

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

KIRK DUQUETTE,	:	APPEAL NO. C-090522
and	:	TRIAL NO. A-0809961
VIRGINIA DUQUETTE,	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs-Appellants,	:	
vs.	:	
CATHERINE M. HUEBNER	:	
Defendant-Appellee,	:	
and	:	
MEDICAL MUTUAL OF OHIO,	:	
Defendant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiffs-appellants Kirk and Virginia Duquette appeal from the trial court's entry granting summary judgment in favor of defendant-appellee Catherine M. Huebner.

The facts in this case are undisputed. On April 12, 2007, Huebner, an 80-year-old woman, was looking for a friend's house on a residential street. She went past the house she was looking for and pulled into the Duquettes' driveway to turn

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

around. She attempted to back out of the driveway, but because she had failed to put the car in reverse, her car accelerated forward, striking the Duquettes' car, which was parked in the driveway, and pushing it forward several feet through their garage door. The police were called and took a report.

There is no dispute that Huebner was responsible for the damages to the Duquettes' car and garage door. After Huebner and the police had left, Kirk Duquette attempted on his own to pull his car out of the garage door. He pushed the door up with one hand while trying to push his car out with the other hand. The garage door snapped down when the car moved, pinning his right hand between the door and the hood of his car. Kirk Duquette admitted that it was "basically a giant mousetrap." As a result, he suffered four broken bones in his right hand.

The Duquettes filed suit against Huebner for the personal injuries Kirk had suffered in his attempt to extricate the car from the garage door. They also joined their insurer, Medical Mutual of Ohio, so that it could assert any existing subrogation interests in the litigation. After discovery was completed, Huebner filed a motion for summary judgment, which the trial court granted. The Duquettes now appeal.

In a single assignment of error, the Duquettes argue that the trial court erred by entering summary judgment in Huebner's favor. We are unpersuaded.

We review the trial court's decision on a summary-judgment motion de novo. Summary judgment is appropriate when "(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party."²

² *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

The Duquettes argue that the trial court erred in granting summary judgment to Huebner on the basis that Kirk's actions constituted an intervening cause of his injuries. Ohio law provides that when a defendant's conduct is negligent and the plaintiff's injury is the natural and probable consequence of that conduct, the defendant is liable.³ "To find that an injury was the natural and probable consequence of an act, it must appear that the injury complained of could have been foreseen or reasonably anticipated from the alleged negligent act."⁴ However, an intervening act may break the causal connection between the defendant's negligence and a later injury, thus absolving the defendant of liability, if the intervening actor was a reasonable person who could or should have eliminated the hazard, and the intervening cause was not reasonably foreseeable by the defendant.⁵

In this case, the Duquettes argue that Kirk's Duquette's injury never would have happened but for Huebner's negligence and that it was foreseeable that the car and garage door would have to be fixed. But where an independent action occurs to break the causal connection, and that independent action was not foreseeable by the defendant, as here, the injury is not the proximate result of the defendant's earlier negligence.⁶ Here, Kirk Duquette's actions occurred four hours after the accident, without the consent or knowledge of Huebner. While it was foreseeable that the door would have to be fixed, it was not foreseeable that Kirk Duquette would have undertaken on his own what he himself termed a dangerous task in attempting to extricate the car from his garage.

The Tenth Appellate District's decision in *Knisley v. Bray*⁷ is both factually and legally on point. In that case, the plaintiff was operating a truck when he was

³ *Reed v. Weber* (1992) 83 Ohio App.3d 437, 441, 615 N.E.2d 253.

⁴ *Knisley v. Bray*, 10th Dist. No. 03AP-887, 2004-Ohio-4553, at ¶10.

⁵ *Id.*

⁶ *Reed*, *supra*, at 441-442.

⁷ 10th Dist. No. 03AP-887, 2004-Ohio-4553.

rear-ended by the defendant.⁸ A large tractor motor in the back of the plaintiff's truck fell out as a result of the collision.⁹ A nearby resident offered the use of his Bobcat to lift the motor back into the truck.¹⁰ While attempting to do so, the plaintiff slipped in a puddle of oil, hitting his head and sustaining serious injuries.¹¹ The trial court granted the defendant's motion for summary judgment, determining that the plaintiff's injuries were not proximately caused by the negligence of the defendant and were not foreseeable by him.¹² The Tenth Appellate District affirmed the trial court's judgment, holding that the plaintiff's attempt to load the motor back on the truck constituted an intervening, superseding cause of his injuries.¹³

Similarly, in this case Kirk Duquette's attempt to extricate his car from his garage was not foreseeable by Huebner and constituted an intervening superseding cause of his injuries. We, therefore, overrule the Duquettes' sole assignment of error and affirm the trial court's entry granting summary judgment to Huebner.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 17, 2010

per order of the Court _____.
Presiding Judge

⁸ Id at ¶2.

⁹ Id.

¹⁰ Id.

¹¹ Id. at ¶3.

¹² Id. at ¶5.

¹³ Id. at ¶¶7-17.