

STATE OF VERMONT  
WINDSOR COUNTY

ROBIN L. BUKER

v.

RICHARD JOHNSTON KING,  
Special Administrator of the  
Estate of Joseph Brouillard

)  
)  
)  
)  
)  
)  
)

Windsor Superior Court  
Docket No. 523-11-05 Wrcv

DECISION

Defendant's Renewed Motion for Judgment as a Matter of Law

The present post-trial matter before the court is defendant Richard Johnston King's renewed motion for judgment as a matter of law. He argues that the evidence presented at trial did not support the jury's determination that the automobile accident was foreseeable. In essence, he seeks a ruling as a matter of law that Mr. Brouillard experienced a sudden and unforeseen medical emergency while driving.

Vermont law provides that a motorist may be excused from liability if he experiences a "sudden and unforeseen medical event that causes a loss of consciousness." *Simpson v. Rood*, 2005 VT 21, ¶ 9, 178 Vt. 474 (mem.). It was undisputed at trial that Mr. Brouillard was a diabetic who experienced a sudden hypoglycemic blackout while driving. The only liability question presented was whether the hypoglycemic event—a loss of consciousness caused by extremely low blood sugar levels—was foreseeable.

There were two medical experts who testified during the trial. The first was Dr. Muriel Nathan, who had treated Mr. Brouillard for diabetes since 1991. She testified that diabetics sometimes experience extremely low blood sugar as a result of insulin intake, and that these hypoglycemic events can result in symptoms ranging from an inability to concentrate to visual impairment. At extraordinarily low blood sugar levels, diabetics can experience blackouts and seizures—or even death.

There are early warning signs that many diabetics experience as their blood sugar levels fall, including shakiness, anxiety, hunger, sweating, rapid heart beat, chills, and light-headedness. More significant warning signs include tingling or numbness in the lips and tongue, blurred vision, and confusion or delirium.

Some diabetics develop an inability to recognize the symptoms that accompany the onset of a hypoglycemic event. Such "hypoglycemic unawareness" can occur when diabetics maintain daily blood sugars that are very low for long periods of time.

Dr. Nathan testified that Mr. Brouillard maintained very strict control over his blood sugar. This meant that he was very attentive to the daily diabetic regimen—taking regular doses of insulin at each meal, counting his carbohydrate intake, etc. This also meant that he was maintaining his blood sugar at low levels that put him at risk of developing hypoglycemic unawareness. Dr. Nathan testified that this made him a risk to become disoriented while driving an automobile.

FILED  
AUG - 5 2009

Windsor County Clerk

To this end, Dr. Nathan advised Mr. Brouillard that he should check his blood sugar before driving. He knew that if his blood sugar was below 120, he should not begin to drive, but rather should eat some carbohydrates and wait fifteen minutes before checking his blood sugar again. He also knew that his blood sugar was typically low in the late morning. Dr. Nathan testified that it was foreseeable that Mr. Brouillard would experience hypoglycemic symptoms while driving if he did not follow his prescribed routine.

On the morning of the accident, Mr. Brouillard ate a carbohydrate-free breakfast of eggs and coffee. (He had recently started a new no-carbohydrate diet.) He then left the house in the late morning and began driving his automobile. We do not know whether he checked his blood sugar before driving or not—he passed away subsequent to the accident but prior to the filing of this lawsuit.

The accident occurred approximately one hour and fifteen minutes after Mr. Brouillard left his home. His blood sugar count shortly after the accident was approximately 30—a level at which seizures and blackouts can occur. Dr. Nathan testified that under ordinary circumstances it would have taken 2½ to 3 hours for Mr. Brouillard's blood sugar level to drop from 120 to 30.

From this circumstantial evidence, the jury could readily infer that Mr. Brouillard's blood sugar was less than 120 when he started driving. The jury could also infer that Mr. Brouillard either checked his blood sugar before driving but disregarded the results or that Mr. Brouillard forgot to check his blood sugar before driving. From this inference, the jury could have reasonably determined that the resulting accident was foreseeable.

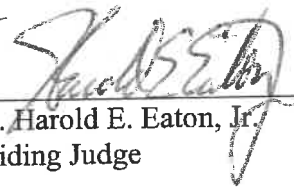
This conclusion is further supported by the testimony of Dr. Neil Aronin, who testified that the medical records showed that Mr. Brouillard had frequently been asked to loosen up on his blood sugar levels in order to lessen the risk of experiencing hypoglycemic symptoms—particularly while driving. This testimony reinforces the fairness of the conclusion that Mr. Brouillard knew the risks of driving without first ensuring that his blood sugar was more than 120.

There are other inferences that the jury could have drawn from the circumstantial evidence. However, in reviewing the renewed motion for judgment as a matter of law, the court views the evidence in the light most favorable to the non-moving party. *Follo v. Florindo*, 2009 VT 11, ¶ 26. Viewed in that light, the evidence fairly and reasonably supports the conclusion that Mr. Brouillard's blackout was foreseeable.

### ORDER

Defendant's Renewed Motion for Judgment as a Matter of Law (MPR #37) is *denied*.

Dated at Woodstock, Vermont this 5 day of August, 2009.

  
Hon. Harold E. Eaton, Jr.  
Presiding Judge

FILED  
AUG - 5 2009

Windsor County Clerk