After observing the deer, Curtis applied her brakes to slow her vehicle down. (App. 16, 20.) By doing this, Curtis was able to avoid the deer as it crossed from her right to her left in front of her towards the southbound lanes of Highway 5. (*Id.*)

Along this stretch of road, Highway 5 is comprised of two northbound lanes and two southbound lanes, with a center median lane separating the traffic. (App. 22.) Off to the right side of the northbound lanes where the deer emerged is a grassy area, and then a bike path. (App. 16-17, 23.). The photos included in the parties’ Appendices depict the general area of the accident. (App. 42-44, 76-77, 80.)²

Before the accident, Appellant Timothy Klausler (“Klausler”) was driving a van owned by the Appellant City of Lakeville (“City”) southbound on Highway 5. (R. App. 7.) In the van with Klausler was another City of Lakeville employee, James Schiffman. (App. 22.) Klausler’s vehicle was in the area of the Old Orchard Gardens Golf course. (R. App. 7.) He and Mr. Schiffman both testified that as they were driving, they were

¹ References to Appellants’ Appendix are denoted as “App.” followed by corresponding page number[s]. References to Appellants’ Addendum are denoted as “Add.” followed by corresponding page number[s].

² References to Respondent’s Appendix are denoted as “R. App.” followed by corresponding page number[s]. References to Respondent’s Addendum are denoted as “R. Add.” followed by corresponding page number[s].

talking about the large homes they observed built along the golf course they were passing. (App. 23, 32.)

The collision occurred at approximately 4:30 p.m. and all parties testified that the area was well lit, traffic was light, and the weather was relatively clear. (App. 16, 23, 32.)

The deer that Curtis successfully avoided continued on to cross both northbound lanes as well as the center median lane, before being struck by Klausler's van. (App. 17, 25, 29.) Klausler testified that he never saw the deer. (App. 23.) Klausler testified that at the time the collision occurred, there were no exterior obstructions to his field of vision and he also testified that he was looking straight ahead while talking with his passenger. (App. 22-23, 25.)

After hitting the deer, Klausler's vehicle crossed the center median lane and then drove into the oncoming northbound lanes and collided with the Curtis' vehicle. (App. 18, 29.) Curtis needed to be removed from her vehicle with the jaws of life. (App. 17.) She suffered two broken arms, a broken neck, a stroke, bruises all along her body, and required a halo, to stabilize her neck for three months. (App. 17.) (R. App. 2-5.) Her treatment for her substantial injuries is ongoing at the time of this appeal.

ARGUMENT

I. Standard of Review

"The applicability of immunity is a question of law, which this court reviews de novo." *Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004). An appellate court reviews an order denying summary judgment by determining whether there are any genuine issues of material fact, and whether the district court erred in applying the law.

Gleason v. Metro. Council Transit Operations, 582 N.W.2d 216, 218-19 (Minn. 1998).

“In reviewing a denial of summary judgment based on a claim of immunity, this court presumes the truth of the facts alleged by the nonmoving party.” *Fear v. Indep. Sch. Dist. 911*, 634 N.W.2d 204, 209 (Minn. Ct. App. 2001), *review denied* (Minn. Dec. 11, 2001).³

II. The Wild Animal Immunity Statute Does Not Apply To This Complex Motor Vehicle Accident, Particularly Where A Fact Intensive Inquiry Into Proximate Cause Is Necessary To Determine If Appellant Klausler Exercised Reasonable Care By Maintaining A Proper Lookout.

While Appellants’ appeal is couched in terms of governmental immunity under the wild animal immunity statute, Minn. Stat. § 3.736, subd. 3(e) and Minn. Stat. § 466.03, subd. 15, (R. Add. 8-14.) determining whether immunity applies in this case requires a fact-intensive analysis of Appellant Klausler’s failure to see the deer under ideal conditions and then failure to avoid the deer that had crossed two lanes of traffic and a third center lane before Klausler’s vehicle struck the deer. Longstanding Minnesota precedent holds that issues of negligence and proximate cause are questions of fact not susceptible to summary judgment. Because both negligence and proximate cause issues exist here, Appellants’ appeal should be denied and the district court’s denial of summary judgment affirmed.

