STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2265

Susan Lammle, et al.,
Appellants,
and
State Farm Fire and Casualty Company, et al.,
plaintiff intervenors,
Appellants,

vs.

Gappa Oil Company, Inc.,
Respondent,

Miltona Electric Company, et al.
Defendants.

Filed August 10, 2010
Affirmed; motion denied
Ross, Judge

Otter Tail County District Court
File No. 56-C3-06-001031

Steven L. Theesfeld, David J. Taylor, Yost & Baill, LLP, Minneapolis, Minnesota (for appellants)

Joseph F. Lulic, Hanson, Lulic & Krall, LLC, Minneapolis, Minnesota (for respondent Gappa Oil Company, Inc.)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

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

ROSS, Judge

Susan Lammle was severely injured and her home destroyed when propane that had been leaking from an uncapped gas line in her kitchen exploded. Lammle sued Gappa Oil Company and argues that Gappa had a duty to lock out, red-tag, and leak-check her propane system upon delivering propane and discovering that the tank had been shut off. The district court granted summary judgment for Gappa, and Lammle appeals. Because there is no evidence that the kitchen gas line was uncapped at the time of Gappa's delivery, none of these preventive measures would have revealed or ameliorated a defect in the system and Gappa's failure to take preventative measures was not a proximate cause of the explosion. We affirm.

FACTS

This is the second appeal in a personal injury suit arising from a November 2005 propane explosion at the home of Susan Lammle. While renovating her home in September 2004, Lammle had Ellingson Plumbing, Heating and Air Conditioning install a new propane furnace. Gappa Oil Company installed a 325-gallon propane tank in Lammle's yard the same month and partially filled it with propane. Gappa also added more propane on one or more later occasions before the explosion. The Ellingson employee who installed the furnace also ran a gas line to Lammle's kitchen to fuel a stove. Because the kitchen was still under construction, Ellingson did not connect the line to the stove but installed a safety shut-off valve near the end of the line and capped the line at the valve outlet. Later, another person involved in the renovation project

uncapped the line and connected the stove to it. And still later, someone disconnected the stove. But no one recapped the disconnected gas line.

An employee of Miltona Electric Company came to Lammle's house on November 16, 2005, to start the furnace. At that time, no propane was flowing into the house because the service valve on the outdoor tank was off. Unaware of the uncapped gas line in the kitchen, the Miltona employee opened the outdoor service valve, releasing the gas from the propane tank. He then started the furnace and left the house. So the propane flowed from the outdoor tank to the furnace; but it also flowed to the kitchen, leaked from the uncapped line near the still-disconnected stove, and filled the home's interior with combustible fumes. Lammle entered her house later that day, and the leaked propane ignited, severely injuring Lammle, destroying her home, and damaging neighbors' homes.

Lammle and the affected neighbors (collectively "Lammle") sued Gappa and other defendants for negligence, breach of warranty, and strict liability. Some of the defendants moved for summary judgment. The district court granted summary judgment for these defendants and certified the judgments for immediate appeal under Minnesota Rule of Procedure 54.02. Lammle appealed, and this court affirmed. *See Lammle v. Gappa Oil Co.*, No. A08-0582 (Minn. App. Jan. 13, 2009), *review denied* (Minn. Mar. 31, 2009*).*

After the appeal, Gappa also moved for summary judgment. Opposing Gappa's motion, Lammle asserted that her propane tank's service valve was off in early September 2005 when Gappa made its final propane delivery before the explosion. She

argued that by encountering the tank in that state, Gappa had a duty to lock out the tank to prevent its use until the system could be inspected for leaks. The district court rejected Lammle's theory that encountering a shut-off propane system gave rise to any duty on Gappa's part and held that Lammle had failed to demonstrate that Gappa's acts or omissions proximately caused her injuries. It granted summary judgment for Gappa. Lammle appeals.

