CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Lawson v Safeway, Inc. (12/30/10)

Negligence; Duty; Proximate Causation

In July 2005, a large Safeway tractor trailer was parked legally on the side of US Highway 101 close to the intersection of Anchor Way in Crescent City. The position of the tractor trailer blocked the view of oncoming traffic for a driver, Mr. Kite, on Anchor Way attempting to cross and turn onto 101. The Kite's pickup truck collided with motorcyclist Charles Lawson whose wife Connie was riding with him as they traveled on 101. The Lawsons filed suit against Safeway, the driver of the Safeway truck, the driver of the pickup, and the State of California.

At trial, the driver of the pickup truck, Mr. Kite, testified that he crept forward past the stop sign controlling his direction of travel on Anchor Way, trying to see around the Safeway truck, and looking to the right to check for traffic coming north on 101. He stated he could not see the plaintiffs' motorcycle approaching until his pickup was about halfway out into the southbound 101 lane.

Larry Neuman, an engineer, testified for plaintiffs that, according to CalTrans' design manual, a driver in Kite's position should have been able to see 550 feet along 101 to safely cross the 50 mph highway. The verified sight line was actually 1,500 feet. Neuman testified that with the Safeway truck blocking the view, a driver could see only 125 feet. Even if he pulled out to the edge of the southbound lane, the driver could only see 366 feet. Neuman testified the Safeway truck created a dangerous condition that posed a "significant risk of vehicle conflict" at the intersection.

Clay Campbell, the engineer retained by Safeway and CalTrans, testified Kite had a responsibility to inch forward until he could see to have a good view of the approaching lanes of traffic. Neuman conceded that since plaintiffs were

traveling only 30-40 mph, Kite should have been able to safely negotiate the intersection with 366 feet of visibility.

The driver of the Safeway truck testified that he had parked in the same position between 20 and 40 times over the last two years. He drove at night and slept during the day, and Crescent City was a convenient layover. He said that when he pulled in front of the Anchor Beach Inn, he attempted to pull over as far as possible. The curb was not painted red, there were no signs prohibiting parking, and the hotel manager and receptionist stated he was permitted to park there. He was told not to park on the other side of the hotel as the truck would block views of the beach.

Safeway required its drivers to park legally and safely when off duty. The driver testified that Safeway never advised him to consider other drivers' sight lines when he parked the truck, and that he was not concerned with blocking views when he parked in front of the Anchor Beach Inn. Plaintiff called a truck safety expert , John Riggins, who testified that the Safeway driver did not use reasonable care in parking the truck because of how it blocked views at the intersection. Riggins said that drivers are trained on how and where to park, including the need to check sight lines to avoid obstructing the views of other motorists. Although he acknowledged it was legal for the truck to be parked at the intersection, Riggins testified as to several alternative locations that were available near the hotel.

CalTrans called its traffic safety chief for the district. He noted this was a fairly low volume intersection, with only two prior accidents reported, neither involving parked vehicles. He testified that parking at this location did not constitute a dangerous condition that created a substantial risk of injury. Cal Trans had permitted the construction of the hotel, with an encroachment into the right of way of Highway 101. There was no record CalTrans had considered parked cars in the area, or how they might obstruct views from Anchor Way. Such a consideration was not required in connection with encroachment review processes. CalTrans design branch chief testified she would have expected safety personnel to be cognizant of the issue.

The jury apportioned fault for plaintiffs' damages 35% to Safeway, 35% to CalTrans, and 30% to Kite. Safeway appealed, arguing that it has no legal duty to plaintiffs or that there was insufficient evidence that his negligence was a cause of plaintiff's injuries. On appeal, the First Appellate District first evaluated the duty issue.

The general rule is that persons have a duty to use ordinary care to prevent others from being injured as the result of their conduct. (Civil Code section 1714) The principal consideration in deciding whether a duty is owed is the foreseeability of the harm (*Dillon v Legg* (1968) 68 Cal.2d 728), which is not to be measured by what is more probable than not, but includes whatever is likely enough in the setting of modern life that a reasonably thoughtful person would take account of it in guiding practical conduct. (*Bigbee v Pacific Tel. & Tel. Co.* (1983) 34 Cal.3d 49) Courts must also be mindful of the extent of the burden to the defendant and the consequences to the community of imposing the duty at issue. (*Rowland v Christian* (1968) 69 Cal.2d 108).

Safeway argues that the risk of an accident like the one that transpired here was not reasonably foreseeable because no accidents involving obstructed views had previously occurred at this particular intersection. The First DCA observed that a court's task in determining duty is not to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party. (*Ballard v Uribe* (1986) 41 Cal.3d 564) Looking generally at the category of conduct involved, the Justices decided that parking a large, commercial truck near an intersection may obstruct the views of passing motorists and cause them to collide.

