IN THE COURT OF APPEALS

8/12/97

OF THE

STATE OF MISSISSIPPI

NO. 96-CA-00051 COA

TROY DODSON, THE SOLE WRONGFUL
DEATH BENEFICIARY OF CHRISTY E.
MASSIE, DECEASED, AND THE ESTATE OF
CHRISTY E. MASSIE, DECEASED, BY AND
THROUGH JENNIFER HANSON,
ADMINISTRATRIX OF THE ESTATE OF
CHRISTY E. MASSIE, DECEASED APPELLANTS

v.

GENERAL MOTORS CORPORATION APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. LEE J. HOWARD

COURT FROM WHICH APPEALED: LOWNDES COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANTS: EDWARD SANDERS

H. J. DAVIDSON, JR.

ATTORNEYS FOR APPELLEE: GENE D. BERRY

PAUL V. CASSISA, JR.

NATURE OF THE CASE: CIVIL: WRONGFUL DEATH

TRIAL COURT DISPOSITION: TRIAL COURT GRANTED GENERAL MOTORS'S RULE 12(c) and 54(B) MOTIONS.

MOTION FOR REHEARING FILED:9/9/97

BEFORE McMILLIN, P.J., COLEMAN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This civil action involves a claim of wrongful death brought by Troy Dodson on behalf of the Estate of Christy E. Massie against General Motors Corporation. The trial judge granted a motion for judgment on the pleadings in favor of General Motors. We find that no error existed in the granting of this motion and therefore affirm the judgment of the lower court.

FACTS

On July 8, 1992, Christy E. Massie was abducted from her law office in Columbus, Mississippi, by James McClure. McClure forced Massie into the trunk of her 1989 Buick Park Avenue, drove the automobile to a nearby park, and left Massie trapped alive inside the trunk of her car. On July 14, 1992, Massie's body was discovered in the trunk of the automobile. Evidence indicated that Massie was conscious while inside the trunk and tried to kick and claw her way out of the trunk but to no avail. McClure was subsequently arrested and convicted of manslaughter.

This lawsuit was filed on behalf of Massie's estate alleging that General Motors was strictly liable and negligent in not equipping its cars with a latch so that the trunk could be opened from the inside. General Motors moved for judgment on the pleadings, and the trial court granted same. Dodson and representatives of Massie's estate filed this appeal asserting one issue.

ANALYSIS

I. WHETHER OR NOT THE CIRCUIT COURT OF LOWNDES COUNTY ERRED WHEN IT GRANTED GENERAL MOTORS CORPORATION'S MOTION FOR JUDGMENT ON THE

PLEADINGS IN A WRONGFUL DEATH CASE ALLEGING NEGLIGENCE AND STRICT LIABILITY FOR GM'S FAILURE TO EQUIP A 1989 BUICK PARK AVENUE WITH A TRUNK LATCH THAT COULD BE OPENED FROM INSIDE THE TRUNK.

First of all, we must point out that Dodson is procedurally barred from asserting this issue as he fails to cite any supporting authority in his brief. *Smith v. Dorsey*, 599 So. 2d 529, 532 (Miss. 1992) (holding that the long standing rule in this State is that the "failure to cite any authority can be treated as a procedural bar, and this Court is under no obligation to consider the assignments.").

Notwithstanding the procedural bar, however, we will address the assignment of error. In the present case, the trial court granted General Motors's motion for judgment on the pleadings. A motion for judgment on the pleadings is the avenue by which a party asks the court to test the legal

sufficiency of the complaint. M.R.C.P. 12(c) cmt. In order to grant the motion, "there must appear to a certainty that the plaintiff is entitled to no relief under any set of facts that could be proved in support of the claim." *Id.* Thus, our review must begin with Dodson's theories of liability.

Dodson advances two theories of liability against General Motors. The first theory of liability is grounded in strict products liability. Dodson attacks the Mississippi Products Liability Act (MPLA) which provides:

(f) In any action alleging that a product is defective because of its design pursuant to paragraph (a)(i)3 of this section, the manufacturer or product seller shall not be liable if the claimant does not prove by the preponderance of the evidence that at the time the product left the control of the manufacturer or seller:

(i) The manufacturer or seller knew, or in light of reasonably available knowledge or in the exercise of reasonable care should have known, about the danger that caused the damage for which recovery is sought; and

(ii) The product failed to function as expected and there existed a feasible design alternative that would have to a reasonable probability prevented the harm. A feasible design alternative is a design that would have to a reasonable probability prevented the harm without impairing the utility, usefulness, practicality or desirability of the product to users or consumers.

Miss. Code Ann. § 11-1-63 (Supp. 1996). Dodson argues that "[i]t is ludicrous for a manufacturer to escape strict products liability as a matter of law under the MPLA with a defense that consists of nothing more than 'the product functioned as expected.'" Dodson submits that such a proposition provides absolutely no incentive for a manufacturer to ever make its products safer.

