

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Crystal L. Wickersham; Crystal L. Wickersham, as
personal representative of the Estate of John Harley
Wickersham Jr., Plaintiffs,

v.

Ford Motor Company, Defendant.

Appellate Case No. 2018-001124

CERTIFIED QUESTION

ON CERTIFICATION FROM THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

Opinion No. 27904
Heard January 29, 2019 – Filed July 24, 2019

CERTIFIED QUESTION ANSWERED

Kathleen Chewning Barnes, Barnes Law Firm, LLC;
Ronnie Lanier Crosby, Peters, Murdaugh, Parker,
Eltzroth & Detrick, P.A., both of Hampton, for Plaintiffs.

Adam H. Charnes and Thurston H. Webb, Kilpatrick
Townsend & Stockton LLP, of Winston-Salem, NC;
Joseph Kenneth Carter Jr. and Carmelo Barone
Sammataro, Turner Padgett Graham & Laney P.A., of
Columbia, for Defendant.

Steve A. Matthews, Haynsworth Sinkler Boyd, P.A., of Columbia; Victor E. Schwartz, Cary Silverman, and Phil Goldberg, Shook Hardy & Bacon LLP, of Washington, D.C., all for amicus curiae the Alliance of Automobile Manufacturers, Inc.

Gray Thomas Culbreath and Jessica Ann Waller, Gallivan White & Boyd, P.A., of Columbia, for amicus curiae the Product Liability Advisory Counsel, Inc.

Frank L. Eppes, Eppes & Plumblee, P.A., of Greenville, for amicus curiae the South Carolina Association for Justice.

JUSTICE FEW: Responding to two questions certified to us by the United States Court of Appeals for the Fourth Circuit, we hold traditional principles of proximate cause govern whether a personal representative has a valid claim for wrongful death from suicide, and whether—in a crashworthiness case—a person's own actions that enhance his injuries, as opposed to those that cause the accident itself, should be compared to the tortious conduct of a defendant in determining liability.

I. Facts and Procedural History

John Harley Wickersham Jr. was seriously injured in an automobile accident. After months of severe pain from the injuries he received in the accident, he committed suicide. *See Wickersham v. Ford Motor Co.*, 194 F. Supp. 3d 434, 435-37 (D.S.C. 2016) (a complete explanation of the facts of this case). His widow filed lawsuits for wrongful death, survival, and loss of consortium against Ford Motor Company in state circuit court. She alleged that defects in the airbag system in Mr. Wickersham's Ford Escape enhanced his injuries, increasing the severity of his pain, which in turn proximately caused his suicide. She included causes of action for negligence, strict liability, and breach of warranty.

Ford removed the cases to the United States District Court for the District of South Carolina. Ford then filed a motion for summary judgment in the wrongful death suit, arguing Mrs. Wickersham has no wrongful death claim under South Carolina law because Mr. Wickersham's suicide was an intervening act that could not be proximately caused by a defective airbag. The district court denied Ford's motion. 194 F. Supp. 3d at 448. The court ruled Mrs. Wickersham could prevail on the

wrongful death claim if she proved the enhanced injuries Mr. Wickersham sustained in the accident as a result of the defective airbag caused severe pain that led to an "uncontrollable impulse" to commit suicide. Ford renewed the motion during and after trial, but the district court denied both motions.

During trial, the parties disputed the cause of Mr. Wickersham's enhanced injuries. Mrs. Wickersham alleged the defective airbag caused them, while Ford argued Mr. Wickersham caused his enhanced injuries by being out of position.

The jury returned a verdict for Mrs. Wickersham on all claims. The jury found the airbag was defective and proximately caused Mr. Wickersham's enhanced injuries and suicide. However, the jury also found Mr. Wickersham's actions in being out of position enhanced his injuries, and found his share of the fault was thirty percent. The district court entered judgment for Mrs. Wickersham, but denied Ford's request to reduce the damages based on Mr. Wickersham's fault. Ford filed motions to alter or amend the judgment, for judgment as a matter of law, and for a new trial, all of which the district court denied.

Ford appealed, and the Fourth Circuit certified the following questions to this Court.

