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Automobile Driver Cannot Be Held to a Normal Degree of Care Under Extraordinary Circumstances - Robinson v. Walls

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Automobile Driver Cannot Be Held To A Normal Degree Of Care Under Extraordinary Circumstances

Robinson v. Walls[1]

The defendant, after leaving his employer's restaurant, was held up by a former employee, forced to turn over all the cash in his possession, and told to get into his car and drive as directed, with the robber taking a position directly behind the driver. After riding for more than ten minutes, the defendant felt there was little hope for his survival, and decided to take a calculated risk. With the car in motion, and after seeing that there were no pedestrians or moving cars in the vicinity, he jumped from his car and ran. The robber, while attempting to control the car, struck the parked unoccupied cars of the plaintiffs, causing damage to each. The plaintiffs brought this suit asserting that the defendant was negligent in abandoning his car while in motion, and that this negligence resulted in the damage to their cars.

The court held that the circumstances under which the defendant acted constituted an emergency situation, and that under the doctrine of emergency he could not be held liable for the resulting damage to the plaintiff's automobiles. In so holding, the court indicated that the defendant acted not only prudently, but more intelligently than most people under such circumstances.

To determine the issue of defendant's liability, two basic questions must be answered: first, did the defendant act as a reasonable and prudent man by exercising the proper degree of care in this particular situation; and second, assuming the defendant was negligent in his actions, were such actions the proximate cause of the resulting damage?

It has long been established that one is not negligent if he has used the same quantum of care as would have been exercised by a reasonable man under like circumstances. That degree of care has been described as that which experience has found necessary to prevent injury to others in like cases.[2] The circumstances of each particular case must be taken into consideration to determine the proper degree of care that one owes in respect to another's person

[1] People's Court of Baltimore City (No. 25189-58), reported in the Daily Record, August 22, 1959 (Md. 1959).

[2] P., W. & B. RR. Co. v. Kerr, 25 Md. 521, 530 (1866).

or property.[3] The doctrine of emergency, which holds the actor not liable for taking a course of action which results in disaster if such action was taken in a situation which arose suddenly and unexpectedly, would operate to lower the required level of care, so as to find an act done, without opportunity for deliberation, not negligent.[4]

In *Burhans v. Burhans*,[5] it was held that the driver was not negligent when, is swerving to avoid a dog, she overturned the car, injuring the occupants. The court said, in this opinion:

> "Because of the peril of the position in which she [the driver] was placed . . . and the possible consequences resulting from a collision . . . she is not held to the same accuracy of judgment as is required of her under ordinary circumstances. And though a course of action other than that which she pursued might have been more judicious, she is not to be held liable for her error of judgment in pursuing the course she did, if, in doing so, she acted with such care and caution as ordinarily prudent persons would have exercised under the stress of like circumstances."[6]

In applying the doctrine to the facts of the instant case, there is difficulty in meeting the requirement that to be an emergency, there must be a sudden and unexpected situation, such as to deprive the actor of all opportunity for deliberation.[7] In the case of the automobile driver, it is held that the emergency doctrine cannot be applied where a driver has had an opportunity to exercise his deliberate judgment between alternative courses of action.[8]

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[3] Kent County v. Pardee, 151 Md. 68, 75-76, 134 A. 33 (1926); Yellow Cab Co. v. Lacy, 165 Md. 588, 596, 170 A. 190 (1934).

[4] PROSSER, TORTS (2d ed. 1955) 137, § 32.

[5] 159 Md. 370, 150 A. 795 (1930).

[6] *Ibid.*, 375. Other cases reaching a similar result include Baker v. Shettle, 194 Md. 666, 72 A. 2d 30 (1950); Coastal Tank Lines v. Carroll, 205 Md. 137, 106 A. 2d 98 (1954); Brehm v. Lorenz, 206 Md. 500, 112 A. 2d 475 (1955); Mason v. Triplett, 217 Md. 433, 141 A. 2d 708 (1958).

[7] PROSSER, *loc. cit.*, *supra*, n. 4. "Sudden and unexpected" restriction applied in Hercules Power Co. v. Crawford, 163 F. 2d 968 (8th Cir. 1947); Kaestner v. Milwaukee Automobile Ins. Co., 254 Wis. 12, 35 N.W. 2d 190 (1948); Horton Motor Lines v. Currie, 92 F. 2d 164 (4th Cir. 1937); Henderson v. Land, 42 Wyo. 369, 295 P. 271 (1931).

[8] 60 C.J.S., § 257. "Sudden and unexpected" restriction applied in Horton Motor Lines v. Currie, 92 F. 2d 164 (4th Cir. 1937); Poneitowcki v. Harres, 200 Wis. 504, 228 N.W. 126 (1929); Bloxom v. McCoy, 178 Va. 343, 17 S.E. 2d 401 (1941). Similar restrictions are found in 1 CYCLOPEDIA OF AUTOMOBILE LAW (1948), Part 2, § 668. Recent Maryland cases in point are: Lehmann v. Johnson, 218 Md. 343, 146 A. 2d 886 (1958) and Warnke v. Essex, 217 Md. 183, 141 A. 2d 728 (1958).

The defendant had been in the perilous situation of being forced to drive at gunpoint for more than ten minutes. He testified that he took a calculated risk when he decided to jump from his automobile, which apparently involved a decision between two alternatives: (1) Remain in his automobile and take his chances with this "desperate criminal", or (2) Jump from the car, causing possible injury to himself as well as to other persons and their property. The first alternative was obviously rejected, and the second chosen only after ascertaining that there were no pedestrians or moving cars nearby. It is clear that the defendant made a definite, deliberate decision in his taking this calculated risk and that his abandoning the car was no mere impulse; and therefore, the situation does not actually fall within the strict definition of an emergency.

In *Lange v. Affleck*,[9] the driver of an automobile had ample opportunity, although less actual time than in the instant case, to observe the approaching danger of an oncoming automobile pulling into the wrong lane preparatory to making a left turn, yet he made no decision as to a course of action which would avoid an accident until the last moment, so that the accident occurred anyhow. Here, the court, disallowed any claim of emergency because the necessary elements of suddenness, unexpectedness and lack of time for deliberation were missing. However, compare *Cordas v. Peerless Transportation Co.*,[10] in which it was held that an emergency was present, where a fleeing criminal jumped into the defendant's cab and ordered the operator to drive away. The driver leapt from the moving cab within seconds when he realized the nature of his passenger, giving the element of suddenness and unexpectedness, thereby distinguishing it from the *Walls* case.

Assuming that the defendant's act of abandoning his moving automobile was negligent, however, it becomes necessary to determine if the negligent act was the proximate cause of the damage. Where a chain of events has been started due to the alleged negligence of the driver of an automobile, he may be held liable for all mishaps which are properly the proximate results of the improper conduct.[11]

The principal means of attacking this doctrine of proximate cause is to show an intervening cause in the chain of

[9] 160 Md. 695, 155 A.. 150 (1931).
[10] 27 N.Y.S. 2d 198 (1941).
[11] 60 C.J..S., § 255.

events that was sufficient to supersede the driver's original negligence.[12] In *Bloom v. Good Humor Ice Cream Co. of Baltimore*,[13] the doctrine of superseding intervening cause was held to relieve the defendant ice cream truck driver of negligence, if any, in his inviting a child to a place of danger by having him cross the street to make a purchase, because the acts of the child and the approach of the car which struck him were intervening causes superseding the defendant's act of negligence. So it may reasonably be argued that in the present case the criminal's attempts to steer the car after the defendant had jumped were the intervening causes, and would thus relieve the defendant of liability by superseding his act of jumping.

However, the mere fact that another cause has intervened between the defendant's negligence and damage for which recovery is sought, is not of itself sufficient in law to relieve the defendant of liability; and if the damage is the natural and probable consequence of the original act, or is such as might reasonably have been forseen as probable, the original wrongdoer is liable notwithstanding the intervening act or event.[14] Also, an intervening act of a person which is the normal response to the stimulus of a situation created by the actor's negligent conduct is not a superseding cause.[15] And in addition, if the occurrence of the intervening cause might have reasonably been anticipated by the wrongdoer as a probable consequence of his own negligence, such intervening cause will not interrupt the connection between the original cause and the damage.[16]

These restrictions would most likely operate to defeat any contention that the criminal's attempts at steering the abandoned automobile were an intervening cause. It is obvious that damage to property would be a reasonably forseeable consequence of abandoning a moving car. Likewise, the fact that where the driver of a moving car had abandoned it the normal response of a passenger would be to try to control it, would prevent such conduct from being an intervening superseding cause. And finally, such attempts at controlling the moving car should have been reasonably forseeable, and the defendant should have ex-

[12] This doctrine is set out in 65 C.J.S., 685, § 111 and upheld in Garbes v. Apatoff, 192 Md. 12, 63 A. 2d 307 (1949).

[13] 179 Md. 384, 18 A. 2d 592 (1941).

[14] Brown v. New York Cent. R. Co., 53 F. 2d 490, 491 (E.D. Mich. 1931).

[15] 2 RESTATEMENT, TORTS (1934) § 443. Also 65 C.J.S., 695-696, § 111.

[16] State of Maryland v. Hecht Company, 165 Md. 415, 422, 169 A. 311 (1933).

pected such to happen when he chose to abandon the automobile.

It would seem therefore, that not only is the defendant unable to avail himself of the emergency doctrine as a means of finding his act to be non-negligent, but that the doctrine of superseding cause cannot be invoked to release the defendant from liability for the damage resulting from his act.

Yet how does the law expect a reasonable man to act in such a situation? Although the principle that a person is to be held responsible for any injury he causes is the foundation of all tort law, the theory that "One assaulted and in peril of his life may run through the close of another to escape from his assailant,"[17] has a definite place in the development of tort law to its present state. In *Ploof v. Putnam,*[18] a well known case that did much to promote this theory, the court held that "One may sacrifice the personal property of another to save his life or the lives of his fellows."[19] This theory has become known as the doctrine of necessity; and, although it does not abolish liability for actual damage done, it could certainly operate to lower the level of care required of the defendant in the instant case and prevent the recovery of any punitive damages.

A person being forced to drive with a gun in his back has every reason to believe that his life is in danger. The concept of self preservation cannot be so disregarded as to consider a person guilty of a negligent act in attempting to save his life; and, even though his actions resulted in certain property damage, it cannot be said that the defendant acted without reason because of the necessity of the situation.

To summarize the effect of the decision in this case, it can be said that a reasonable decision made by someone in a perilous situation to save his own life by taking a course of action which results in certain damage, is not to be considered a negligent act because the normal degree of care required of a driver cannot be required of a person in such a perilous situation. The instant case thereby demonstrates a tendency to expand upon the limitations of the doctrine of emergency.

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[17] 37 Hen. VII, pl. 26.
[18] 81 Vt. 471, 71 A. 188 (1908).
[19] *Ibid.*, 189.