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Negligent Parking of Automobiles

James G. Young*

LIABILITY FOR AN ACCIDENT involving both a moving vehicle and a stationary one is most commonly imputed to the moving vehicle. However, numerous cases involving various fact situations have held otherwise. It is the object of this note to review the reasoning of these decisions.

Under ordinary circumstances, allowing a car to stand in a street or highway is not of itself negligence, if the stop is temporary and for a legitimate or necessary purpose. But restrictions are often imposed by government regulations, and the right to stop when the occasion requires it has been held to be incidental to the right to travel the highway.

Motorists have the right to assume that the road ahead is clear and safe for ordinary travel.¹ Rulings have shown that reasonable stops on the traveled portion of the highway do not include stopping to remove frost,² snow,³ or to clear vision obscured by low lying smoke.⁴ Nor is it justified by loss of a headlight,⁵ stalling,⁶ or running out of gas.⁷ In any of these situations, the driver could have pulled onto the shoulder of the road.

Temporary and reasonable stops that have been held acceptable include that of a rural delivery postman in front of a mailbox,⁸ a driver checking a shifting load,⁹ and loading or discharging passengers and/or merchandise.¹⁰

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¹ *New Cigar Co. v. Broken Spur, Inc.*, 103 Ga. App. 395, 119 S. E. 2d 133 (1961).

² *O'Brien v. Dunigan*, 187 Or. 227, 210 P. 2d 567 (1949).

³ *Henry v. Hallquest*, 226 Minn. 39, 31 N. W. 2d 641 (1948); *Peck v. Hickman*, 321 S. W. 2d 395 (Ky. App. 1959). Ice and snow do not excuse parking in manner that ordinarily would be negligent per se.

⁴ *Fequer v. Brown*, 130 F. Supp. 637 (N. D. Ind. 1955).

⁵ *Weir v. Caffery*, 247 Wis. 70, 18 N. W. 2d 327 (1945).

⁶ *Axelrod v. Krupinski*, 302 N. Y. 367, 98 N. E. 2d 561 (1951).

⁷ *Opplé v. Ray*, 208 Ind. 450, 195 N. E. 81 (1935); *Glenn v. Orfutt*, 309 S. W. 2d 366 (Mo. 1958).

⁸ *Borden v. Daniel*, 48 Tenn. App. 314, 346 S. W. 2d 283 (1961).

⁹ *Ceccacci v. Garre*, 158 Or. 466, 76 P. 2d 283 (1938).

¹⁰ *Evansville & O. V. Ry. Co. v. Wollsey*, 120 Ind. 570, 93 N. E. 2d 355 (1950).

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Violation of Ordinance or Statute

*Newman v. Owl Transfer and Storage Co.*¹¹ defines parking as: "Something more than a mere temporary and reasonable stop for a necessary purpose."¹² This definition was applied in *Naylor v. Dragoon*.¹³ Plaintiff parked on the side of a road while her husband went across the road to register their dog in a kennel. While she was waiting for him, her car was hit in the rear by another auto. The court held that the stop was more than temporary, and that the plaintiff was in violation of a statute.¹⁴

Violation of Statute or Ordinance

Although parking a car or truck in violation of a safety statute is generally negligence per se, plaintiff must still prove that the illegal parking was the proximate cause of the accident. The violation of a statute does not automatically mean that there will be recovery against the violator.

In *Medlin v. Bickford*¹⁵ defendant had parked illegally. Auto A, approaching from the rear, attempted to pass defendant's auto and sideswiped car B, approaching from the opposite direction. Auto A then jumped the curb, hitting the plaintiff, a pedestrian walking on the sidewalk. Defendant's parking was found to be negligence per se. In discussing the question of an intervening cause, the court held that if the accident was reasonably foreseeable and the probable consequence of illegal parking this causal connection was not broken. Certainly the pedestrian fell into the class which the safety rule seeks to protect.

