# Supreme Court of Texas

No. 23-0493

Werner Enterprises, Inc. and Shiraz A. Ali,

*Petitioners*,

v.

Jennifer Blake, individually and as next friend for Nathan Blake, and as heir of the estate of Zackery Blake, deceased; and Eldridge Moak, in his capacity as guardian of the estate of Brianna Blake,

*Respondents*

On Petition for Review from the
Court of Appeals for the Fourteenth District of Texas

**Argued December 3, 2024**

CHIEF JUSTICE BLACKLOCK delivered the opinion of the Court, in which Justice Devine, Justice Busby, Justice Young, and Justice Sullivan joined.

JUSTICE YOUNG filed a concurring opinion, in which Justice Huddle joined.

JUSTICE BLAND filed an opinion dissenting in part, in which Justice Boyd and Justice Huddle joined.

Justice Lehrmann did not participate in the decision.

A negligent actor incurs liability only for damages proximately caused by his negligence. Proximate cause is not established merely by proof that the injury would not have happened if not for the defendant's negligence. Instead, proximate cause requires, among other things, proof that the defendant's negligence was a substantial factor in causing the injury. The substantial-factor requirement incorporates "the idea of responsibility" into the question of causation. *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 472 (Tex. 1991) (quoting RESTATEMENT (SECOND) OF TORTS § 431 cmt. a (AM. L. INST. 1965)). Thus, even if the defendant's negligence is part of the causal chain of events that led to the injury, the defendant is not liable if his involvement was a mere "happenstance of place and time." *Id.* Instead, the substantial-factor requirement means that liability falls only on a party whose substantial role in bringing about the injury is such that he is "actually responsible for the ultimate harm." *Transcon. Ins. Co. v. Crump*, 330 S.W.3d 211, 224 (Tex. 2010). Liability does not fall on other participants in the causal chain whose actions merely "created the condition which made the injury possible." *IHS Cedars Treatment Ctr. of DeSoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 803 (Tex. 2004).

These principles require judgment for the defendants in the terrible circumstances of this highway-collision case. The driver of a pickup truck traveling too fast on an icy, divided interstate highway suddenly lost control, hurtled across a 42-foot-wide median, and collided with the defendant's 18-wheeler before the defendant had time to react. The collision killed one of the pickup's occupants and severely injured three others. The plaintiffs proved at trial that, if not for the

18-wheeler's speed, which was below the speed limit but still unsafe for the icy conditions, the accident likely would not have occurred or the injuries would have been less severe. We must conclude, however, that this proof is insufficient to establish that the defendant's negligence was a substantial factor in bringing about the plaintiffs' injuries. The defendant's presence on the highway, combined with his speed, furnished the condition that made the injuries possible, but it did not proximately cause the injuries. Rather, the sole proximate cause of this accident and these injuries—the sole substantial factor to which the law permits assignment of liability—was the sudden, unexpected hurtling of the victims' vehicle into oncoming highway traffic, for which the defendants bore no responsibility.

To assign legally significant causal force—that is, proximate causation—to any other human factor in this accident would be to distort the tragic reality of what transpired. This awful accident happened because an out-of-control vehicle suddenly skidded across a wide median and struck the defendant's truck, before he had time to react, as he drove below the speed limit in his proper lane of traffic. That singular and robustly explanatory fact fully explains why the accident happened and who is responsible for the resulting injuries. Because no further explanation is reasonably necessary to substantially explain the origins of this accident or to assign responsibility for the plaintiffs' injuries, the rule of proximate causation does not permit a factfinder to search for other, subordinate actors in the causal chain and assign liability to them. Compared to the central and defining fact about this accident's cause—the pickup careening across a wide median into

oncoming interstate-highway traffic—anything the defendant did or didn't do to contribute to the possibility of such an accident is too attenuated to qualify as the substantial factor necessary for proximate causation.

Because our holding regarding proximate cause requires judgment for the defendants, we do not reach any other issues. The judgment of the court of appeals is reversed, and judgment is rendered in favor of the defendants.