In response, General Motors relies on a literal interpretation of the MPLA (specifically § 11-1-63(f)(ii)) which provides that a plaintiff cannot recover under a theory of defective design unless the "product

failed to function as expected." General Motors cites to *Daniell v. Ford Motor Co., Inc.*, 581 F. Supp. 728, 731 (D.N.M. 1984), for the definition of a trunk's function: an automobile trunk

is to "transport, stow and secure the automobile spare tire, luggage and other goods and to protect those items from elements of the weather." General Motors argues that the trunk functioned as expected; therefore, the trial court was correct in granting a judgment on the pleadings. We agree.

While Dodson may think that the Mississippi Products Liability Act is ludicrous, it goes without saying that Section 11-1-63(f) governs in this instance. We are of the opinion that Dodson could not have satisfied his burden of proof as set forth in Section 11-1-63(f)(i) and (ii). There is nothing on the face of the complaint to suggest that General Motors knew or should have known that someone would be abducted and locked in the trunk of a General Motors car. There is also nothing in the complaint that would lead this court to find that the trunk did not function as expected. Apparently, there was nothing more that Dodson could offer in support of his theory as there is no indication that he moved to amend the complaint as is permitted under M.R.C.P. 12(c) and M.R.C.P. 15(a). There is also no indication that Dodson attempted to offer any evidence outside the pleadings. Like Dodson's brief, the record is completely devoid of any proof or support for Dodson's strict liability claim.

Dodson's second theory of liability is a negligence claim. Dodson argues that the judgment on the pleadings prevented him from conducting discovery that may have shown that it is a common occurrence for individuals to get locked in their trunk and that GM had notice that a problem existed with their trunk design. Dodson submits that General Motors did, in fact, have knowledge of other incidents in which people have been trapped in the trunks of their cars. Dodson contends that such incidents are foreseeable and that a jury should have been allowed to decide if General Motors was negligent in designing the 1989 Buick Park Avenue without a release mechanism inside the trunk.

General Motors responds that McClure's illegal act of abducting Massie and putting her in the trunk was an independent, intervening, and superceding cause for which General Motors is not liable. General Motors also argues that a manufacturer has no duty to prevent the criminal misuse of a product. Again, we must agree.

First of all, we do not see that a duty existed on the part of General Motors to design its cars with a latch on the inside of the trunk. Dodson's speculation that General Motors knew that this trunk design was dangerous is just that, speculation. Dodson argues that discovery *may* have revealed that it is not uncommon for persons to get trapped in the trunks of their cars. Even if discovery had revealed that persons have, in the past, been trapped in the trunk of a car, such does not necessarily give rise to a duty.

Assuming, arguendo, that Dodson could have established that a duty existed and that General Motors was in fact negligent in failing to design its cars with a latch on the inside of the trunk, Dodson would still have to overcome the fact that this case involves a criminal act which led to Massie's being trapped inside her trunk. The Mississippi Supreme Court has stated, quoting 57 Am. Jur. 2d Negligence § 206 (1971):

[T]he general rule is that when, between an original negligent act or omission and the occurrence of an injury, there intervenes a wilful, malicious, and criminal act of a third person which causes the injury

but was not intended by the person who was negligent, and could not have been foreseen by him, the causal chain between the negligence and the accident is broken. The deliberate, intentional, wrongful, or criminal acts of independent third persons, not actually intended by the defendant, are not regarded by the law as natural consequences of his wrong, and he is not bound to anticipate the general probability of such acts.

Touche Ross & Co. v. Commercial Union Insurance Co., 514 So. 2d 315, 324 (Miss. 1987). While we recognize that the supreme court has deviated somewhat from a strict application of the general rule that an unforeseeable criminal act is an intervening cause which breaks the chain of liability, *see O'Cain v. Harvey Freeman and Sons, Inc.*, 603 So. 2d 824, 830 (Miss. 1992) (holding that the "reasonable foreseeability of criminal activity would be for the trier of fact."), we do not

believe that the supreme court had in mind the same set of facts that are present in this case. *O'Cain* was a case against an apartment complex that allegedly failed to install the proper locks on the patio doors of its apartments. *Id.* at 830-31. O'Cain sued the landlord of her apartment for emotional distress stemming from the burglary of her apartment and rape of her roommate. *Id.* at 824. The supreme court reversed a summary judgment granted to the landlord on the ground that a material issue of fact existed because there were statements from a locksmith that he had informed the landlord that the locks on the patio doors were not sufficient. *Id.* at 831. In the present case, there exists no feasible argument that the events leading to Massie's death were foreseeable.