(Continued from preceding page)

See also *Northern Indiana Transit Co. v. Burk*, 228 Ind. 162, 89 N. E. 2d 905 (1950). Busses loading and unloading passengers must still park or stop in accordance with the governing statute. The fact that they are common carriers does not excuse them. In *DeLuca v. Manchester Laundry & Dry Cleaning Co.*, 380 Pa. 484, 112 A. 2d 372 (1955), a stop to load was found to be temporary.

¹¹ 51 Wash. 2d 67, 316 P. 2d 120 (1957).

¹² *Ibid.*, 316 P. 2d at 124.

¹³ 116 Vt. 552, 80 A. 2d 600 (1951).

¹⁴ V. S. A. 47, 10-219, Par. XIII.

¹⁵ 106 Ga. App. 859, 128 S. E. 2d 531 (1962). In *Marchl v. Dowling & Co.*, 157 Pa. Super. 91, 41 A. 2d 427 (1945) negligent double parking brought results similar to *Medlin*. In *Backers v. Cedartown Coca Cola Bottling Co.*, 106 Ga. App. 764, 128 S. E. 2d 355 (1962) a pedestrian, hit while walking around an illegally parked truck could not recover against owners of the truck when it was found that city ordinance was not designed to protect class into which plaintiff fell.

Blocking the view of other cars, by parking at an intersection in violation of a city ordinance, has also been held to be the proximate cause of an accident.¹⁶ So is parking at a railroad crossing in violation of a statute,¹⁷ completely blocking the view of a passing motorist.¹⁸

The negligence of a motorist who ran a stop sign was superseded by that of the defendant whose bus completely obscured the sign in violation of an ordinance. The court found that the resulting collision probably would not have happened had the sign been visible.¹⁹

After plaintiff hit defendant's illegally parked car, the defendant claimed that plaintiff's driving had caused the accident. Answering this claim, in *Steagull v. Houston Fire & Casualty Insurance Co.*,²⁰ the court said:

The intervening cause will not relieve defendant of liability if it was reasonably foreseeable and a normal incident of the risk created by defendant's negligence.²¹

Two tests help to determine whether or not a negligently parked auto is the legal cause of an accident, according to *Bertrand v. Trunkline Gas Co.*:²²

1. Was the negligence of the obstructing driver's auto a cause in fact of the collision?, and
2. Was the plaintiff a member of the class of persons sought to be protected by the statute or safety rule which was violated?²³

¹⁶ *Domitz v. Springfield Bottlers*, 359 Mo. 412, 221 S. W. 2d 831 (1949).

¹⁷ L. S. A. R. S. 14:97. Simple Obstruction of Highway Commerce. Pertains to acts of obstruction that make movement more difficult.

¹⁸ *Bergeron v. Greyhound Corp.*, 100 So. 2d 923 (La. 1958). Also, *Thiessen v. Wabash Railroad Co.*, 41 Ill. App. 2d 238, 190 N. E. 2d 498 (1963).

¹⁹ *Meridian Hatcheries, Inc. v. Troutman*, 230 Miss. 493, 93 So. 2d 472 (1957).

²⁰ 138 So. 2d 433 (La. 1962); see also *Hall v. Cable Dairies*, 234 N. C. 206, 67 S. E. 2d 63 (1951). It was held that defendant would not have to foresee the particular injury as long as an accident resulted from defendant's negligence: *Eberhart v. Abshire*, 158 F. 2d 24 (7th Cir. 1946).

²¹ *Id.* at 138 So. 2d 437.

²² 149 So. 2d 152 (La. 1963); also *Lanzer v. Wentworth*, 315 S. W. 2d 622 (Ky. App. 1958). Recovery disallowed when it was found that deceased did not fall into the class the safety statute sought to protect.

²³ *Id.* at 154, 155. *Dixie-Drive-It-Yourself-System New Orleans Co. v. American Beverage Co.*, 242 La. 471, 128 So. 2d 841 (1961) contains the decision from which these tests evolved.

