IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

BARBARA WILKINSON, PAUL WILKINSON, and BIT & PUMP, INC.	)	JEFFERSON COUNTY 03A01-9604-CV-00147
Plaintiffs-Appellants	)	HON. REX HENRY OGLE, JUDGE
v.	)	
ROBERT E. STINSON	)	
Defendant-Appellee	)	AFFIRMED AND REMANDED

CARL R. OGLE, JR., OF JEFFERSON CITY FOR APPELLANTS

JEFFREY L. JONES OF DANDRIDGE and DALTON L. TOWNSEND OF KNOXVILLE FOR APPELLEE

O P I N I O N

Goddard, P.J.

Barbara Wilkinson and her husband, Paul Wilkinson, and Bit & Pump, Inc., appeal a judgment of the Circuit Court for Jefferson County, finding that they were entitled to a total of $7500 damages for both Mrs. Wilkinson's injuries, Mr. Wilkinson's loss of consortium, and property damage to a vehicle owned by Bit & Pump, Inc.

The following issue is raised on appeal:

1. WHETHER THE TRIAL JUDGE ERRED IN FINDING, AS A MATTER OF LAW, THAT THE PLAINTIFF COULD NOT RECOVER FOR THE LYMPHOMA-RELATED DAMAGES WHICH WERE HIDDEN AND/OR CAMOUFLAGED BY INJURIES RECEIVED IN THE CAR ACCIDENT AND WHICH, AS A RESULT OF THE LACK OF TREATMENT, RESULTED IN DISABILITY TO THE PLAINTIFF.

Prior to trial of the case, the Defendant Robert E. Stinson, moved for partial summary judgment, insisting that Mr. and Mrs. Wilkinson were not entitled to damages by reason of pre-existing lymphoma, which the proof showed was neither caused nor aggravated by the accident. The proof also showed, however, when taken in the light most favorable to Mrs. Wilkinson, that because the pain from the accident camouflaged the pain she was experiencing from the lymphoma she became partially paralyzed because her lymphoma condition was not promptly diagnosed and treated.

There is no dearth of reported cases addressing the issue of proximate cause, which we believe is dispositive of this appeal. In this connection, our Supreme Court, in a relatively recent case of McClenahan v. Cooley, 806 S.W.2d 767, 775 (Tenn.1991), addressed the issue thusly:

> Taken as a whole, our cases suggest a three-pronged test for proximate causation: (1) the tortfeasor's conduct must have been a "substantial factor" in bringing about the harm being complained of; and (2) there is no rule or policy that should relieve the wrongdoer from liability because of the manner in which the negligence has resulted in the harm; and (3) the harm giving rise to the action could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence.

A later case of this Court, Mansfield v. Colonial Freight Systems, 862 S.W.2d 527 (Tenn.App.1993), is in accord. Specifically, we believe the third prong addressing the issue of foreseeability is our appropriate guide in resolving this appeal.

We conclude that on the issue of foreseeability the injury received by Mrs. Wilkinson was beyond the outer limit envisioned by the Rule. Indeed, in the case at bar even Mrs. Wilkinson herself, not knowing of her condition, could not have foreseen the injury for which she seeks compensation.

In reaching our conclusion, we are not unmindful of the cases holding that defendants must accept plaintiffs as they find them, and would be liable for any additional disability caused by their negligence, Kincaid v. Lyerla, 680 S.W.2d 471 (Tenn.App.1984), and where disabilities from the pre-existing condition cannot be separated from the disability occasioned by the acts of the defendant, all disability ensuing. Haws v. Bullock, 592 S.W.2d 588 (Tenn.App.1979).

Apropos of the foregoing, we concede a traveling motorist would have no knowledge of the physical condition of other motorists who they may meet on the highway. Nonetheless, we are satisfied that there must be some limit to injury that may be foreseen[1] and that, as already stated, Mrs. Wilkinson's claim for damages falls beyond that limit.

[1]It has been said, that "on a clear judicial day, you can foresee forever."

In conclusion, we believe the following quotation from Section 41, Prosser & Keaton on Torts, 5th Ed., is applicable to the facts of this case:

> "Proximate cause"--in itself an unfortunate term--is merely the limitation which the courts have placed upon the actor's responsibility for the consequences of the actor's conduct. In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, 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." As a practical matter, 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. Some boundary must be set to liability for the consequences of any act, upon the basis of some social idea of justice or policy.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for collection of costs below. Costs of appeal are adjudged against Mrs. Wilkinson and her surety.

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Houston M. Goddard, P.J.

CONCUR:

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Herschel P. Franks, J.

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Don T. McMurray, J.