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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1468**

Sam Salzl, et al.,  
Appellants,

vs.

Estate of Ransom Butkowski, Deceased,  
Respondent,

Delores Mary Butkowski,  
as Trustee for the heirs and next of kin of Ransom Leslie Butkowski, deceased,  
Respondent,

vs.

Samuel Fred Salzl,  
Appellant,

MetLife Auto & Home,  
Respondent,

Benjamin Salzl,  
Respondent.

**Filed May 18, 2010  
Affirmed  
Lansing, Judge**

Stearns County District Court  
File No. 73-CV-08-6938  
73-CV-08-5654

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Considered and decided by Lansing, Presiding Judge; Worke, Judge; and Crippen, Judge.\*

### **U N P U B L I S H E D   O P I N I O N**

**LANSING**, Judge

This appeal is from a summary judgment in a negligence action that arose from a tragic effort to tow a car from a ditch. Sam Salzl appeals the district court's determination that Ransom Butkowski owed no legal duty to Salzl and was therefore not liable for injuries that Salzl sustained when an oncoming car struck Butkowski and the towed car. Because no genuine issues of material fact require resolution and the district court properly applied the law, we affirm.

### **F A C T S**

Sam Salzl sustained serious injuries and Ransom Butkowski died when a car that was proceeding on County Road 17 in Stearns County struck Butkowski and his car. The collision took place after Salzl and his son towed Butkowski's car from an adjacent ditch. On the night of the incident, Butkowski had driven the car to Salzl's farm to visit Salzl's daughter. As Butkowski was leaving the farm about 8:00 p.m., he backed down the

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

driveway and, turning too sharply, ended up in the ditch. Salzl saw the mishap and told his son to get Salzl's pickup so they could pull Butkowski's car from the ditch.

Salzl attached a tow rope between Butkowski's car and the pickup. Salzl's son drove the pickup and Butkowski was in the driver's seat of his car as it was towed from the ditch. When the car was out of the ditch and back on the driveway, Salzl told his son to stop. At that point, Butkowski's car was almost entirely on the driveway—only the front corner on the driver's side extended beyond the driveway and into the westbound lane of County Road 17. Butkowski turned off the ignition and stood by the side of the car with Salzl's daughter. The car's lights were off, but the area was partially illuminated by lights from another of Salzl's vehicles, which was parked farther up the driveway and pointed toward the road. Salzl disconnected the tow rope from the pickup, and his son drove it down County Road 17 to turn it around. Salzl got down on the driveway and slid under Butkowski's car to detach the other end of the tow rope.

Butkowski and Salzl's daughter saw a car approaching on County Road 17, travelling west. Salzl was still trying to detach the rope under Butkowski's car. Butkowski got down on the ground, reached under the car, and held up his cell phone to provide light for Salzl. In this position, part of Butkowski's body was lying across the fog line of County Road 17. As the westbound car approached the driveway, Salzl's daughter tried to warn Butkowski or to think of a way to stop the impending collision. But the approaching car struck Butkowski, who was fatally injured, and also struck the front corner of Butkowski's car. During the collision, an object struck Salzl in the head

and he was knocked unconscious. Salzl suffered a severe brain injury and, as a result, is no longer able to manage his farm.

A series of litigation arose from the accident. In addition to their own insurance coverage, the Salzls settled their claim against the driver of the westbound vehicle and recovered the policy maximum from his insurer. Butkowski's mother, as the trustee for his next of kin, brought a claim against Salzl and his son. Summary judgment was granted to the Salzls in that case, dismissing Butkowski's claim. Salzl brought this negligence action against Butkowski's estate. Following discovery, the estate moved for summary judgment on two grounds. First, it denied liability based on the absence of a legal duty. Second, it denied liability based on the theory that Salzl had assumed the risks that resulted in his injury. The district court granted summary judgment for Butkowski's estate. Salzl now appeals.

### **DECISION**

On review of a district court's grant of summary judgment, we determine whether there are any genuine issues of material fact and whether the district court correctly applied the law. *Yang v. Voyagaire Houseboats, Inc.*, 701 N.W.2d 783, 788 (Minn. 2005). If no genuine issues of material fact exist and only legal questions remain, our review is de novo. *Progressive Specialty Ins. Co. v. Widness ex rel. Widness*, 635 N.W.2d 516, 518 (Minn. 2001). "The existence of a legal duty in a negligence case . . . is a question of law that is reviewed de novo." *Foss v. Kincade*, 766 N.W.2d 317, 320 (Minn. 2009)

In its motion for summary judgment, Butkowski's estate argued that Butkowski owed no duty because Salzl volunteered to help Butkowski, and no "special relationship" existed between them. On appeal, Salzl agrees that the circumstances did not give rise to a special relationship, but contends that Butkowski breached the ordinary duty of care that he owed Salzl because Butkowski negligently operated the car as it was removed from the ditch.