For instance, in *Weubbles v. Shea*,²⁴ Lamar parked his car at the northwest corner of Franklin and 12th Street within ten feet of an intersection, in violation of a statute.²⁵ Shea turned left onto Franklin as he entered the intersection from the south. Weubbles, heading east on the same street, swerved to avoid colliding with Shea. He lost control of his auto and hit Lamar's parked car. Recovery was sought against Lamar on the basis that his parking violation constituted negligence and interfered with clear passage of the street. The court, however, found that the accident was caused by two independent factors which were the proximate cause, and with which Lamar was unconnected.

A double-parked panel truck was found to be a condition rather than the proximate cause of plaintiff's injuries in *Jarosh v. Van Meter*.²⁶ While Van Meter was passing the parked panel truck he hit Jarosh, a pedestrian, who was jaywalking immediately in front of the truck. Plaintiff Jarosh claimed that the parked truck blocked his view and that the truck was at least a concurrent, if not a proximate cause of the injury. The court disagreed. Jarosh did see the truck before starting across the street. So did Van Meter. Under these circumstances (and with no other traffic to distract their attention) the double-parked truck merely created a *condition* which both Jarosh and Van Meter knew—and which, under the circumstances, could not be the proximate cause.

In a recent Ohio decision,²⁷ plaintiff was standing in the back of a parked truck in violation of a city ordinance.²⁸ This truck was struck from the rear by defendant's truck. The defendant admitted negligence, but said that plaintiff was guilty of contributory negligence, his violation of an ordinance being negligence per se. The jury found that defendant's negligence was

²⁴ 294 Ill. App. 157, 13 N. E. 2d 646 (1948); see also *Clark v. Morrison*, 406 Pa. 130, 177 A. 2d 96 (1962): accident resulted from stop light violation rather than defendant's car parked too near intersection. *Collar v. Meyer*, 251 Wis. 292, 29 N. W. 2d 31 (1947): violation did not constitute Proximate cause. *Evans v. General Steamship Corp.*, 220 Or. 476, 349 P. 2d 269 (1960): taxi illegally parked was not proximate cause of accident when fare opened door on traffic side. Also, *Young v. Lamson*, 121 Vt. 474, 160 A. 2d 873 (1960); and *Howell v. Kansas City Southern Transport Co.*, 66 So. 2d 646 (La. 1953).

²⁵ Ill. Rev. Stat. 1937 c. 95½ 187.

²⁶ 171 Neb. 61, 105 N. W. 2d 531 (1960).

²⁷ *White v. Ohio Power Co.*, 171 Ohio St. 148, 168 N. E. 2d 314 (1960).

²⁸ Code of City of Ironton, Ohio, Art. 5, Sec. 19.

the proximate cause of the accident. The verdict was upheld by the court, which said:

This is in accordance with the rule summarized in 6 Ohio Jurisprudence (2d), 532, Section 284: 'Manifestly the contributory negligence of a plaintiff, to bar recovery, must contribute as a proximate cause of his own injury. The negligence of the plaintiff may be concurrent with the negligence of the defendant and not be, strictly speaking, a proximate cause of the injury.'²⁹

Double parking must be the proximate cause of the accident, even if a safety statute is violated.³⁰

Failure to Use Warning Signals

Failure to display proper warning lights, flares, or reflectors, when stopped or parked along the highway, is often a ground for liability, particularly where display is required by statute.

In *Gutierrez v. Koury*³¹ a truck was left on the pavement without displaying warning signals as prescribed by statute.³² Plaintiff hit the truck, was injured, and charged defendant with negligence per se. The court held that it was reasonable for the plaintiff to assume that the road was clear, and that defendant's negligence was the proximate cause of the accident.