**I.**

On the afternoon of December 30, 2014, Trey Salinas was driving his F-350 pickup with four passengers—Jennifer Blake and her three children—on I-20 eastbound near Odessa. That morning, the National Weather Service issued a winter weather advisory indicating that ice was likely to accumulate on the roads and cause hazardous driving conditions. The temperature dropped below freezing in Odessa around 9:30 a.m. At 2:50 p.m., the National Weather Service updated its advisory to say that freezing rain had begun and that temperatures would remain below freezing all afternoon.

Testimony from a driver behind Salinas suggested that Salinas was driving approximately 50-60 miles per hour when he lost control of his pickup at approximately 4:30 p.m. In the course of two to three seconds, Salinas's F-350 left I-20 eastbound, crossed the 42-foot grassy median, entered traffic on I-20 westbound, and collided with a Werner Enterprises 18-wheeler driven by Shiraz Ali. Ali was a driver in training with Werner. His trainer, Jeffrey Ackerman, was in the 18-wheeler's sleeper berth. Ali testified that as soon as he saw Salinas's truck, he

"pressed on the brake as hard as [he] could." The plaintiffs' expert witness testified that Ali's split-second reaction to the oncoming vehicle "was appropriate to the conditions that he saw coming up ahead of him." Nevertheless, the vehicles collided, killing one of the Blake children and severely injuring the three other Blake family members traveling with Salinas.

There is little question that driving conditions were hazardous on both sides of the road. In addition to the winter weather advisory, there was evidence that 18-wheelers parked off the side of the highway to get off the slick roads. There was also evidence that in the ninety minutes preceding the collision, there were several accidents—single-vehicle and multi-vehicle—on I-20 westbound and I-20 eastbound. At 3:00 p.m., a driver on I-20 westbound lost control, crossed the center median, and collided with a vehicle on I-20 eastbound approximately 4.5 miles from where Salinas and Ali collided. Also at 3:00 p.m., a driver elsewhere on I-20 westbound hit a concrete barrier. At 4:01 p.m., roughly 100 feet down I-20 westbound from that accident, another vehicle lost control and hit a concrete barrier. At 3:30 p.m., a car went off the road on I-20 eastbound. The officer responding to the 3:30 p.m. accident described the roads as "so icy I couldn't drive very fast or I would have gone out of control." While that officer was responding to the 3:30 p.m. accident on I-20 eastbound, a pileup occurred on I-20 westbound. A different driver—traveling on I-20 westbound approaching the pileup—hit her brakes to avoid colliding with the stopped vehicles. In doing so, she lost control of her car, which went into the center median, rolled, and entered traffic on I-20 eastbound, where it collided with an

eastbound 18-wheeler. The driver of that 18-wheeler estimated he was traveling at five miles per hour at the time of impact. The car's driver was not injured. The officer responding to that accident said the driver lost control of her car "because of the icy roadway" and described the roads as "covered in ice." This cross-median accident was roughly 50 miles away from where Salinas and Ali collided. The first responders at Ali and Salinas's collision also recounted that the roads were icy and that they needed to travel slowly, approximately 10-15 miles per hour. One of the responding officers testified, "You couldn't walk on [the road]. It was like a skating rink."

Neither Ali nor Ackerman checked the weather before they started the stretch of the drive on which the collision occurred. They had no knowledge of the 2:50 p.m. advisory, and at trial, Ali could not remember if he had seen the earlier advisory. Ali testified that the roads were wet but that he didn't need to drive any slower because the truck "handled just fine. Traction was good." There was also evidence that Ali passed three different accidents in the hour preceding the collision. Ali testified that he did not remember seeing these accidents but would not deny that he did.

