Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-235

OCTOBER TERM, 2010

John La Croix and Marcia La Croix	}	APPEALED FROM:
	}	
	}	
v.	}	Windham Superior Court
	}	
	}	
Leah Pleason Mueller	}	DOCKET NO. 59-2-09 Wmcv
		Trial Judge: John P. Wesley

In the above-entitled cause, the Clerk will enter:

Plaintiffs appeal from the trial court's order granting summary judgment to defendant on their negligence complaint.[*] We affirm.

The trial court relied on the following undisputed facts in reaching its decision. In late April 2008, defendant parked her car in a dead-end alley adjacent to Sanel Auto Parts, where plaintiff John La Croix worked. Defendant parked in an area marked "loading zone" while she went into a store on the opposite side of the alley. When defendant returned to her vehicle and turned it around, she discovered a Sanel truck blocking the alley's exit. La Croix's coworker, Erik Ethier, exited the store and began to move the truck. La Croix also exited the Sanel store and approached defendant's vehicle. La Croix was then struck and injured by Ethier's truck.

La Croix sued defendant for negligence. He alleged that defendant had a duty to maintain control of her vehicle, obey parking laws, and avoid creating a hazard to others, and that she breached this duty by parking in the loading zone. According to La Croix, as the direct and proximate result of defendant's act, he was injured when he was struck by a motor vehicle operated by a co-worker.

Defendant moved for summary judgment, and the court granted her request. It found no logical nexus between defendant's decision to park in the loading zone and La Croix's injuries. The court explained that at the time of the collision, defendant was seated in her stationary vehicle waiting for the alley to be unblocked so she could drive out of it. Her vehicle made no contact with the Sanel truck or any part of La Croix's body. Defendant did not advise Ethier how to maneuver his truck, nor did La Croix show that any act by defendant contributed to the collision by causing a distraction. The collision presumably resulted from Ethier and La Croix's inattention, the court explained, and there were no facts supported by the evidence that implicated defendant as a participant in the immediate precipitating events leading to La Croix's

[*] Plaintiffs are husband and wife. For simplicity's sake, we refer only to John La Croix.

injuries. The court found La Croix's "but for" analysis far too attenuated to permit any reasonable jury to find proximate cause. It thus entered judgment for defendant. This appeal followed.

La Croix maintains that the court decided disputed facts in reaching its decision. According to La Croix, there was evidence to suggest that defendant might have contributed to the collision by causing a distraction. As support, he cites, among other things, defendant's statement during her deposition that she was engaged in a conversation with La Croix at the time of the accident. La Croix also asserts that he did not need to show that he was distracted by defendant, but only that defendant contributed to his injury by parking in an unauthorized manner and that she was a cause of the events leading to the injury. La Croix reiterates his claim that but for defendant's parking in the alley, the incident would not have occurred.

We review a grant of summary judgment using the same standard as the trial court. Richart v. Jackson, 171 Vt. 94, 97 (2000). Summary judgment is appropriate when, taking all allegations made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Id.; V.R.C.P. 56(c). Summary judgment was properly granted to defendant here.

To sustain his negligence claim, La Croix needed to establish, among other requirements, that defendant's conduct was the proximate cause of his injuries. Langle v. Kurkul, 146 Vt. 513, 517 (1986) (identifying elements of common law negligence). As we have explained, "[p]roximate cause is the law's method of keeping the scope of liability for a defendant's negligence from extending by ever-expanding causal links." Estate of Sumner v. Dep't of Soc. & Rehab. Servs., 162 Vt. 628, 629 (1994) (mem.). Thus, proximate cause requires "a causal connection between the act for which the defendant is claimed to be responsible and which is alleged to be negligent and the resulting flow of injurious consequences." Rivers v. State, 133 Vt. 11, 14 (1974) (describing proximate cause as "cause-in-fact, resulting from the negligent act"). While "proximate cause ordinarily is characterized as a jury issue, it may be decided as a matter of law where the proof is so clear that reasonable minds cannot draw different conclusions or where all reasonable minds would construe the facts and circumstances one way." Collins v. Thomas, 2007 VT 92, ¶ 8, 182 Vt. 250 (quotations omitted).