Similarly, a defendant who allowed his unlighted trailer to extend onto the traveled portion of a highway was held to have created a safety hazard.³³

Flares and other warning devices must be displayed properly. Thus, when a statute³⁴ specified that flares be placed on the road, defendant was guilty of negligence as a matter of law when he attached a flare to a corner of his trailer.³⁵

Failure to carry proper warning devices resulted in a finding of negligence in *Jess v. McNamer*.³⁶ Defendant's truck bogged

²⁹ *White v. Ohio Power Co.*, *supra*, n. 39, at 315, 316.

³⁰ *Maloney v. Howard Johnson, Inc.*, 174 N. Y. S. 2d 257, 5 A. D. 2d 1015 (1958).

³¹ 57 N. M. 741, 263 P. 2d 557 (1953). See also *Car & General Insurance Corp. v. Cheshire*, 159 F. 2d 985 (5th Cir., 1947); *LeClair v. Bruley*, 119 Vt. 164, 122 A. 2d 742 (1956); *Leek v. Dillard*, 304 S. W. 2d 60 (Mo. 1957).

³² Sec. 68-523 (c.) of 1941 compilation.

³³ *Sandifer Oil Co. v. The Home Indemnity Co.*, 150 F. Supp. 265 (W. D. La. 1957).

³⁴ Iowa Code of 1946, Sec. 321.448. Regulates display of flares.

³⁵ *Hayungs v. Falk*, 238 Iowa 285, 27 N. W. 2d 15 (1947).

³⁶ 42 Wash. 2d 466, 255 P. 2d 902 (1953).

down in snow, at night. He had no flares to display as required by statute.³⁷ Instead he tried to warn oncoming traffic with hand signals. Bad weather and darkness limited visibility, and plaintiff collided with the parked truck. In spite of defendant's attempt to prevent the accident, it was held that his failure to comply with the statute was nevertheless the proximate cause of the accident.

Failure to display flares as required by statute³⁸ was a bar to recovery in a suit for wrongful death by the estate of a truck driver who had remained in the cab of his parked truck and was struck from behind. His failure to set out flares was held to be contributory negligence.³⁹

Removing Disabled Vehicles

Every effort must be made to remove a disabled vehicle from the road as quickly as possible. In *Capitol Transport v. A. R. Blossman, Inc.*,⁴⁰ the plaintiff's truck which carried inflammable materials had a blowout. The driver pulled onto the shoulder of the road so that one set of wheels remained on the road. The driver set out reflectors and called his office for help. A passing state policeman observed that the truck was parked in accordance with the safety rules. Twelve hours later the truck was still there when defendant's truck hit it from behind. Plaintiff was denied damages, the court holding that plaintiff had allowed his truck to remain in a danger-creating position longer than reasonably necessary for the particular type of breakdown.

Movement of Unoccupied Vehicles

Motor vehicles sometimes move without the benefit of a driver. In *Kolbe v. Public Market Delivery and Transfer*,⁴¹ the defendant's truck was parked on a slight incline while the driver ran an errand. During his absence the truck rolled down the street, hitting the Kolbes' car, injuring Mrs. Kolbe. It was shown that the brakes were defective. The court found that the accident was caused by lack of care by the defendant's employee, and defendant was liable.

³⁷ R. C. W. 46.40.210.

³⁸ R. C. M. 1947, 31-108.

³⁹ *Burns v. Fisher*, 132 Mont. 26, 313 P. 2d 1044 (1957).

⁴⁰ 218 La. 1086, 51 So. 2d 795 (1951).

⁴¹ 130 Wash. 302, 226 P. 1021 (1924), also *Colla v. Mandella*, 1 Wis. 2d 594, 85 N. W. 2d 345 (1957).

When an owner leaves his car at a service station—in gear and with the motor running—the owner and not the service station attendant is liable for injuries caused when his runaway car hits a passerby.⁴² In this case the car began to roll right after the owner left the car and before the service station attendant took over control.

A recent New York case⁴³ found that the defendant had hurriedly parked his car in a driveway with a slight incline. He did not turn his wheels to the side of the drive as required by statute.⁴⁴ The car rolled into plaintiff's house. Defendant disclaimed all negligence on the ground that there was no evidence as to whether anyone had *caused* it to roll. Plaintiff alleged that the facts constituted a *prima facie* case of negligence in that the wheels were not turned as required by statute. Had the wheels been turned properly the accident would not have happened even if the brakes were not set.