Most of the *Rowland* factors militate in favor of recognizing a duty in this case. Plaintiffs were unquestionably injured and the Safeway driver's conduct was connected closely enough to the accident to qualify as a proximate cause. Recognition of a duty would help prevent future harm because intersections will be safer if approaching traffic is clearly visible. No showing has been made that the risk involved is uninsurable. On the other hand, little or no moral blame attached to the Safeway driver as interpreted in *Rowland*. (See, *Adams v City of Freemont* (1998) 68 Cal.App.4th 243)

Safeway argues that the duty in question would be unduly burdensome because drivers generally "lack the training and expertise necessary to perform a line of sight analysis" and there would be no reasonable way to describe the duty if it was recognized. In Safeway's view, drivers should be entitled to rely on the government to prohibit parking where parking would be unsafe. The government's duty to avoid ignoring or creating dangerous conditions on public

property, and drivers' duty to use reasonable care while crossing intersections, are sufficient to prevent accidents like the one here.

The Court agreed that drivers should ordinarily have no exposure to liability if they are legally parked. It agreed that parked vehicles are often parked in ways that obstruct views in ways that increase the risk of nearby collisions, and liability would not be appropriate in the great majority of such situations. But the Justices determined this case is different and involves a situation where the risk of foreseeable harm was unreasonable. They explained that in a case involving a large commercial truck, the sheer size of the vehicle obstructs more of the view than smaller vehicles. Additionally, expert testimony established that drivers are trained to take other drivers' sight lines into account when parking. Although large tractor trailer operators would not expect they have a duty to pick a lawful parking spot and pull fully into it, **specially licensed drivers like Safeway's employee here are aware of the need to take extra precautions**.

Here, on Highway 101, the higher posted speed limit raises the risk of serious injury. The driver could have parked elsewhere without creating a hazard. "If the actor reasonably can accomplish the same result by other conduct which involves less opportunity for harm to others, the risk incurred in the manner of doing business which resulted in injury is clearly unreasonable." (6 Witkin, Summary of Cal. Law, Torts, section 868) The driver was not as a matter of law excepted from the duty he would ordinarily bear to exercise due care in the operation of his vehicle simply because he was parked legally, and the issue of his negligence in choosing where to park was properly submitted to a jury.

The Appellate Court recognized that imposing a duty to park safely as well as legally would require line drawing in future cases, but added that courts have been able to limit liability predicated on tests largely based on foreseeability. Each case must be considered on its own facts to determine whether the situation justifies the conclusion that the foreseeable risk of harm is unreasonable, and the defendant owner or one in charge of a vehicle has a duty to third persons in the class of the plaintiffs to refrain from subjecting them to such risk. (*Dillon*, at p. 742)

Here, the alleged inability to fix definitions for recovery on the different facts of future cases does not justify the denial of recovery on the specific facts of the instant case; and, in any event, proper guidelines indicate the extent of liability for future cases. The Justices stated: **"It should be clear from the facts we have identified that justify recognition of a duty in this case that our**

holding will not clog the streets with drivers looking for safe parking spaces, and that our decision is of no concern to the driver of the Expedition who parks next to the Mini Cooper at the shopping center, however difficult it might be for the smaller vehicle to back out of its space."

The Court then reviewed 10 cases from other states, eight of which support its rationale. It concludes that there is very little support for Safeway's legal parking defense in cases involving the kind of accident that occurred here. In cases where a duty has been recognized the courts have cited some of the same considerations the First DCA found to be relevant. Importantly, imposition of a legal duty under the particular facts of this case does not necessarily impose liability on the driver. It is then up to a jury to determine fault after consideration of all the evidence.

Safeway contends that the evidence was insufficient as a matter of law to support the proximate cause element of plaintiffs' case. While duty is a question for the court, proximate causation is generally a question of fact for the jury. (*Hoyem v Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508) The jury found that Safeway's driver was a substantial factor in causing plaintiffs' harm, a 35% contributing factor. This finding, supported by the evidence, satisfied the first element of proximate cause, which asks whether the defendant's conduct was a "cause in fact" of the injury. (*Mitchell v Gonzalez* (1991) 54 Cal.App.3d 1041)

Safeway bases its argument on the second, "normative or evaluative" element of proximate cause, which asks, as a matter of policy, whether the defendant should be held responsible for the damage its negligence has caused. (*Jackson v Ryder Truck Rental, Inc.* (1993) 16 Cal.App.4th 1830) Safeway argues that it was entitled to expect that other parties would act reasonably, and that it had no reason to expect public authorities would permit an unsafe parking spot or expect that Mr. Kite would proceed into a busy highway without ensuring clear sight. Safeway argues the degree of connection between its conduct and the accident is attenuated.

The Court noted that it had already addressed the question of Safeway's driver being legally parked in the discussion of the duty issue. As to the negligence of Kite, Safeway relies on the principles of CACI 411 that every person has a right to expect that every other person will use reasonable care and will not violate the law. The Justices pointed out that this expectation does not exonerate a defendant whose "conduct has increased the risk of harm." "If the likelihood that a third person may act in a particular manner is the hazard or one

of the hazards which makes the actor negligent, such an act whether innocent, intentionally tortuous, or criminal does not prevent the actor from being liable for harm caused thereby." (Rest.2d Torts, section 449) In other words, the allegedly remote connection between the Safeway driver's conduct and plaintiff's injuries was an argument for the jury because the evaluation of cause as a substantial factor is ordinarily a question of fact for the jury. (6 Witkin, Summary of Cal.Law, Torts, section 1184)

The evidence was sufficient to support the submission of cause to the jury and the finding of cause in this case. The judgment is affirmed. Safeway will bear plaintiffs' costs on appeal.

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