COURT OF APPEALS
DECISION
DATED AND FILED

July 29, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2552 **Cir. Ct. No. 2013CV375**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

MARK SCHULTZ,

PLAINTIFF-APPELLANT,

GOLDEN RULE INSURANCE COMPANY,

INVOLUNTARY-PLAINTIFF,

V.

GERMANTOWN MUTUAL INSURANCE COMPANY AND DAVID JUEDES,

DEFENDANTS-RESPONDENTS,

APPEAL from a judgment of the circuit court for Fond du Lac County: RICHARD J. NUSS, Judge. *Affirmed*.

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. Mark Schultz appeals from a judgment denying his motion for summary judgment and granting summary judgment to David Juedes and Juedes's insurer, Germantown Mutual Insurance Company. Schultz alleges that an injury he suffered while helping Juedes free a lawn mower was due to Juedes's negligence in getting it stuck. We conclude Schultz's injury is too remote from the alleged negligence, precluding liability. We therefore affirm.

¶2 Schultz is an excavation contractor Juedes hired to reconfigure a pond. While Schultz was excavating part of the pond, Juedes used a riding mower to cut the grass and weeds around it. As he attempted to drive the mower over the pond's edge into the dry bed, it became lodged on a chunk of hard dirt.

¶3 From approximately fifty feet away, Schultz saw Juedes trying to free the mower. Unsummoned, he walked over to see if he could help. After other attempts to free the mower failed, Schultz tried to lift and push the mower by placing his hands on a piece of metal extruding from under the hood. The mower rolled backwards, lacerating Schultz's finger. He later underwent a partial amputation.

¶4 Schultz brought this negligence action against Juedes. Juedes moved for summary judgment on grounds that Schultz's own actions caused his injury or, alternatively, that public policy considerations preclude a finding of liability. Schultz opposed Juedes's motion and filed his own motion for summary judgment on the issue of liability. The circuit court granted Juedes's motion and denied Schultz's. Schultz appeals.

¶5 We review summary judgment determinations de novo, using the same methodology as the circuit court. ***Sonday v. Dave Kohel Agency, Inc.***, 2006 WI 92, ¶20, 293 Wis. 2d 458, 718 N.W.2d 631. We affirm a grant of summary

judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2) (2013-14).[1]

¶6 Schultz raises two issues on appeal. First, he contends that summary judgment should have been denied to Juedes because a reasonable jury could find that Juedes was causally negligent in operating the lawn mower. Second, he argues that his summary judgment motion on liability should have been granted because it was reasonably foreseeable that he would go to help Juedes free the mower. Neither argument persuades.

¶7 We assume for purposes of this appeal that the lawn mower got stuck due to Juedes's negligent operation. Liability does not necessarily follow from a finding of negligence and cause-in-fact, however. ***Kidd v. Allaway***, 2011 WI App 161, ¶8, 338 Wis. 2d 129, 807 N.W.2d 700. This is so because "negligence and liability are distinct concepts." ***Hoida, Inc. v. M&I Midstate Bank***, 2006 WI 69, ¶25, 291 Wis. 2d 283, 717 N.W.2d 17 (citation omitted).

¶8 Wisconsin courts long have recognized six judicial public policy factors that limit liability even when negligent conduct is present:

> (1) "the injury is too remote from the negligence"; (2) the recovery is "'wholly out of proportion to the culpability of the negligent tort-feasor'"; (3) the harm caused is highly extraordinary given the negligent act; (4) recovery "would place too unreasonable a burden" on the negligent tort-feasor; (5) recovery would be "too likely to open the way to fraudulent claims"; and (6) recovery would enter into "'a field that has no sensible or just stopping point.'"

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless noted.

Id., ¶41 (citation omitted). Though it usually is a better practice to submit the case to a jury before precluding liability on public policy grounds, a court may review the public policy factors when, as here, the facts are straightforward and the public policy questions have been fully presented. *See* ***Alvarado v. Sersch***, 2003 WI 55, ¶18, 262 Wis. 2d 74, 662 N.W.2d 350. A finding of nonliability due to public policy considerations presents a question law, which we review de novo. ***Rockweit v. Senecal***, 197 Wis. 2d 409, 425, 541 N.W.2d 742 (1995).

¶9 In reviewing the public policy factors, we conclude that Schultz's injury is too remote from any negligence on Juedes's part. "The remoteness factor revives the intervening or superseding cause doctrine." ***Cefalu v. Continental W. Ins. Co.***, 2005 WI App 187, ¶21, 285 Wis. 2d 766, 703 N.W.2d 743. A determination that the negligence and the injury are too remote essentially is "a determination that a superseding cause should relieve the defendant of liability." ***Id.*** In assessing remoteness, we consider "time, place, or sequence of events" and "whether 'the chain of causation was direct and unbroken.'" *See* ***Kidd***, 338 Wis. 2d 129, ¶14 (citation omitted).

¶10 Here, Juedes's negligence in causing the mower to become stuck was too far removed in time and place from Schultz sustaining his injury. Nothing in the record indicates, and Schultz does not claim, that the stuck mower presented an emergency situation requiring immediate attention. By itself, the immobilized mower posed no threat to anyone and could have remained in that position indefinitely.

¶11 The sequence of events between the negligence and the injury also points to remoteness. Juedes did not summon Schultz for assistance. Rather, Schultz voluntarily walked over to Juedes after observing the stuck mower from a

distance. Schultz suggested ways to free the mower and cut his finger implementing one of them when Juedes's negligence no longer was actively operating. Indeed, Schultz conceded at deposition that Juedes did not engage in any negligent conduct while he tried to help Juedes. Schultz's actions broke the chain of causation.

¶12 We conclude that liability for Schultz's injury is precluded by public policy as it is too remote from Juedes's earlier negligence. We affirm the grant of summary judgment to Juedes and the dismissal of Schultz's complaint.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.