1. Does South Carolina recognize an "uncontrollable impulse" exception to the general rule that suicide breaks the causal chain for wrongful death claims? If so, what is the plaintiff required to prove is foreseeable to satisfy causation under this exception—any injury, the uncontrollable impulse, or the suicide?

2. Does comparative negligence in causing enhanced injuries apply in a crashworthiness case when the plaintiff alleges claims of strict liability and breach of warranty and is seeking damages related only to the plaintiff's enhanced injuries?

II. Recovery for Wrongful Death from Suicide

In its order of certification, the Fourth Circuit acknowledged this Court might restate the certified questions. In answering the first question, we find it necessary to do so.

South Carolina does not recognize a general rule that suicide is an intervening act which breaks the chain of causation and categorically precludes recovery in wrongful death actions. Rather, our courts have applied traditional principles of proximate cause to individual factual situations when considering whether a personal representative has a valid claim for wrongful death from suicide.

In *Scott v. Greenville Pharmacy*, 212 S.C. 485, 48 S.E.2d 324 (1948), we stated,

In every case of this character the inquiry is: Was the injury a natural and probable consequence of the wrongful act, and ought it to have been foreseen in the light of the attendant circumstances? In this case the deceased took his own life by hanging. Can it be reasonably said that his tragic end was a natural and probable consequence of the sale to him of the barbiturate capsules, and should it have been foreseen in the normal course of events?

212 S.C. at 493-94, 48 S.E.2d at 328. In *Scott*, the plaintiff brought a wrongful death action against a pharmacy, claiming her husband committed suicide after becoming addicted to barbiturate capsules the pharmacy sold him in violation of state law. 212 S.C. at 487-88, 48 S.E.2d at 325. The circuit court dismissed the case. 212 S.C. at 487, 48 S.E.2d at 325. On appeal, we found "it would be going entirely too far . . . to hold that the unlawful sale of the barbiturate capsules brought about a condition of suicidal mania as the natural and probable consequence of the sale, or that this result should have been reasonably foreseen by the respondent." 212 S.C. at 495, 48 S.E.2d at 328.

Likewise, in *Horne v. Beason*, 285 S.C. 518, 331 S.E.2d 342 (1985), this Court affirmed the dismissal of a wrongful death action brought by the estate of Horne, a seventeen-year-old who hung himself with a cloth bathrobe belt tied to overhead bars in his jail cell shortly after being arrested. 285 S.C. at 521-22, 331 S.E.2d at 344-45. We explained, "Foreseeability is often a jury issue but not here." 285 S.C. at 522, 331 S.E.2d at 345. We applied standard proximate cause principles and found the defendants could not be expected to foresee that Horne would hang himself. 285 S.C. at 521-22, 331 S.E.2d at 344-45. We specifically addressed the unique facts of the case, stating "the presence of overhead bars is of no real significance" and there are "few things more unlike a dangerous instrumentality than a bathrobe belt." 285 S.C. at 521-22, 331 S.E.2d at 345. We concluded, "Under the circumstances, none of the defendants should have been expected to

foresee that Horne would likely commit suicide." 285 S.C. at 522, 331 S.E.2d at 345.¹

As *Scott* and *Horne* illustrate, South Carolina courts apply traditional proximate cause principles in analyzing whether a particular plaintiff can recover for wrongful death from suicide. "Each case must be decided largely on the special facts belonging to it." *Scott*, 212 S.C. at 494, 48 S.E.2d at 328. See Alex B. Long, *Abolishing the Suicide Rule*, 113 NW. U. L. Rev. 767 (2019) (discussing the "trend among court decisions away from singling out suicide cases for special treatment and toward an analytical framework that more closely follows traditional tort law principles"). Thus, we restate the first question as asking us to explain how our standard proximate cause analysis applies to an alleged wrongful death from suicide.

Proximate cause requires proof of cause-in-fact and legal cause. *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006). In causation, as in other contexts, "proximate" is the opposite of "remote." See *Stone v. Bethea*, 251 S.C. 157, 162, 161 S.E.2d 171, 173 (1968) ("When the [conduct] appears merely to have brought about a condition of affairs, or a situation in which another and entirely independent and efficient agency intervenes to cause the injury, the latter is to be deemed the direct or proximate cause, and the former only the indirect or remote cause."). The cause-in-fact and legal cause elements are designed to enable courts and juries to differentiate between proximate and remote causes in a reliable manner.