We would also take this opportunity to point out that there are no cases in this State that address the particular issue now before us. We do, however, find the above cited case of *Daniell v. Ford Motor Co., Inc.*, to be persuasive authority. In *Daniell*, the plaintiff sued Ford Motor Company seeking recovery on theories of strict products liability, negligence, and breach of warranty for psychological and physical injuries sustained when the plaintiff, in an attempt to commit suicide, locked herself inside the trunk of her car, where she remained for nine days. *Daniell*, 581 F. Supp. at 730. The Federal District Court for New Mexico, in an opinion affirming the trial court's grant of summary judgment in favor of Ford Motor Company, stated that "[a]s a general principle, a design defect is actionable only where the condition of the product is unreasonably dangerous to the user or consumer." *Id.* The court went on to delineate the purposes of an automobile trunk and then stated, "[t]he automobile trunk was not unreasonably dangerous within the contemplation of the ordinary consumer or user of such a trunk when used in the ordinary ways and for the ordinary purposes for which such trunk is used." *Id.* at 731. Lastly, the district court held that the plaintiff's conception of the manufacturer's duty was in error. *Id.*

While the facts of our case differ from that of *Daniell*, the arguments and analysis do not. We therefore find that Dodson's argument is without merit and affirm the trial court's judgment on the pleadings.

THE JUDGMENT OF THE LOWNDES COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANTS.

McMILLIN, P.J., HERRING, HINKEBEIN, AND SOUTHWICK, JJ., CONCUR.

COLEMAN, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY BRIDGES, C.J., THOMAS, P.J., DIAZ AND KING, JJ.

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COLEMAN, J., DISSENTS:

With deference to my colleagues of the majority, I dissent because to me it does not "appear to a certainty that the plaintiff is entitled to no relief under any set of facts that could be proved in support of" Dodson's claim for the wrongful death of Christy E. Massie against General Motors Corporation (GM). While I agree that there can be no products liability claim against General Motors based on Section 11-1-63 of the Mississippi Code of 1972 (Rev. 1991), I am not prepared to concede at the ostensible close of pleadings that Dodson's claim of negligence is foreclosed solely because it could not be foreseen that Ms. Massie would be kidnapped by James McClure and confined by force in the trunk of her car.

To be sure, McClure's kidnapping of Ms. Massie was a criminal act, but, unlike the majority, I find *O'Cain v. Harvey Freeman and Sons, Inc.*, 603 So. 2d 824, 830 (Miss. 1992), to be persuasive that the foreseeability of McClure's kidnapping of Ms. Massie by GM would be a question of fact to be resolved by the jury. In *O'Cain*, the plaintiff sued the landlord of her and her roommate's apartment for emotional distress which resulted from the burglary of her apartment and consequent rape of her roommate. *Id.* at 825. The trial judge granted the defendant landlord's motion for summary judgment. *Id.* The trial judge found that the criminal act of the burglar was a superseding criminal act which "cut off liability from the original wrongdoer," who was the landlord whom O'Cain had sued. *Id.* at 830.

On appeal, O'Cain argued that "criminal activity is always within the realm of reasonable foreseeability for a lessor of apartment residential property." *Id.* In response to that argument, the supreme court opined:

Whether something is or is not within the realm of reasonable foreseeability depends upon the facts of the case and the duty which the plaintiff asserts for the particular defendant. "[A]n independent intervening cause is one that could not have been reasonably foreseen by the defendant while exercising due care." *Kelly v. Retzer & Retzer, Inc.*, 417 So.2d 556, 562 (Miss.1982); *Oliver Bus Lines v. Skaggs*, 174 Miss. 201, 210, 164 So. 9, 12 (1935). *In the case at bar, the question of reasonable foreseeability of criminal activity would be for the trier of fact.* Furthermore, the question of superseding intervening cause is so inextricably tied to causation, it is difficult to imagine a circumstance where such issue would not be one for the trier of fact. *See Gibson v. Avis Rent-A-Car System, Inc.*, 386 So.2d 520, 522 (Miss.1980) (whether intervening cause is foreseeable is for trier of fact). *In summary, blanket application of the general rule that intervening criminal acts extinguish the defendant's liability is inappropriate for this case*.

(emphasis added). The Mississippi Supreme Court reversed and remanded the trial court's grant of summary judgment for the landlord.

Reports of kidnappings and carjackings in which the victim is abducted by being forced into the trunk of an automobile have become almost routine nationwide. Thus, I think that James McClure's criminal act of kidnapping Ms. Massie was foreseeable enough to create a potential question of fact for the jury. Thus, I must respectfully part company with the majority who are of the opinion that it is "a certainty that [Dodson] is entitled to no relief under any set of facts that could be proved in

support of [his claim for the wrongful death of Christy E. Massie against General Motors]."

Criminal agency is not an intervening cause which always insulates a defendant who is negligent. I submit that Dodson is correct to contend that discovery might well establish GM's duty to the purchasers of its automobiles to provide them a means of escape from or survival in a locked trunk of an automobile which it has manufactured. Criminal agency is not the exclusive means by which owners and users of automobiles may become trapped -- and in Ms. Massie's case, entombed -- in the trunk of an automobile. Discovery might well also create an issue of fact on the question of foreseeability which would render GM liable for Ms. Massie's death. Thus, I would reverse and remand this case to the trial court.

BRIDGES, C.J., THOMAS, P.J., DIAZ AND KING, JJ., JOIN THIS SEPARATE OPINION.