A. Summary Judgment Standard

Under Minn. R. Civ. P. 56.03, summary judgment is only appropriate if the movant can show that there are no genuine issues as to any material fact and that either

³ The record on appeal is comprised of, and all the citations will be made to, the papers filed in the trial court, including exhibits. Minn. R. Civ. App. P. 110.01.

party is entitled to judgment as a matter of law. Summary judgment “is a tool to be used sparingly, and where there is doubt about whether there are genuine issues of material fact to be resolved, summary judgment should not be used.” *Int’l Union of Operating Eng’rs Local No. 49 Health & Welfare Fund v. Krejec*, 366 N.W.2d 388, 390 (Minn. Ct. App. 1985). The Minnesota Supreme Court has held:

Summary judgment is a “blunt instrument” and should not be employed to determine issues which suggest that questions be answered before the rights of the parties can be fairly passed upon. It should be employed only where it is perfectly clear that no issue of fact is involved, and that it is not desirable (*sic*) nor necessary to inquire into facts which might clarify the application of the law.

Donnay v. Boulware, 275 Minn. 37, 45, 144 N.W.2d 711, 716 (1966).

The evidence below must be viewed in the light most favorable to the Respondent, as the non-moving party. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 847 (Minn. 1995). Of course, if any doubt exists about a disputed issue of material fact, then the motion for summary judgment must be denied. *Murphy v. Wood*, 545 N.W.2d 52, 54 (Minn. Ct. App. 1996). All presumptions, all inferences from circumstantial evidence and all doubts must be resolved against the Appellants, as the moving party. *See Forsblad v. Jepson*, 292 Minn. 458, 459-60, 195 N.W.2d 429, 430 (1972); *Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981).

B. The Wild Animal Immunity Statute Does Not Apply To Respondent Curtis’ Claim Because The Evidence Demonstrates That The Proximate Cause Of The Accident Was Klausler’s Inattentive Driving.

Respondent Curtis’ claim is not barred by the wild animal immunity statute because fact issues exist as to Appellant Klausler’s exercise of reasonable care before

hitting the deer, as well as his failure to control his vehicle after he struck the deer. As evidenced by the plain language of Minn. Stat. § 3.736, subd. 3(e) and case law illustrating the true applicability of the wild animal immunity statute, the statute only applies when a wild animal is the sole cause of the injury and not in situations where a tortfeasor's negligence contributed to the loss.

Minn. Stat. § 3.736, subd. 3(e) and Minn. Stat. § 466.03, subd. 15 (as against a municipality) provides that:

Without intent to preclude the courts from finding additional cases where the state and its employees should not, in equity and good conscience pay compensation for personal injuries or property losses, the legislature declares that the state and its employees are not liable for the following losses: (e) a loss caused by wild animals in their natural state, except as provided in section 3.7371. (Compensation for crop damage caused by elk)

The one Minnesota case interpreting the wild animal immunity statute is *Woller v. City of Granite Falls*, No. CO-94-2616, 1995 WL 434455, (Minn. Ct. App. July 25, 1995) *rev. denied* (Minn. Sept. 19, 1995) (Add. 18-21.). In *Woller*, a plaintiff brought suit against the city after she skidded and lost control of her vehicle while avoiding a deer on the roadway. *Id.* at *3. While the Court analyzed the city's discretionary immunity defense related to condition of the road and absence of warning signs along the road, the Court also analyzed the city's proffered immunity defense under Minn. Stat. § 3.736, subd. 3(e). *Id.*

On appeal, this Court affirmed the denial of the city's summary judgment motion because genuine issues of material fact existed as to causation. *Id.* (“[plaintiff] has identified a genuine factual dispute concerning causation.”). To highlight the factual

dispute in existence, the *Woller* plaintiff used an accident reconstruction expert and testimony of city workers concerning difficulty in mowing the area to raise an inference of poor conditions related to the roadway. *Id.* at *2.

