

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00449 COA

**RAYMOND LOVEBERRY, INDIVIDUALLY AND AS FATHER AND NEXT FRIEND OF
RAMON**

MYERS (MEYERS)

APPELLANTS

v.

ROBIN SULLIVAN

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ANDREW CLEVELAND BAKER

COURT FROM WHICH APPEALED: TATE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DANA J. SWAN

ATTORNEY FOR APPELLEE:

TOM JANOUSH

NATURE OF THE CASE: PERSONAL INJURY; AUTOMOBILE ACCIDENT

TRIAL COURT DISPOSITION: DIRECTED VERDICT GRANTED TO DEFENDANTS

BEFORE THOMAS, P.J., COLEMAN AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

This is an appeal from a directed verdict granted at the close of the Plaintiff's case. The trial court found that the actions of one driver-- who was dismissed by the plaintiff at the beginning of trial-- were an independent intervening cause in a three-car automobile accident. The court held this absolved the second driver, who was the only remaining defendant. Appealing is the third driver, who was the injured party as well as the plaintiff, alleging that a jury question existed on proximate cause. We agree. The case is reversed and remanded.

STATEMENT OF FACTS

On January 13, 1993, three cars collided at an intersection in Tate County. At the intersection, traffic on Highway 4 had the right-of-way; traffic attempting to cross Highway 4 from Yellow Dog Road must stop. Raymond Loveberry and his passenger Ramon Meyers were traveling north on Yellow Dog Road. They stopped at the stop sign on Highway 4, but from that stationary position would ultimately be hit. Proceeding south on Yellow Dog Road from the other side of Highway 4 was the defendant Dale McCain. The Loveberry and McCain cars were simultaneously stopped on the opposite sides of Highway 4. Proceeding easterly with the right-of-way on Highway 4 was a car driven by Robin Sullivan. McCain pulled onto the right-of-way of Highway 4 in front of Sullivan and turned to go east on that road. Sullivan's car collided with McCain's car. McCain's vehicle was then thrown south onto Yellow Dog Road, colliding with Loveberry's car.

The McCains were dismissed prior to trial, presumably because of a settlement. After the plaintiffs had presented their case, Sullivan moved for a directed verdict. There was evidence that tended to show that the Sullivan vehicle was speeding. Nonetheless, the trial court found that McCain's entering the highway with the Sullivan vehicle approaching created an independent intervening cause of the accident. The motion for directed verdict was granted.

DISCUSSION

The final judgment of the trial court stated that McCain "in the operation of his vehicle at the time and place of the accident, suddenly and without warning attempted to cross Robin Sullivan's lane of traffic. . . . This sudden action on the part of Dale McCain was an unusual and extraordinary occurrence which a reasonably prudent person was not required to provide for."

Relying on that finding, the trial court said the McCains' actions were an independent intervening cause which was the sole proximate cause of the accident. The sole case relied upon by the trial court also involved an automobile accident. *Capitol Tobacco & Speciality Co. v. Runnels*, 221 So. 2d 703 (Miss. 1969). The law involved is clear enough: "precaution is a duty only so far as there is reason for apprehension." *Capitol Tobacco*, 221 So. 2d at 705 (quoting *Burnside v. Gulf Refining Company*, 148 So. 219, 221 (Miss. 1933)). Taking that principle as the starting point, the court in *Capitol Tobacco* found the following facts to show that as a matter of law there was no reason for apprehension. On a four lane divided highway, with a grass median in between the two pairs of lanes that went each separate direction, a car was traveling the wrong direction on the shoulder next to the grass median. Rather than crossing over at a paved crossing, the car suddenly turned sharply to the

right, crossed the grass median and entered the roadway on the other side. A car that may have been speeding then collided with it. The court found the speeding to be irrelevant. Instead, the court said that the "sudden 'jump' of the car was an unusual or extraordinary occurrence. Ordinary care of a reasonably prudent person does not demand that he should provide for or anticipate such an occurrence." *Capitol Tobacco*, 221 So. 2d at 705.

The causation in *Capitol Tobacco* seemed clear to the supreme court, so much so that it ruled that as a matter of law the actions of the driver who was initially on the wrong side of the divided highway and then jugged across to the opposite side, were an independent intervening cause for the accident. The court in our case similarly decided that the actions of one of the parties were so clearly beyond anticipating, that they constituted the sole independent cause. We understand the rationale of *Capitol Tobacco*, that when certain extraordinary events occur, that a reasonable person, even a reasonable speeder, need not anticipate them. We cannot find the facts of our present case to be so one sided to be beyond the necessity of weighing by a jury. McCain, by entering the right-of-way, did what individuals at intersections do, namely, to enter the intersection and proceed along the correct lane of travel. Unlike the potentially speeding driver in *Capitol Tobacco*, who did not have to anticipate somebody cutting across a grassy median, the potentially speeding car in our case was under a duty of reasonable care to anticipate vehicles entering the right-of way at an intersection. Someone who is speeding must also be aware that drivers entering from side roads do not have as much time to avoid a collision as they would were the speeder traveling at a legal pace. There is nothing in entering a roadway from a side road so "unusual or extraordinary," to quote *Capitol Tobacco*, as to be beyond the precaution of another driver. *Id.*

The facts as they appear in the record, based only on the plaintiff's case, do not constitute proof as a matter of law that McCain was the independent intervening cause of the accident. Perhaps Sullivan was so close to the intersection by the time McCain left his stopped position, that Sullivan's speed was irrelevant. After full presentation of the case, a jury might well have a range of sustainable explanations for assigning negligence and causation. We find that the trial court erred in taking that decision from the jury.

THE JUDGMENT OF THE TATE COUNTY CIRCUIT COURT OF MARCH 10, 1995, IS REVERSED AND THE CAUSE IS REMANDED FOR FURTHER PROCEEDINGS. COSTS ARE TAXED TO THE APPELLEE, ROBIN SULLIVAN.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.