As to legal cause, "foreseeability is considered 'the touchstone . . . ,' and it is determined by looking to the natural and probable consequences of the defendant's act or omission." *Baggerly*, 370 S.C. at 369, 635 S.E.2d at 101 (quoting *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994)). In most cases, foreseeability ends up being addressed as a question of fact for the jury. *Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992). In the first instance, however, legal cause is just what its name suggests—a question of law. "[W]hen the evidence is susceptible to only

¹ Cf. *Hearn v. Lancaster Cty.*, 566 F. App'x 231, 236 (4th Cir. 2014) (explaining that because of qualified immunity, the personal representative of an inmate who committed suicide in jail may recover from a governmental entity or employee only if the representative meets the "deliberate indifference" standard "that is generally only satisfied by government conduct that shocks the conscience" (citing *Parrish v. Cleveland*, 372 F.3d 294, 302 (4th Cir. 2004))).

one inference . . . [legal cause] become[s] a matter of law for the court." *Id.* (citing *Matthews v. Porter*, 239 S.C. 620, 625, 124 S.E.2d 321, 323 (1962)); *see also Gause v. Smithers*, 403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013) (discussing foreseeability, and stating "in rare or exceptional cases . . . the issue of proximate cause [may] be decided as a matter of law" (quoting *Bailey v. Segars*, 346 S.C. 359, 367, 550 S.E.2d 910, 914 (Ct. App. 2001))).

In cases involving wrongful death from suicide, our courts have consistently decided legal cause as a matter of law. *See Horne*, 285 S.C. at 522, 331 S.E.2d at 345 (finding as a matter of law the suicide was not foreseeable); *Scott*, 212 S.C. at 495, 48 S.E.2d at 328 (same); *Crolley v. Hutchins*, 300 S.C. 355, 357-58, 387 S.E.2d 716, 718 (Ct. App. 1989) (same). Therefore, whether a suicide is a foreseeable consequence of tortious conduct is first a question of law for a court to decide. If a court determines a particular suicide is not unforeseeable as a matter of law, legal cause—foreseeability—becomes a question for the jury.

A plaintiff must also prove cause-in-fact. "Causation in fact is proved by establishing the plaintiff's injury would not have occurred 'but for' the defendant's negligence." *Hurd v. Williamsburg Cty.*, 363 S.C. 421, 428, 611 S.E.2d 488, 492 (2005) (citing *Oliver*, 309 S.C. at 316, 422 S.E.2d at 130). This is a difficult burden in claims for wrongful death from suicide. For instance, proving causation-in-fact in this case required Mrs. Wickersham to prove the following sequence of causal events: Ford's defective design of the airbag enhanced Mr. Wickersham's injuries, which in turn caused him to suffer severe pain he would not otherwise have had, which in turn caused him to experience an uncontrollable impulse to commit suicide, which in turn caused him to take his own life involuntarily, which he would not have done but for Ford's defective design.

We answer the Fourth Circuit's first certified question as follows:

South Carolina does not recognize a general rule that suicide is an intervening act that always breaks the chain of causation in a wrongful death action. Rather, our courts apply traditional principles of proximate cause. First, the court must decide as a matter of law whether the suicide was unforeseeable. If the court determines the suicide was not unforeseeable as a matter of law, the jury must consider foreseeability. The jury must also consider causation-in-fact, including whether the defendant's tortious conduct caused a decedent to suffer

from an involuntary and uncontrollable impulse to commit suicide.

III. Proximate Cause of Enhanced Injuries

In *Donze v. General Motors, LLC*, 420 S.C. 8, 800 S.E.2d 479 (2017), we addressed the following question certified to us by the United States District Court for the District of South Carolina:

Does comparative negligence *in causing an accident* apply in a crashworthiness case when the plaintiff alleges claims of strict liability and breach of warranty and is seeking damages related only to the plaintiff's enhanced injuries?