Minnesota drivers owe others a duty of care in the operation of motor vehicles. Minn. Stat. § 169.14, subd. 1 (2006) (stating that drivers "must use due care in operating a vehicle"); *see generally Schubitzke v. Minneapolis, St. Paul & Sault Ste. Marie R.R.*, 244 Minn. 156, 160, 69 N.W.2d 104, 107 (1955) (stating that driver's negligence is based on "the standard of care to be expected from a reasonably prudent person under similar circumstances"). Violation of a traffic law is "prima facie evidence of negligence." Minn. Stat. § 169.96(b) (2006).

A person violates a traffic law if he leaves a vehicle standing in the main-traveled part of a road when it is practical to leave it off the road instead. Minn. Stat. § 169.32(a) (2006). This violation does not apply "to the driver of any vehicle which is disabled . . . in such a manner . . . that it is impossible to avoid . . . temporarily leaving" the vehicle in the road. *Id.* (b) (2006). If a car is stopped on a road at a time of day when cars are required to use their lights, the car "shall be equipped with one or more lamps" visible from a distance of 500 feet to the front and rear. Minn. Stat. § 169.53 (2006).

Salzl argues that, under these statutes, Butkowski had a duty as the driver of his car not to leave it partially on the roadway without its lights illuminated. He maintains

that Butkowski was the driver of his car while it was towed, and he was therefore responsible for where and how the car came to rest.

It is undisputed that Butkowski was driving the car when he backed it into the ditch. Once in the ditch, however, the car could not be driven out by its own power and had to be pulled out by Salzl's pickup. Salzl's son drove the pickup under Salzl's direction. The pickup pulled the car forward, and Salzl told his son when to stop. Nothing in the record suggests that Butkowski controlled the car's direction or that he applied the brakes to determine where it came to rest. Salzl's son stated, at most, that Butkowski would be "*able to* control the direction of the car," but did not state that Butkowski did control the direction. Salzl's son also said that Butkowski stepped on the accelerator—not to drive the car so much as to free it from the circumstances that were making it undrivable. This evidence fails to establish that Butkowski was "driving" the car in the way that the term is commonly used or legally understood. *See* Minn. Stat. § 169.01, subd. 25 (2006) (defining "driver" as one who "is in actual physical control" of vehicle).

We have previously held that a person steering and operating a car's brakes, while being towed with all four wheels on the ground, was "driving." *State v. Peterson*, 463 N.W.2d 308, 308 (Minn. App. 1990). But the actions of the driver in *Peterson* differ from Butkowski's conduct. The driver in *Peterson* operated the car for some distance on traveled streets, steering and braking to maintain a proper position with respect to the towing vehicle. *Id.* at 309-10. The towed car was traveling between two different locations, and the driver's actions were necessary for the operation of the car in traveled

lanes of a roadway. *Id.* Butkowski did not drive his car in the same way. The evidence is undisputed that he had little, if any, control over the car as it was pulled from the ditch. Consequently, we agree with the district court's determination that Butkowski did not owe Salzl the general duty of a vehicle driver, as it is commonly understood, while he was seated in the driver's seat of the car that was being towed or when it came to a stop on the driveway.

We further conclude that, even if Butkowski was driving the car in some limited way, as it was towed, Salzl actually controlled where it stopped. According to the record, Salzl directed his son who was driving the pickup, he told his son where to stop the pickup, and he unhooked the tow rope from the pickup at the point where he told his son to stop. Salzl also provided lighting for the effort by leaving another vehicle in the driveway with its lights on, pointed toward Butkowski's car. Salzl took responsibility for the car's direction, movement, and location. Although Salzl's actions were genuinely focused on the humanitarian effort of helping Butkowski to get his car out of the ditch, Salzl's direction of the operation partially created the hazard that caused his own tragic injury.

In *Baber v. Dill*, the Minnesota Supreme Court held that Baber, who was doing construction work on residential property, could not invoke the homeowners' duty of care to an invitee because Baber, the invitee, helped create the hazard that injured him in the course of his construction work. 531 N.W.2d 493, 495, 496 (Minn. 1995). Similarly, the duty that Butkowski potentially owed Salzl as a driver is not implicated because the

record indicates that Salzl's actions, not Butkowski's, resulted in the violation of the traffic laws Salzl now invokes as prima facie evidence of Butkowski's negligence.

We conclude, therefore, that because Butkowski was not a driver, he owed no duty in that capacity to Salzl, and we affirm the district court's summary judgment on that basis. Because absence of a duty defeats Salzl's liability claim against Butkowski, we need not reach Butkowski's asserted defense to liability based on the theory that Salzl assumed the risk of injury through his actions. *Id.* at 495. Therefore, we do not reach the district court's alternative ground for summary judgment.

**Affirmed.**