D E C I S I O N

I

Lammle challenges the district court's summary judgment for Gappa. The district court must grant summary judgment when "there is no genuine issue as to any material fact and . . . either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03. In a negligence action, the defendant is entitled to summary judgment when the record reflects a complete lack of proof on any essential element of the plaintiff's claim. *Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002). The essential elements of a negligence claim are (1) that the defendant owed the plaintiff a duty of care, (2) that the defendant breached this duty, and (3) that the breach was the proximate cause of injury to the plaintiff. *State Farm Fire & Cas. v. Aquila, Inc.*, 718 N.W.2d 879, 887 (Minn. 2006). On appeal from summary judgment, we determine whether the district court applied the correct legal standard and whether there are genuine issues of material fact for trial, *Gradjelick*, 646 N.W.2d at 230, viewing the evidence in the light most favorable to the party against whom summary judgment was granted, *Foss v. Kincade*, 766 N.W.2d 317, 320 (Minn. 2009).

Lammle argues that the district court erred by holding that Gappa's discovering her propane tank's service valve in the "off" position did not trigger a duty to lock out her tank until the system could be inspected for leaks. She advances several theories under which a shut-off propane tank triggers a duty on the part of a propane supplier to ensure that the system is not returned to service until a leak check is done. Lammle's argument assumes that Gappa was aware that the valve was off, or at least that Gappa had a duty to ascertain the valve's position upon fueling. But there is no evidence that Gappa was aware that the valve was off. The Gappa employee who filled Lammle's tank testified that he had no specific recollection of the service valve's position. Lammle is left only with her argument that Gappa had a duty to determine the valve's position and to take additional measures if it found the valve off.

The parties dispute whether there is sufficient evidence that the tank's service valve was off when Gappa last refilled the tank in early September 2005. The district court found this fact issue irrelevant because it concluded that, even if Gappa had discovered the service valve in the "off" position, it had no duty to lock out or inspect the system. We agree with the district court that the service valve's position is irrelevant, but on different reasoning. There is no evidence that the kitchen gas line was disconnected at the time of the September refill, so nothing that Gappa could have done then would have uncovered or ameliorated the infirmity that destroyed Lammle's home. Accepting for the sake of our analysis that the service valve was off, we conclude that, whatever duty that knowledge of the valve's position may have triggered, Gappa's breach of that duty was not a proximate cause of the explosion that injured Lammle.

A negligent act is the proximate cause of injury if the act was a substantial factor in bringing about the harm and the defendant, in the exercise of ordinary care, ought to have anticipated that the act was likely to result in injury to others. *Lietz v. N. States Power Co.*, 718 N.W.2d 865, 872 (Minn. 2006). A superseding, intervening cause of harm may break the chain of causal events set in motion by the defendant. *Lennon v. Pieper*, 411 N.W.2d 225, 228 (Minn. App. 1987). An intervening cause that supersedes a defendant's negligence must meet four requirements: (1) "its harmful effects must have occurred after the original negligence," (2) "it must not have been brought about by the original negligence," (3) "it must have actively worked to bring about a result which would not otherwise have followed from the original negligence," and (4) "it must not have been reasonably foreseeable by the original wrongdoer." *Canada by Landy v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997). Although proximate cause generally is a fact question for the jury, "when reasonable minds could reach only one conclusion," proximate cause becomes a question of law and may be disposed of by summary judgment. *Id.* at 506.

Lammle argues that, but for Gappa's filling her tank and failing to prevent its use, the uncapped kitchen gas line would not have leaked the propane that exploded. But the supreme court has expressly rejected "but-for" causation as a test for proximate cause because "it converts events both near and far, which merely set the stage for an accident, into a convoluted series of 'causes' of the accident." *Lubbers v. Anderson*, 539 N.W.2d 398, 402 (Minn. 1995).

Lubbers establishes that not every contributing cause is considered the proximate cause of an injury. In *Lubbers*, a group of snowmobilers was travelling single-file down a frozen river. *Id.* at 400. Neutilla, a snowmobiler in the middle of the group, deviated from the course set by those in front of him and led several following snowmobilers toward the center of the river, where one of them, Lubbers, drove into open water and was hit by Anderson, another member of the group. *Id.* at 400−01. Anderson sought indemnity from Neutilla, arguing that, but for Neutilla's leading part of the group to the open water, he would not have hit Lubbers. *Id.* at 402. The supreme court reasoned that "the fact that Neutilla turned to the right and rode his snowmobile toward the center of the river does not, without more, raise an inference that it was the cause of Lubbers riding into the open water and being hit." *Id.* The court continued, "Obviously something occurred behind Neutilla that caused . . . Lubbers . . . to go into the water. The record does not tell us anything about what that something was." *Id.* The court concluded that there were not sufficient facts to create a genuine issue for trial on the element of proximate cause.