420 S.C. at 11, 800 S.E.2d at 480 (emphasis added). We answered the certified question "no" and held "comparative negligence does not apply to permit the negligence of another party—whether the plaintiff or another defendant—*in causing an initial collision* to reduce the liability of a manufacturer for enhanced injuries in a crashworthiness case." 420 S.C. at 20, 800 S.E.2d at 485 (emphasis added). In reaching our decision, we adopted the reasoning of *Jimenez v. Chrysler Corp.*, 74 F. Supp. 2d 548 (D.S.C. 1999), *rev'd in part on other grounds*, 269 F.3d 439 (4th Cir. 2001), in which the district court explained "the alleged negligence causing the collision is legally remote from, and thus not the legal cause of, the enhanced injury caused by a defective part that was supposed to be designed to protect in case of a collision." 420 S.C. at 18, 800 S.E.2d at 484 (quoting *Jimenez*, 74 F. Supp. 2d at 566). Therefore, we held, "[b]ecause a collision is presumed, and enhanced injury is foreseeable as a result of the design defect, the triggering factor of the accident is simply irrelevant." *Id.* (quoting *Jimenez*, 74 F. Supp. 2d at 566).

In this case, the Fourth Circuit asks a different question. We are now asked whether comparative negligence—which is normally thought of as a defense²—applies when the conduct to be compared relates only to the enhancement of the injuries, not to the cause of the accident. As we did with the first question, we restate the question. We address the question as one of proximate cause. The question is whether a plaintiff's actions that cause only the enhancement of his injuries—not the accident itself—may be proximate, or are they necessarily legally

² See *Donze*, 420 S.C. at 10, 800 S.E.2d at 480 (stating "the defense of comparative negligence does not apply in crashworthiness cases").

remote as in *Donze*, and therefore irrelevant. We anticipated this question in *Donze*. See 420 S.C. at 20 n.4, 800 S.E.2d at 485 n.4 (noting our ruling applied only to a plaintiff's fault "in causing the collision," and leaving open the possibility a plaintiff's conduct independent of the initial collision—such as "tying a door shut for example"—could reduce a plaintiff's recovery for his enhanced injuries (quoting *Jimenez*, 74 F. Supp. 2d at 566 n.11)); see also 420 S.C. at 24-25, 800 S.E.2d at 488 (Kittredge, J., concurring) ("I would limit the holding to true crashworthiness cases where it is established as a matter of law that the plaintiff's comparative fault was not a proximate cause of the 'enhanced injuries.'").

In contrast to the situation in *Donze*, if a plaintiff's actions that do not cause the accident are nevertheless a contributing cause to the enhancement of his injuries, the plaintiff's actions are not necessarily a legally remote cause. We now hold—under a standard proximate cause analysis—even though the cause of the accident itself is legally remote, comparative principles must apply in a crashworthiness case in determining who caused the enhancement of the plaintiff's injuries. This is a different question than who caused the initial collision. A plaintiff's actions that do not cause the accident, but cause the enhancement of his injuries, must be compared to the fault of the manufacturer in determining the manufacturer's share of liability for the enhanced injuries.

Under *Donze*, any fault Mr. Wickersham may have had in causing the accident is remote. However, Ford maintained Mr. Wickersham was out of position in his driver's seat by leaning into the passenger seat when the airbag deployed, and Mr. Wickersham being out of position was a proximate cause of the enhancement of his injuries. The jury agreed, and found Mr. Wickersham was thirty percent at fault for his injuries. These actions must be compared to Ford's fault in determining Ford's liability for enhancement of Mr. Wickersham's injuries. We answer the second certified question as follows:

When there is evidence in a crashworthiness case that the plaintiff's own actions—although not a cause of the accident itself—caused his enhanced injuries, comparative principles must be employed to determine the defendant's share of liability for the plaintiff's enhanced injuries. This is a separate inquiry from the plaintiff's fault as a cause of the accident, which—under *Donze*—is legally remote and therefore not relevant. It is also a separate question from "fault," and it is not necessarily a defense as we normally consider

comparative negligence to be. Rather, it is a question of proximate cause. As would be true in any case, it is the plaintiff's burden to prove the defendant proximately caused the damages he alleges. In a crashworthiness case, it is the plaintiff's burden to prove the defendant's tortious conduct—whether the theory of recovery is negligence, breach of warranty, or strict liability—proximately caused a specific share of the plaintiff's enhanced injuries.

CERTIFIED QUESTIONS ANSWERED.

BEATTY, C.J., HEARN and JAMES, JJ., and Acting Justice James E. Lockemy, concur.