Leaving Key in Car

Liability for the subsequent negligent act of a thief may or may not (depending on the state) be imputed to the owner of a stolen vehicle who has left his car unattended with the key in the ignition.

A leading case is *Ross v. Hartman*.⁴⁵ The defendant parked his truck in an alley and left the key in the ignition. The attendant, who was then supposed to park the car in a garage, claimed that he was not notified to do so. A short time later an unknown person took the truck and drove it negligently, striking the plaintiff. The defendant had left the truck parked in violation of a city ordinance⁴⁶ which forbids leaving the key in the ignition of an unlocked vehicle. The court held that defendant's negligent conduct was the proximate cause of the accident. The court reasoned that the parking ordinance is designed to protect the public, and that its violation is an invitation to thieves to steal the car and constitutes negligence. The court held that the fact that

⁴² *Storey v. Parker*, 12 So. 2d 88 (La. 1943).

⁴³ *Davidson v. Hicks*, 34 Misc. (N. Y.) 451, 228 N. Y. S. 2d 439 (1963); *Arnett v. Yeago*, 247 N. C. 356, 100 S. E. 2d 855 (1957).

⁴⁴ Vehicle and Traffic Law, Sec. 1210, subd. (a).

⁴⁵ 78 U. S. App. D. C., 139 F. 2d 14, 158 A. L. R. 1370 (1943), cert. den. 64 S. Ct. 790, 321 U. S. 790, 88 L. Ed. 1080.

⁴⁶ Traffic and Motor Regulations for the Dist. of Col., Sec. 58.

a thief actually caused the accident was immaterial because the defendant's action was the proximate cause.

Under similar facts, *Ostergard v. Frisch*⁴⁷ followed the reasoning set down in the *Ross* case,⁴⁸ which is now considered to be the minority view. A thief took the vehicle 6½ blocks, and negligently struck the plaintiff. Defendant's negligence created a hazard to the general public and the court refused to accept the argument that the results of this act—a thief's negligent driving—could not be reasonably foreseen.

A Minnesota case, *Wannebo v. Gates*,⁴⁹ started a reversal of this trend. The facts were similar to those in the preceding cases, and the plaintiff used the same reasoning. The court did not agree. It was inferred that in these two cases the accidents occurred while the thief was still in flight, the flight coming as a result of defendant's negligence. In the present case, the accident occurred many miles and some hours after the theft, when the thief was no longer in flight. Making this distinction, the court felt that it would be unreasonable to hold defendant liable for something that in fact might have occurred weeks or months later. The effect of any safety statute would have ceased. The defendant was found not liable.

The rule of *Ostergard*⁵⁰ was reversed in Illinois by *Cockerell v. Sullivan*.⁵¹ The court reasoned that the accident resulting from the theft was too remote for defendant's action to be the proximate cause and that defendant could not reasonably foresee it. The court then stated that a locked car, or one without a key, would certainly not stop a thief determined to steal it. And the safety precaution of these statutes has little practical effect in stopping auto thefts.⁵²

⁴⁷ 333 Ill. App. 359, 77 N. E. 2d 537 (1948). *Mellish v. Cooney*, 23 Conn. Sup. 350, 183 A. 2d 753 (1962) is one of the few recent cases adopting this view, although this was the first case of this type to be decided in Connecticut.

⁴⁸ *Ross v. Hartman*, *supra* n. 47.

⁴⁹ 227 Minn. 194, 34 N. W. 2d 695 (1948).

⁵⁰ *Ostergard v. Frisch*, *supra* n. 49.

⁵¹ 344 Ill. App. 620, 101 N. E. 878 (1951).

⁵² There have been numerous law review articles written on the key cases in recent years. A discussion of the need to correct the apparent loophole in the safety statutes is found in *Fernandes, Leaving Keys In A Vehicle: Should There Be A Statute*, 14 *Hastings L. R.* 444 (1963).

The Ohio case of *Garbo v. Walker*⁵³ also adopts the theory that it is questionable whether a car owner can reasonably foresee that the theft of a car and its negligent operation can cause an accident, even if the key is left in the car. The jury decided that the ordinance⁵⁴ violation was not negligence per se.

Many states⁵⁵ now follow the majority view, holding that the intervening negligence of the thief, rather than the negligence of the owner or the violation of the statute, is the proximate cause of the injury.

Conclusion

Improper parking, failure to use warning signals, failure to remove disabled vehicles, movement of unoccupied vehicles, or leaving the key in an unattended vehicle, each may result in liability of the owner or driver, particularly if the negligent act is in violation of an ordinance or statute. Violation of a safety statute, however, is a basis for recovery only if the violation is the proximate cause of the accident. The foremost purpose of such statutes is to bring safety to the roads. Recovery against those who violate these laws is a secondary consideration.

⁵³ 71 Ohio L. Abs. 368, 129 N. E. 2d 537 (1955).

⁵⁴ Ordinance No. 1203-A-46 a.n.a. 9.0936, Certified Ordinances of the City of Cleveland.

⁵⁵ *Ariz.—Shafer v. Monte Mansfield Motors*, 91 Ariz. 331, 372 P. 2d 333 (1962).

Cal.—*Hergenrether v. Collier*, 36 Cal. Rptr. 88 (1963).

Col.—*Lambotte v. Payton*, 167 P. 2d 167 (Col. 1961).

Fla.—*Lingefelt v. Hamner*, 125 So. 2d 325 (Fla. 1960).

Ind.—*Kiste v. Red Cab, Inc.*, 122 Ind. App. 587, 106 N. E. 2d 395 (1952).

Ky.—*Frank v. Ralston*, 145 F. Supp. 294 (W. D. Ky., 1956).

La.—*Town of Jackson v. Mounger Motors, Inc.*, 98 So. 2d 697 (La. 1957).

Mass.—*Galbraith v. Levin*, 323 Mass. 225, 91 N. E. 2d 560 (1948).

Md.—*Liberto v. Holfeldt*, 155 A. 2d 698 (Md. 1959).

Mich.—*Corinitti v. Wittkopp*, 355 Mich. 170, 93 N. W. 2d 906 (1959).

Minn.—*Anderson v. Theisen*, 231 Minn. 369, 43 N. W. 2d 272 (1950).

Miss.—*Permenter v. Milner Chevrolet Co.*, 229 Miss. 385, 91 So. 2d 243 (1956).

Mo.—*Gower v. Lamb*, 282 S. W. 2d 867 (Mo. 1955).

Neb.—*Hersh v. Miller*, 169 Neb. 517, 99 N. W. 2d 878 (1959).

N. C.—*Williams v. Mickens*, 247 N. C. 262, 100 S. E. 2d 511 (1957).

N. Y.—*Wilson v. Harrington*, 269 App. Div. 891, 56 N. Y. S. 2d 157 (1945);
affd. 295 N. Y. 667, 65 N. E. 2d 101.

Ohio—*Ross v. Nutt*, 177 Ohio St. 113, 203 N. E. 2d 118 (1964).

R. I.—*Clements v. Tashjoin*, 91 R. I. 308, 168 A. 2d 472 (1961).

Tenn.—*Teague v. Pritchard*, 38 Tenn. App. 686, 279 S. W. 2d 706 (1954).

Tex.—*Parker & Parker Construction Co. v. Morris*, 346 S. W. 2d 922 (Tex. 1961).

D. C.—*Casey v. Carson & Gruman Co.*, 221 F. 2d 51 (D. C. Cir. 1955). Here negligence of driver was too remote, as accident happened many hours afterward. *Ross v. Hartman* (*supra* n. 47) does not govern.