In this case, we *do* know the immediate cause of the explosion at Lammle's home—the uncapped, leaking kitchen gas line. And the only evidence of when the gas line became disconnected from the stove suggests that it was still connected in early September 2005 when Gappa refilled Lammle's tank for the last time. Lammle's father testified that he was in the house one to three weeks before the November 16 explosion and that, at that time, the stove was connected to the line. So at the earliest, the disconnection and failure to recap the kitchen line occurred on about October 26, almost

two months after Gappa last delivered propane. Because the record gives us no reason to doubt that the kitchen gas line was safely connected when Gappa last serviced the tank in early September, we conclude that Gappa's breach of the alleged duty to lock out, red-tag, or inspect Lammle's system is too attenuated a cause of the explosion to create a genuine issue on the element of proximate cause.

We briefly explain why all of Lammle's three different categories of duties fail to support proximate cause. Each duty is directed at preventing a shut-off propane system from being returned to service without inspection. She asserts separate duties to lock out the tank, to warn the customer (with a red tag) that the system must be inspected, and to inspect the system for leaks. And Lammle grounds these duties on four legal theories: that a shut-off propane tank is notice of a dangerous condition, that the National Fuel Gas Code creates a statutory duty to lock out a shut-off tank, that a common-law duty required Gappa to warn her of foreseeable danger, and that by placing red warning tags on other customers' tanks Gappa assumed a duty to do so for her as well.

But the causal link between Gappa's breach of these duties and the explosion that injured Lammle was broken. The hazard that eventually led to the explosion did not exist at the time of Gappa's alleged duty. So inspecting the system for leaks at that time would have revealed no danger. We recognize that tagging the tank with a warning not to turn on the system without a leak check or locking out the system until a leak check could be completed might have prevented the Miltona worker from filling the house with propane fumes. But Gappa's failure to take either of these actions is superseded as a cause of the explosion by the unknown party's disconnecting the stove and leaving it that way and by

the furnace worker's decision to turn on the system without identifying that hazard. *See Canada*, 567 N.W.2d at 507 (defining superseding cause). It is clear to us that someone uncapping the gas line and then leaving it uncapped and a furnace starter then failing to notice this potentially dangerous condition before or immediately after he turned the propane system back on was not reasonably foreseeable to Gappa. Whatever duty the shut-off service valve might have triggered, Gappa's breach of that duty was not a proximate cause of the explosion, and the record therefore reflects a complete lack of proof on an essential element of Lammle's claim. The district court properly granted summary judgment for Gappa.

One final point that Lammle raises in her brief merits a short discussion. Lammle argues that the district court erred by holding that only a statute could create a duty requiring Gappa to recommend or require the use of a gas detector. The issue of whether a propane supplier would have had a duty to recommend a gas detector on these facts was litigated in *Lammle I*. *See* 2009 WL 67438, at *7. We held that the defendant wholesale propane suppliers' failure to provide Lammle with a gas detector was too remote to be a cause of the explosion. *Id.* Lammle is bound by that holding.

II

Gappa moves to strike portions of Lammle's appeal submissions. Gappa asserts that footnotes on pages 8−9, 13, and 23 of Lammle's brief and pages 42 through 123 of her appendix, referring to or reproducing attorneys' affidavits and exhibits from prior summary judgment proceedings in this case as well as the district court's resultant summary judgment orders, are outside the record on this appeal. We depend only on

those facts that are in the record to decide an appeal, and a party does not add to that record merely by including extraneous material with her appeal submissions. *See* Minn. R. Civ. App. P. 110.01 ("The papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases."); Minn. R. Civ. App. P. 130.01, subd. 1 (limiting an appellant to append only "portions of the record" to her brief). Although we frequently entertain motions to strike noncomplying submissions, we also may simply disregard attachments and references that are beyond the record, with or without "striking." Gappa's motion to strike is denied but our opinion rests only on facts in the record.

Affirmed; motion denied.