Most importantly, the *Woller* court recognized the role of proximate causation analysis in interpreting and applying the statute, and held that it was up to the jury to decide if the city defendant's roads, along with the deer caused plaintiff's damages. *Id.* at *3. (emphasis added) The *Woller* court stated: "[c]ausation is a classic question for the factfinder." *Id.* Thus, just because the deer may have played some role and could have been "a cause" of the accident, the mere fact that a deer was involved did not warrant the application of the wild animal immunity statute as a matter of law.

Based on the plain meaning of the statute and the *Woller* decision, Appellants' interpretation of the wild animal immunity statute is impracticable and unconvincing in this case. First, Appellants' attempt to distinguish *Woller* by arguing that the statute must apply because Klausler actually struck the deer, unlike the plaintiff in *Woller*. This is merely an attempt to write in a physical impact requirement into the statute, when none exists. The wild animal immunity statute only states that the wild animal "cause" the loss, and the *Woller* case does nothing to indicate a physical impact alone warrants the statute's application.

Secondly, applying the wild animal immunity statute in this case without consideration of the pre-accident negligence of Klausler would expand the immunity granted by the statute to a loss in which a wild animal plays any factor whatsoever,

leading to an absurd result. Appellants' proposed interpretation was rejected by the *Woller* court when it analyzed the case under causation principles.

For example, such an interpretation would permit immunity to apply even if a government official was intoxicated or driving recklessly and a wild animal played any role in the accident or if Klausler was looking out his rear view mirror at a "wild deer" crossing behind him and drifted over the center line due to the distraction, and struck an oncoming vehicle. See *Erdman v. Life Time Fitness, Inc.*, 788 N.W.2d 50, 56 (Minn. 2010) ("courts should construe a statute to avoid absurd results and unjust consequences."); *Nash v. Wollan*, 656 N.W.2d 585, 590 (Minn. Ct. App. 2003) (noting that although plain meaning interpretation of statutes is the governing principle, "courts will not give effect even to plain meaning if to do so would produce an absurd or unreasonable result or would depart from the purpose of the statute.").

It is evident, from Appellants' own arguments that Appellants are not buying into the immunity theory. Appellants take great pains to point out that the deer approached Klausler's vehicle from the left side, as opposed to the front of the vehicle--presumably in order to make the argument is that it was more difficult for Klausler to see the deer before the impact. In fact, Appellants even suggest that the deer may have overtaken Appellants' vehicle from behind. Under Appellants' immunity theory, however, it would not matter whether the deer approached the vehicle from the driver's side, from straight in front of the vehicle or whether it was standing in the middle of the road in plain view. It would not matter whether Klausler saw the deer before the accident. It would not matter whether Klausler had half a second notice of the collision or whether he had a full

minute to avoid the deer. In fact it would not matter if Klausler intentionally ran into the deer, and then unintentionally collided with Ms. Curtis. According to Appellants' theory, if a city owned truck collides with an animal regardless of the fault of the driver, there can be no liability for anything that happens after the collision. The arguments made by Appellants regarding Klausler's failure to see the deer prior to the collision, however, illustrates the fact that Appellants are not buying their own immunity argument; Appellants are arguing fault or causation, which are issues for the jury.

This discussion highlights the trial court's correct application of the statute. All of the cases cited by Appellants involve claims brought by the person that collided with the wild animal--claims where the plaintiff was trying to impose fault on a municipality for damages caused by the plaintiff's collision with the animal. For that reason, the cases cited by Appellants are distinguishable and not persuasive. They involve the classic case of wild animal immunity; where a plaintiff strikes or encounters a deer or other wild animal and attempts to recover resulting loss from the city or state. *See Massar v. New York State Thruway Authority*, 228 N.Y.S.2d 777 (N.Y. Ct. 1962); *Rippy v. Fogel*, 529 A.2d 608 (Pa. Commw. Ct. 1987) (holding that city was not liable when plaintiff struck deer on roadway); *Arroyo v. State of California*, 40 Cal. Rptr.2d 627 (Cal. Ct. App. 1995) (applying statutory immunity to case of mountain lion attacking plaintiff); *Deluca v. Whitemarsh Tp.*, 526 A.2d 456 (Pa. Commw. Ct. 1987) (applying wild animal immunity to wolf attacking plaintiff).