No reasonable jury could find that defendant's act was the proximate cause of La Croix's injuries here. As the trial court found, the connection between defendant's alleged act of negligence—parking in a loading zone—and La Croix's injuries is simply too tenuous. While defendant's act eventually led to someone moving a truck that struck La Croix, that alone is insufficient. See Collins, 2007 VT 92, ¶ 8 (explaining that "but for" causation alone is not sufficient to establish negligence; one must also show proximate cause, i.e., a sufficient legal nexus between the alleged negligent act and the injurious consequences at issue). As one treatise explains, "[i]n a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the discovery of America and beyond. . . . But any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would set society on edge and fill the courts with endless litigation." W. Prosser, Handbook of the Law of Torts, § 45, at 312 (1941) (quotation omitted). "As a practical matter," then, "legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability." Id.

That critical connection is absent in this case. The cause-in-fact of La Croix's injuries was Ethier's act of backing up his truck, and defendant played no role in this act whatsoever. We reject La Croix's attempt to distinguish his case from other cases where we have found an absence of proximate cause. See, e.g., Collins, 2007 VT 92, ¶ 10 (plaintiff, who was intoxicated, died after falling from back of pickup truck; Court held that while defendant acted negligently in operating a defective truck, driver's conduct was not the proximate cause of plaintiff's injury because there was no relationship between alleged negligent act and accident); Finnegan v. State, 138 Vt. 603 (1980) (plaintiff injured when struck by car operated by escaped prisoner, and claimed that State was negligent in creating circumstances that allowed prisoner to escape; Court rejected claim, finding that cause-in-fact of plaintiff's damages was independent act of escapee and not any alleged negligent acts by State); Rivers, 133 Vt. 11 (State not liable for negligence when plaintiffs were struck by an automobile driven by a prison inmate who had been released on a weekend pass; proximate cause of harm was independent act of inmate who was driving while intoxicated, at high rate of speed, and without lights).

None of La Croix's arguments persuade us to a contrary conclusion. La Croix suggests that there is a dispute of fact as to whether he was distracted by defendant at the time of the accident. Assuming arguendo that the accident report form and other documents on which La Croix relies are admissible evidence, they do not support the proposition that defendant engaged in acts that distracted La Croix. They reflect instead that La Croix was attempting to engage defendant in conversation. Indeed, La Croix asserts as much in his own statement of facts. The record similarly does not support La Croix's assertion that the court applied an inappropriate standard to evaluate proximate cause or that the court decided disputed facts in reaching its decision. We also reject La Croix's assertion that the court reversibly erred by misconstruing his argument regarding per se negligence. According to La Croix, he did not assert that defendant's act of parking in the loading zone was negligence per se, but argued only that it could be considered as a factor in determining if defendant acted negligently. Even if one considers illegal parking as a factor, however, the result would be the same. There is simply insufficient evidence to establish proximate cause.

La Croix next argues that the court failed to provide any analysis of the Restatement (Second) of Torts regarding intervening cause. Had the court explicitly considered this issue in its written decision, the result would be the same. This case is not about "intervening causes." As previously discussed, La Croix's injuries were not the natural and probable consequence of defendant's act of parking in a loading zone. It is Ethier's act alone that is the legal cause of La Croix's injuries. Defendant did not "create[] or increase[] the risk of a particular harm," as La Croix asserts, and her act was not "a substantial factor in causing that harm." Restatement (Second) of Torts § 442 B (1965). Defendant's reliance on Johnson v. Cone, 112 Vt. 459 (1942), as support for this intervening-cause theory is thus misplaced. We note, however, that Johnson does recognize that "[w]here a second actor has become aware of the existence of a potential danger created by the negligence of an original tort-feasor, and thereafter, by an independent act of negligence, brings about an accident[,] the first tort-feasor is relieved of liability, because the condition created by him was merely a circumstance [of the accident] and not its proximate cause." Id. at 464 (quotation omitted). At its core, negligence "necessarily involves a foreseeable risk, a threatened danger of injury, and conduct unreasonable in proportion to the danger. If the defendant could not reasonably foresee any injury as the result of his act, or if his conduct was reasonable in light of what he could anticipate, there is no negligence, and no liability." Prosser, supra, § 48, at 341. The trial court correctly determined that defendant was not legally responsible for La Croix's injuries here.

Finally, we reject plaintiffs' assertion that the court erred by granting summary judgment without first holding a hearing on the motion. The trial court is authorized to dispose of such motions without argument, and there is no support for plaintiffs' claim that they were "denied their day in court." See V.R.C.P. 78(b)(2); Blake v. Nationwide Ins. Co., 2006 VT 48, ¶ 21, 180 Vt. 14 (rejecting similar argument).

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice