COURT OF APPEALS
DECISION
DATED AND FILED

July 22, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2039 **Cir. Ct. No. 2010CV8349**

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

KEVIN STANFORD AND STANFORD TRUST,

PLAINTIFFS-APPELLANTS,

V.

TIME WARNER CABLE OF SOUTHEASTERN WISCONSIN LIMITED PARTNERSHIP AND CLINTON STAMPS,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Reversed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 CURLEY, P.J. Kevin Stanford and the Stanford Trust (hereafter collectively referred to as "Stanford") appeal the order granting summary judgment on claims alleged against Clinton L. Stamps and Time Warner Cable (hereafter collectively referred to as "Stamps"). The order was accompanied by a

written decision in which the trial court determined that: Stamps trespassed on Stanford's property by parking his work van—owned by Time Warner Cable—on a concrete pad next to Stanford's garage without permission; Stamps' trespass was a substantial cause of a fire that began in the van and spread to Stanford's garage, destroying the garage; and, nevertheless, public policy factors precluded liability. Stanford argues that summary judgment is inappropriate in this case because public policy factors do *not* preclude liability, and we agree. We consequently reverse the trial court's order.

BACKGROUND

¶2 The facts of this case are not in dispute. We derive much of the pertinent background information from the trial court's decision, which uses facts stipulated to by the parties.

¶3 Stanford owns property on North Fourth Street in Milwaukee. The property includes a garage and an adjacent concrete pad. Stanford does not use the property as his primary residence, but has used the garage for storage in the past. He has rented the property to tenants over the years, but has not done so since the fall of 2008.

¶4 In December 2006, Stamps moved to a residence across the alleyway from the Stanford property. In May 2007, Stamps began working for Time Warner Cable as a technician. Time Warner provided Stamps with a van containing various tools and cable equipment that Stamps needed to perform his duties.

¶5 Shortly after starting work at Time Warner, Stamps began parking his work van on the concrete pad next to the Stanford garage when he returned

home from work each day. According to Stamps, Time Warner Cable permitted him to park his work van at home during non-work hours. Although Time Warner maintained a parking lot for work vehicles in Greenfield, he chose to park his work van near his home instead of the Greenfield lot because the company routed his daily work schedule from his home. Stamps stated that he would have incurred a long bus commute to get to Greenfield because his personal car was often not in working order. Stamps also explained that he chose to park his work van on the Stanford property instead of on the street because he believed that the city prohibited the parking of utility vehicles on the street for extended periods of time. In addition, Stamps did not park his work van in the driveway spot reserved for him on the property he rented because his personal vehicle was parked there.

¶6 In addition to parking his work van next to the garage at night, Stamps also parked the vehicle next to the garage during his days off. Out of a seven-day week, Stamps typically had two days off, and regularly parked his van next to the garage for most, if not the entirety, of those two days. He typically parked the van parallel to the garage door to allow other vehicles to freely pass his vehicle.

¶7 Stamps never asked Stanford for permission to park his van on the concrete pad adjacent to the garage, and Stanford was not aware that Stamps was parking his van in that location; in fact, before the incident that is the subject of this appeal, the two had never met. Stamps testified that he initially obtained "permission" to park his van on the concrete slab from a woman who rented the Stanford property at the time. Stamps could not recall the woman's name or how long she lived at the Stanford residence—although, as noted, the parties agree that the property had not been rented since 2008—but recalls asking the woman and her boyfriend if he could park next to the garage after he noticed that the two did

not park a car in that spot. According to Stamps, the couple said it would be "no problem." Stamps never received an objection or a complaint about parking the van in front of the garage from anyone.

¶8 On July 18, 2009, Stamps' run of free parking at the Stanford property came to an abrupt and fiery end. On that day, Stamps returned from work and parked the Time Warner van on the concrete pad located adjacent to the garage. He then left home and returned around 3:00 or 4:00 a.m. Upon his return, Stamps encountered his downstairs neighbor, Tamara, who was standing with two men in the alley near the garage. Stamps had a tenuous relationship with Tamara, and had a "debate" with Tamara and the two men about what they were doing in the alley. As Stamps described it, the three "had words" because Stamps believed that Tamara and the men had blocked his work van and his personal car with their cars. After his encounter with the people in the alley, Stamps left in his personal car to drive to a friend's house.

¶9 That night, Stamps' work van caught on fire while parked next to the Stanford garage. The fire spread to the garage, destroying it and its contents. When Stamps returned from his friend's house around 1:00 p.m. the next day, he saw that the garage had burned to the foundation and that his work van was gone. According to Stamps, when Tamara saw that he was looking for the van, she opened her window and said something to the effect of, "you deserved it." Stamps asked what she meant, but Tamara merely responded by shutting her window. Stamps contacted the police department and learned that his van had caught on fire.

¶10 The Milwaukee Fire Department determined that the fire began in Stamps' Time Warner work van and then spread to the Stanford garage. The Fire

Department could not, however, determine the precise cause of the fire or how it began. Stamps believed a small can of lighter fluid was missing from an area next to his grill, and that the same can was found empty in the yard next to his work van after the fire. Additionally, in light of Tamara's comment after the fire occurred, Stamps thought that Tamara and the two men from the alley started the fire.

¶11 Stanford subsequently filed the instant claim against Stamps and Time Warner, alleging that Stamps and Time Warner were negligent and that Stamps trespassed on Stanford's property, ultimately causing the fire damage to the garage. Stanford's insurer, Acuity, was later added as an involuntary plaintiff, but was dismissed from the case thereafter.

¶12 Stanford filed a "brief on liability," which requested judgment against Stamps on the grounds that there was no dispute that Stamps trespassed on Stanford's property and that his trespass ultimately resulted in the fire that destroyed Stanford's garage. Stamps in turn filed his own "brief on liability," arguing that he was not a trespasser, the presence of the van on Stanford's property was not a proximate cause of the fire that destroyed the garage, and public policy factors precluded liability.

¶13 The trial court found in Stamps' favor and dismissed Stanford's claims. In a written decision, the trial court determined that Stamps did trespass on Stanford's property and that, because "the Stanford garage would not have been damaged but for Mr. Stamps' decision to park his van adjacent to the garage," Stamps' trespass "was clearly a substantial factor in bringing about the

damages sustained by the plaintiffs," but that public policy factors precluded liability.[1]

¶14 Stanford now appeals.

ANALYSIS

¶15 On appeal, Stanford argues that the trial court erred in granting summary judgment on his claims against Stamps. The summary judgment standard is well-known and we need not repeat it here. *See* WIS. STAT. § 802.08 (2011-12);[2] ***Alliance Laundry Sys. LLC v. Stroh Die Casting Co.***, 2008 WI App 180, ¶12, 315 Wis. 2d 143, 763 N.W.2d 167.

¶16 Specifically, the issue before us in determining whether summary judgment is appropriate is whether public policy factors preclude liability; this is

[1] Stanford, in his appellate brief, describes the parties' briefs on liability as cross-motions for summary judgment that were based on stipulated facts. The defendants, in their appellate brief, insist that while "the trial court rendered … legal conclusions based upon the submissions of the parties … [t]his process was not a summary judgment" because the parties did not argue the summary judgment standard and the trial court did not reference the standard in its decision.

While not pertinent to any issue on appeal—as our standard of review is *de novo* whether the motion is characterized as a motion for summary judgment, *see* ***Smaxwell v. Bayard***, 2004 WI 101, ¶12, 274 Wis. 2d 278, 682 N.W.2d 923 (summary judgment reviewed *de novo*); ***Kidd v. Allaway***, 2011 WI App 161, ¶10, 338 Wis. 2d 129, 807 N.W.2d 700 (whether public policy precludes liability reviewed *de novo*)—we agree with Stanford that the motions filed by the parties, and the relief granted by the trial court, were for summary judgment. Notably, the parties stipulated to the pertinent facts, and both parties asked the trial court to dismiss the opposing parties' case. Moreover, the trial court's order did in fact dispose of the entire claim. This is a classic summary judgment, even if it was not titled as such. *See* ***Alliance Laundry Sys. LLC v. Stroh Die Casting Co.***, 2008 WI App 180, ¶¶12, 22-24, 315 Wis. 2d 143, 763 N.W.2d 167 (whether a motion is treated as one for summary judgment depends on the substance of the motion and supporting facts, not the title given by the parties or the trial court).

[2] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

because the parties agree that Stamps trespassed on Stanford's property and that the trespass was a substantial factor in causing the fire that destroyed Stanford's garage. *See, e.g.*, ***Coffey v. City of Milwaukee***, 74 Wis. 2d 526, 541, 247 N.W.2d 132 (1976) ("The determination to not impose liability in instances where a negligent act has been committed and the act is a 'substantial factor' in causing the injury rests upon considerations of public policy.") (citation and quotation marks omitted). Whether public policy factors preclude liability is a question of law we review *de novo*, benefitting from the trial court's analysis. *See* ***Kidd v. Allaway***, 2011 WI App 161, ¶10, 338 Wis. 2d 129, 807 N.W.2d 700. "Before determining whether public policy considerations preclude liability, it is usually a better practice to submit the case to the jury." ***Gritzner v. Michael R.***, 2000 WI 68, ¶26, 235 Wis. 2d 781, 611 N.W.2d 906. When, as in the case before us, however, "the facts are not complex and the relevant public policy questions have been fully presented," we may determine whether public policy precludes liability before trial. *See* ***id.***; *see also* ***Stephenson v. Universal Metrics, Inc.***, 2002 WI 30, ¶42, 251 Wis. 2d 171, 641 N.W.2d 158 ("The assessment of public policy does not necessarily require a full factual resolution of the cause of action by trial.").

¶17

> The public policy reasons that may preclude liability include: (1) the injury is too remote from the negligence, (2) the injury is too wholly out of proportion to the tortfeasor's culpability, (3) in retrospect it appears too highly extraordinary that the negligence should have resulted in the harm, (4) allowing recovery would place too unreasonable a burden on the tortfeasor, (5) allowing recovery would be too likely to open the way for fraudulent claims, and (6) allowing recovery would enter a field that has no sensible or just stopping point.

Gritzner, 235 Wis. 2d 781, ¶27.

¶18 The trial court focused on the first three public policy factors, determining that the damage to Stanford's garage was too remote from Stamps' trespass, the damage was out of proportion to Stamps' culpability, and it was too highly extraordinary that Stamps' trespass should have brought about the harm. *See* ***id.*** The parties also focus on the first three factors. Stanford contends that the trial court's analysis of these public policy factors is misguided, while Stamps argues that the trial court got it right—or, at the very least, that we should affirm summary judgment for *some* reason, if not the reasons stated by the trial court. *See* ***Badtke v. Badtke***, 122 Wis. 2d 730, 735, 364 N.W.2d 547 (Ct. App. 1985).

¶19 Our analysis of all six public policy factors leads us to conclude that summary judgment is not appropriate in this case.

¶20 Turning to the first public policy factor, we conclude that the injury is not too remote from the trespass. *See* ***Gritzner***, 235 Wis. 2d 781, ¶27. "Whether the injury is too 'remote' … 'is a restatement of the old chain of causation test.'" ***Kidd***, 338 Wis. 2d 129, ¶14 (citation omitted).

> [T]he remoteness inquiry "revives the intervening or superseding cause doctrine, which had passed away with the adoption of the substantial factor test of cause-in-fact." A determination that the injury is too removed or separated from the negligence is "essentially just a determination that a superseding cause should relieve the defendant of liability." Thus, in considering the time, place or sequence of events, we consider whether "the chain of causation was direct and unbroken."

Id. (citations omitted).

¶21 While the parties agree that the act of parking the van near the garage did not, by itself, start the fire, there is no dispute that Stamps' trespass set in motion the chain of events leading to the fire; additionally, there is not enough

evidence to conclusively establish that there was a "'superseding cause'" that broke the chain of events set in motion by Stamps' trespass. *See* ***id.*** (citation omitted). First, the parties agree that the garage would not have caught fire if Stamps had not parked his van next to it. This is in stark contrast to ***Kidd***—a case in which parents of a teenage girl sued a man for negligent mutilation of their daughter's body when the man hit her body, which was lying on the highway after she had already been killed in an earlier accident, with his car. *See* ***id.***, ¶¶2-6. In ***Kidd***, we held that the man who subsequently hit the plaintiffs' daughter's body should not be held liable, primarily because it was the first car accident that caused the daughter's death and it was the first accident that set the chain of events leading to the second contact in motion. *See* ***id.***, ¶¶17-19. Unlike the ***Kidd*** case, Stamps' trespass *did* set the chain of events leading to the fire in motion. Second, in this case there is no evidence of a superseding cause of the fire that broke the chain of causation. *See* ***id.***, ¶14. While Stamps believes, given the rude comments made by his neighbor Tamara, that the fire was an act of arson, the parties point to no facts conclusively establishing the cause of the fire. Under these circumstances, we cannot conclude that the fire damage is too remote from Stamps' trespass.

¶22 Turning to the second public policy factor, *see* ***Gritzner***, 235 Wis. 2d 781, ¶27, we conclude that the fire damage to the garage is not wholly out of proportion to Stamps' culpability. Just because no one objected to his parking next to the garage does not mean that he had permission to do so. Likewise, the fact the Stamps never saw anyone other than a few stray cats leave or enter the garage does not mean that no person would be injured by his decision to park where he did not have permission. Contrary to what Stamps implicitly argues, the fact that he never got "caught" parking without permission does not negate his

culpability. Rather, we agree with Stanford that Stamps' actions "were intentional, deceitful, and disreputable." Even assuming that Stamps had permission to park the van from the previous tenants of the Stanford property, the parties agree that he did not have permission from anyone after the fall of 2008, when the tenants moved out. This means that Stamps parked on Stanford's property without permission for a minimum of seven months. That Stamps may now be held responsible for the fire damage to the garage is not out of proportion to his wrongdoing.

¶23 Regarding the third public policy factor, *see* ***Gritzner***, 235 Wis. 2d 781, ¶27, we conclude that, in retrospect, it is not too highly extraordinary that Stamps' trespass should have brought about the harm. In determining otherwise, the trial court appears to have assumed that the fire was an act of arson. However, as we have already noted, the parties agree that the cause of the fire is unknown. Vans—and any vehicles or machines with internal combustion engines—can and do catch fire for any number of reasons, and a vehicle catching fire is not a once-in-a-lifetime event. The consequences of such fires can be disastrous, as they were in this case. Indeed, the risks inherent in automobiles are part of why we have rules about where people can park. Given the facts before us, we conclude that the damage caused by the trespass is not so extraordinary that liability must be precluded.

¶24 Turning to the final three factors—whether allowing recovery would place too unreasonable a burden on the tortfeasor, be too likely to open the way for fraudulent claims, or enter a field that has no sensible or just stopping point, *see* ***id.***—we conclude, for all the aforementioned reasons, that these factors do not preclude liability. We do not think that allowing recovery will place too unreasonable a burden upon Stamps, who, as noted, parked on Stanford's property

without permission for a considerable period of time. Nor can we imagine—given that the parties agree that Stamps' trespass was "clearly a substantial factor in bringing about the damages," and given that the parties agree that the cause of the fire is unknown—that allowing recovery in the instant case will likely open the way for fraudulent claims or enter a field that has no sensible or just stopping point. *See* ***id.***

¶25 Therefore, for all of the foregoing reasons, we conclude that public policy factors do not preclude liability, and that summary judgment on Stanford's claims against the defendants must be denied.

By the Court.—Order reversed.

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