That is not what we have here. Ms. Curtis is alleging that Klausler was negligent in the operation of his motor vehicle. It doesn't matter whether he negligently failed to

control his car because collided with a deer, a tree, another vehicle, or a pedestrian. It is his negligence that is the subject of the Respondent's lawsuit. If Klausler was not negligent in his failure to keep a proper lookout, to avoid the deer, or to maintain control of his vehicle after he struck the deer, then the jury will find that he is not liable. If *he* (not the deer) was negligent, then the fortuitous circumstance of failing to control his vehicle because he hit a deer, as opposed to a pedestrian or a child on a bicycle should not insulate him from liability.

This accident consists of a deer crossing two lanes of traffic, and a third lane in the middle of the highway before being struck by an inattentive Klausler whose vehicle then crossed the center median lane and drove into the southbound lanes and struck Curtis' vehicle (who had carefully observed and avoided the deer in the first place). The presence of a deer is simply not enough to warrant a whole scale application of this immunity. Moreover, because Klausler's pre-accident negligence must be considered, a fact-intensive inquiry into proximate causation is necessary and summary judgment is inappropriate.

C. Genuine Issues of Material Fact Exist To Proximate Causation and Negligence On The Part Of Appellant Klausler's Failure To Exercise Reasonable Care, Such That, The Wild Animal Immunity Statute Does Not Apply And Denial Of Summary Judgment Was Appropriate.

Once it is established that causation issues prevent application of the wild animal immunity statute, Appellants' appeal is defeated.⁴ In addition to the long-standing principle that proximate causation issues are for a jury, Curtis has more than sufficient

⁴ Appellants' other grounds in their summary judgment motion are not subject to interlocutory appeal.

evidence in support of her claim that the statute is inapplicable here. She submits not only her own testimony, but the testimony of Klausler, the testimony of his passenger, Mr. Schiffman, and the expert reconstruction opinion of Kenneth Drevnick. (R. Add. 1-7.)

Proximate cause typically presents a question of fact and seldom can be disposed of on a motion for summary judgment. *Hamilton v. Independent School Dist. No. 114*, 355 N.W.2d 182, 184-85 (Minn. Ct. App. 1984). Because proximate cause involves an intensely fact-specific inquiry, determination of proximate cause is most suitable for jury fact-finding and should be decided as a matter of law in only exceptional cases. *McCuller v. Workson*, 248 Minn. 44, 47, 78 N.W.2d 340, 342 (1956) (“Since proximate cause is usually a question of fact for the jury, it can seldom be disposed of on a motion for summary judgment. This principle is of long standing.”).

In cases such as this, expert testimony is preferred rather than having jurors make findings based solely on the limited ability of “eyewitnesses.” Expert witnesses provide testimony of what occurred based on the physical evidence. To disallow expert testimony would serve to create a verdict based on “a thin perception” of the “eyewitness” or sheer speculation. *Behlke v. Conwed Corp.*, 474 N.W.2d 351, 357 (Minn. Ct. App. 1991), *review denied* (Minn. Oct. 11, 1991), (citing *Polacec v. Voigt*, 385 N.W.2d 867, 869-70 (Minn. Ct. App. 1986), *pet. for rev. denied* (Minn. June 19, 1986) (holding that qualified expert opinion admissible because “eyewitnesses were admittedly uncertain about what actually happened.”) Because this case involves one vehicle striking a deer and then crossing a median lane before striking another vehicle, expert

testimony will assist the jury on the issue of reasonable care, or lack thereof, by Appellant Klausler.

