

[Cite as *Javaid v. Pontious*, 2006-Ohio-6766.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87827

HAAMID JAVAID, DVM, ET AL.

PLAINTIFFS-APPELLANTS

VS.

RICHARD PONTIOUS

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-515043

BEFORE: Cooney, J., Celebrezze, P.J., and Corrigan, J.

RELEASED: December 21, 2006

JOURNALIZED:

[Cite as *Javaid v. Pontious*, 2006-Ohio-6766.]

ATTORNEY FOR APPELLANTS

For Haamid Javaid, DVM

Michael I. Shapero
David S. Michel
Shapero & Green, LLC
Signature Square II, Suite 220
25101 Chagrin Boulevard
Beachwood, Ohio 44122

ATTORNEY FOR APPELLEE

William Vance
Davis & Young
600 Superior Avenue, East
Cleveland, Ohio 44114-2654

[Cite as *Javaid v. Pontious*, 2006-Ohio-6766.]
COLLEEN CONWAY COONEY, J.:

{¶ 1} Plaintiff-appellant, Haamid Javaid (“Javaid”), appeals the jury verdict in favor of defendant-appellee, Richard Pontious (“Pontious”). Finding merit to the appeal, we reverse and remand.

{¶ 2} In 2003, Javaid filed an action against Pontious alleging that Pontious negligently operated his vehicle and rear-ended Javaid’s vehicle. The matter proceeded before a jury, where the relevant facts are not in dispute. As Javaid waited at a red light on a snowy evening, Pontious rear-ended his car. The collision knocked off Javaid’s glasses from his face. Pontious came up to Javaid’s window and noticed that he was shaken up and disoriented. Nevertheless, Pontious asked Javaid to step out of his car to inspect the damage. As Javaid attempted to exit his car, he fell, suffering injuries.

{¶ 3} At the close of evidence, Javaid moved for a directed verdict on the issue of negligence. The trial court denied the motion and proceeded to instruct the jury on negligence per se, proximate cause, and comparative negligence. Javaid objected to the instruction on comparative negligence. The jury returned a verdict for Pontious, finding Javaid ninety-five percent negligent. The trial court denied Javaid’s subsequent motion for judgment notwithstanding the verdict, or in the alternative, motion for a new trial.

{¶ 4} Javaid appeals the jury verdict, raising three assignments of error. Finding the second assignment of error dispositive, we will address it first.

Motion for Directed Verdict

{¶ 5} In his second assignment of error, Javaid argues that the court erred in not directing a verdict in his favor because the injuries that he sustained occurred during an unbroken chain of events put into motion by Pontious' negligence. Javaid also argues that, because the trial court considered the accident and subsequent fall as part of one continuum, Javaid's injuries occurred during an unbroken chain of events for which Pontious is liable.

{¶ 6} Civ.R. 50(A)(4) sets forth the standard for granting a motion for a directed verdict:

“When a motion for directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.”

{¶ 7} The trial court must, however, submit an issue to the jury if there is evidence that, if believed, would permit reasonable minds to come to different conclusions. *TLT-Babcock, Inc. v. Service Bolt & Nut Co.* (1984), 16 Ohio App.3d 142, 474 N.E.2d 1223.

{¶ 8} In deciding a motion for a directed verdict, the trial court must construe the evidence most strongly in favor of the nonmoving party. *Nickell v. Gonzalez* (1985), 17 Ohio St.3d 136, 477 N.E.2d 1145. Also, where substantial evidence supports the nonmoving party's position, upon which reasonable minds may reach different conclusions, the trial court must deny the motion. *Id.*

{¶ 9} In the instant case, no evidence was presented demonstrating that Javaid acted negligently when he attempted to exit his vehicle to assess the damage from the accident. Javaid merely stepped out of his vehicle and fell to the ground. Slipping and falling, by itself, is not negligent. The trial court judge instructed the jury that the accident and fall were part of one continuum, and that Pontious was negligent for "entreating" Javaid out of his vehicle. Also, Javaid had no notice that walking outside of his car was unsafe, as he had just seen Pontious approach his car window without incident. Furthermore, Javaid fell after taking one step, so he could not have been put on notice that he should retreat to his car because the road was icy. Accordingly, we find that Javaid could not be found negligent for exiting his car under these circumstances.

{¶ 10} Without any evidence that Javaid acted negligently, reasonable minds could reach only one conclusion: Pontious' negligence was the sole cause of Javaid's injuries, which occurred during the unbroken chain of events that Pontious' negligence set in motion. Therefore, the trial court erred by denying Javaid's motion

for directed verdict. Moreover, because we find that Javaid did not act negligently, any instruction given to the jury regarding comparative negligence was improper.

{¶ 11} Accordingly, the second assignment of error is sustained. The other assignments of error raised by Javaid, challenging the jury instructions and the jury verdict, are thus rendered moot.

{¶ 12} Judgment is reversed and case is remanded for a new trial on damages.

It is, therefore, ordered that appellant recover of appellee the costs herein.

{¶ 13} The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, JUDGE

FRANK D. CELEBREZZE, JR., P.J. CONCURS;
MICHAEL J. CORRIGAN, J.* DISSENTS (see
separate opinion)

*Sitting by Assignment, Judge Michael J. Corrigan, Retired, of the Eighth District Court of Appeals.

MICHAEL J. CORRIGAN, J., DISSENTING:

{¶ 14} I disagree with the majority's conclusion that the court should have directed a verdict for Javaid. The majority's statement that "slipping and falling, by

itself, is not negligent” is a non sequitur. The negligence is the failure to exercise due care under the circumstances, not the act that results from refusing to exercise due care.

{¶ 15} It requires no citation to point out that persons living in this state are put on notice that our winter weather can create very hazardous conditions. Here, Javaid had actual notice. By his own admission, weather conditions on the night of the accident were abominable — snow and freezing rain. Not only did Pontious lose control of his vehicle (something which Javaid said he watched), but Javaid said that his vehicle, too, skidded on ice as he tried to stop at the traffic signal. That Javaid failed to process these facts and exited his car without a thought to them merely underscores his want of reasonable care under the circumstances. Indeed, Javaid’s conduct arguably rises to the level of recklessness since he proceeded despite having knowledge of known risk. Under these circumstances, the court did not err by denying the motion for a directed verdict.