

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN EVENS,

Plaintiff-Appellant/
Cross-Appellant,

v

SHIAWASSEE COUNTY ROAD
COMMISSION,

Defendant-Appellee/
Cross-Appellant.

UNPUBLISHED

March 7, 1997

No. 186253

Shiawassee Circuit Court

LC No. 93-002586

Before: Jansen, P.J., and Saad and M. D. Schwartz,* JJ.

PER CURIAM.

In this case involving the highway exception to governmental immunity, plaintiff appeals as of right from the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10). Defendant cross-appeals the trial court's denial of summary disposition on the issue of causation. We reverse in part, affirm in part and remand to the trial court for further proceedings in accordance with this opinion.

Plaintiff sustained injuries from a car accident that resulted after he stopped but proceeded into the intersection of Byron and Newburg Roads and was struck broad-side by a pickup truck that had the right of way. Plaintiff brought an action under the highway exception to governmental immunity, MCL 691.1402; MSA 3.996(102), alleging that the intersection was unsafe for vehicular travel because defendant failed to adequately place traffic control devices to make the intersection safe. Specifically, plaintiff claimed that defendant had a duty to install stop signs for Newburg Road traffic, thereby making the intersection a four-way stop. Relying upon this Court's decision in *Pick v Gratiot Co Road Comm'n*, 203 Mich App 138; 511 NW2d 694 (1993), the trial court granted defendant's motion for summary disposition holding that defendant owed no duty to place traffic control devices at the intersection because the signs would be outside of the roadbed.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff argues that the trial court's holding that defendant did not owe a duty to him to erect a stop sign on Newburg Road because it would be outside the traveled roadbed was in error. We agree.

The Michigan Supreme Court recently reversed this Court's decision in *Pick*, holding that "a duty is imposed on government agencies to provide traffic control devices or warnings signs at, or in regard to, points of hazard affecting roadways within their jurisdiction. *Pick v Szymczak*, 451 Mich 607, 619; 548 NW2d 603 (1996). The Supreme Court defined "point of hazard" as:

any condition that directly affects vehicular travel on the improved portion of the roadway so that such travel is not reasonably safe. To be a point of hazard for purposes of the highway exception, the condition must be one that uniquely affects vehicular travel on the improved portion of the roadway, as opposed to a condition that generally affects the roadway and its surrounding environment. We reemphasize, however, that such conditions need not be physically part of the roadbed itself. [*Id.* at 623.]

Therefore, we remand this case to the trial court to determine whether a factual question exists regarding whether the intersection at Byron and Newburg Roads constituted a "point of hazard." See also *Wechsler v Wayne Co Rd Comm'n*, 215 Mich App 579, 588-595; 546 NW2d 690 (1996).

Defendant argues that the trial court erred in refusing to hold as a matter of law that plaintiff's negligence was the sole and proximate cause of his injuries. We disagree.

Liability for negligence does not attach unless the plaintiff establishes that the injury in question was proximately caused by the defendant's actions. *Babula v Robertson*, 212 Mich App 45, 54; 536 NW2d 834 (1995). Proximate cause means such cause as operates to produce particular consequences without the intervention of any independent, unforeseen cause, without which the injuries would not have occurred. *Id.* There may be more than one proximate cause of a plaintiff's injury. *Brisboy v Fibreboard Corp*, 429 Mich 540, 547; 418 NW2d 650 (1988). When a number of factors contribute to produce an injury, one actor's negligence will not be considered a proximate cause of the harm unless it was a "substantial factor" in producing the injury. *Id.* But, an intervening cause, meaning one that comes into active operation in producing harm to another after the negligence of the defendant, may relieve the defendant from liability. *Poe v Detroit*, 179 Mich App 564, 576-577; 446 NW2d 523 (1989). The question of intervening causes should be determined by the trier of fact if reasonable minds could differ regarding the proximate cause of the plaintiff's injury. *Singerman v Municipal Service*, 211 Mich App 678, 686; 536 NW2d 547 (1995). We find that the trial court correctly held that the issue of whether plaintiff's own negligence was the sole and proximate cause of his injuries was a question for the jury because reasonable minds could differ on the issue.

Reversed in part, affirmed in part and remanded. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Michael D. Schwartz