The facts and circumstances of the chain of events in this crash do give rise to the need for expert testimony. Klausler and his passenger testified that they cannot even recall where their vehicle was on Highway 5 in relation to the cross street they had just passed (156th Street), prior to the accident. (App. 29.) (R. App. 7.) Thus, a qualified accident reconstruction expert who has conducted an onsite inspection and analysis will offer an opinion on the vehicle positions and views of the respective vehicle's drivers based on time, distance and speed information available to the expert -- including the position of the City's vehicle and the view Klausler had while heading southbound on Highway 5 just before the collisions. Mr. Drevnick's report concludes that the deer was in open view to Klausler for two and one-half seconds had Klausler been keeping a proper lookout, and based on the layout of Highway 5 in that area, the "trajectory of his vehicle while in the curve placed the deer almost directly in front of him." (R. Add. 6.)

This evidence directly rebuts Appellants' claim that Klausler, who admitted he did not see the deer, could not have seen the deer because it came from behind his fast-moving vehicle on the left side. (App. 24.) As further rebuttal of that argument, it also defies logic and common sense that any deer could have run in excess of the 45 miles per hour Klausler was traveling in order to not only overtake the vehicle from behind, but do so with the force necessary to cause the damage that occurred when Klausler's vehicle struck the deer. (Appellant admits that the vehicle was traveling approximately 45 miles

per hour and the top speed of a whitetail deer is only 30 miles per hour.) Furthermore, Appellants lack foundation to assert as undisputed fact that based upon Klausler's "post-accident inspection," certain structural damage to the van (as opposed to the presence of deer matter) was caused solely by the collision with the deer, rather than the collision with Curtis' vehicle. Klausler's assertions are nothing more than speculation of a lay person about the issue of causation. In contrast, the expert Drevnick report and the inferences that can be drawn from this evidence preclude the application of summary judgment at this stage. *See Illinois Farmers, Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630, 633 (Minn. 1978) ("A motion for summary judgment should be denied if reasonable persons might draw different conclusions from the evidence presented.")

Even without expert testimony, several undisputed facts fully support that Klausler failed to maintain a proper lookout: (1) just moments before the accident, Klausler and Schmitt admit that they were engaged in conversation about recent homes that had been built in the area (App. 23, 32.); (2) Plaintiff Curtis observed the deer coming from an open area along the north side of the road (App. 19.); (3) Plaintiff Curtis properly slowed her vehicle to avoid hitting the deer (App. 16, 20.); (4) the deer crossed a bike path, two lanes of traffic to Klausler's left, and a center median lane before being struck by Klausler's vehicle; (5) Klausler failed to observe the deer despite testifying that the weather conditions were ideal for driving, traffic was light and there were no exterior obstructions to his view. (App. 22-23.)

Moreover, while Appellants state, as undisputed fact, that Klausler lost consciousness as a result of the collision with the deer--that is not at all clear. The best

that Appellants can say is that he stopped talking after he struck the deer, and Klausler is unable to recall the collisions themselves. (App. 23, 26.) Because he testified that he eventually lost consciousness and therefore cannot specifically recall what occurred, Klausler's testimony alone does not prove that he lost consciousness when he struck the deer. Schiffman testified that he only saw that Klausler was unconscious after the collision with Curtis. (App. 30-31.) This means that there is also a fact issue as to whether Klausler was negligent in failing to control his car after striking the deer.

CONCLUSION

Based on this record, reasonable people most certainly can draw the conclusion that Klausler failed to observe the deer that crossed several lanes of traffic because Klausler was inattentive or distracted by the conversation with his passenger. Klausler's line of view was directly at the area where the deer was crossing, if he had been looking. A jury could also find that he negligent in failing to control his vehicle after striking the deer. Because the facts and circumstances of this accident give rise to at least an inference of negligence on the part of Klausler, Appellants' appeal should be denied and the district court's denial of summary judgment affirmed.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to Minn. R. Civ. App. P. 132.01, for a brief produced using the following font: Proportional serif font, 13 point or larger. The length of this brief is 4,396 words. This brief was prepared using Microsoft Word 2000.

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