Ali's speed was extensively discussed at trial. From 2:41 p.m. to 4:26 p.m., the Blakes' expert testified that Ali's speed averaged 60.57 miles per hour. Immediately prior to the F-350 crossing the median at 4:30 p.m., Ali was accelerating at full throttle after having slowed down. When Ali pressed the brake after spotting the F-350, the 18-wheeler was going approximately 50 miles per hour. At the time of impact, the 18-wheeler was going approximately 43-45 miles per hour.

The plaintiffs' expert testimony indicated that roughly two seconds transpired between when Salinas lost control in the eastbound lanes and when he collided with Ali in the westbound lanes.

The collision was catastrophic for the Blake family. Seven-year-old Zackery Blake was killed. Twelve-year-old Brianna Blake was rendered a permanent quadriplegic. Fourteen-year-old Nathan Blake and Jennifer Blake suffered traumatic brain injuries as well as physical injuries. Salinas was treated at a local hospital but was discharged within hours.

Jennifer Blake, individually and as next friend for Nathan Blake and as heir of Zackery Blake's estate, and Eldridge Moak, in his capacity as guardian of Brianna Blake's estate, sued Werner and Ali. Werner acknowledged that Ali was acting in the course and scope of his employment and accepted vicarious liability for his conduct.

The jury found Werner and Ali liable. It apportioned 70% of the responsibility for causing the Blakes' injuries to Werner employees other than Ali, 14% to Ali, and 16% to Salinas. It awarded Jennifer Blake $16,500,000, Nathan Blake $5,000,000, and Brianna Blake $68,187,994. The district court rendered judgment against Werner and Ali, awarding these amounts plus court costs and interest. The Blakes settled with Salinas before trial. Werner and Ali received a credit from the settlement.

Werner and Ali appealed. They challenged: (1) the legal and factual sufficiency of the jury's negligence liability finding against Ali, (2) the legal and factual sufficiency of the jury's negligence liability findings against Werner, (3) jury charge issues, (4) apportionment

issues, (5) admission of evidence, and (6) the award of future medical expenses. 672 S.W.3d 554, 568 (Tex. App.—Houston [14th Dist.] 2023). The case was argued to a three-justice panel, but before the panel issued a decision, the court voted to consider the case en banc. *Werner Enters., Inc. v. Blake*, 2021 WL 3164005, at *1 (Tex. App.—Houston [14th Dist.] July 27, 2021) (en banc order). The en banc court of appeals affirmed the district court's judgment. 672 S.W.3d at 618. Four justices dissented, across two opinions. The dissenting justices agreed with the majority that sufficient evidence supported the jury's negligence finding against Ali. *Id.* at 618 (Christopher, C.J., dissenting), 627 (Wilson, J., dissenting). The first dissent would have held that the district court erred in submitting Question 1 of the jury charge, the "direct" theory of Werner's liability. *Id.* at 623 (Christopher, C.J., dissenting). Because apportionment was based, in part, on the jury's answer to Question 1, the dissent would have remanded for a new trial. *Id.* The second dissent would have rendered a take-nothing judgment as to the Blakes' derivative theories of liability against Werner based on the "Admission Rule"—the idea that an employer's admission that an employee was acting in the course and scope of his employment generally prevents plaintiffs from pursuing derivative theories of negligence against the employer—which the second dissent would have adopted. *Id.* at 625 (Wilson, J., dissenting). The second dissent would have remanded the remaining claims for a new trial. *Id.*

Werner and Ali petitioned for review in this Court. They argue: (1) Ali's negligence, if any, did not proximately cause the accident, (2) Ali owed no duty to the Blakes under these circumstances, (3) Werner

cannot be held liable for the accident under a negligent training theory or other derivative theories, (4) the Court should adopt the "Admission Rule" when assessing employer liability, (5) the court of appeals overlooked multiple *Casteel* problems in the jury charge, and (6) the jury's apportionment findings are unsupported by the evidence. We granted the petition.

## II.

### A.

We first consider the defendants' contention that Ali's negligence was not a proximate cause of the plaintiffs' injuries. The requirement of proximate cause has been a foundational pillar of the common law throughout our history. As the ancient maxim instructs, "*In jure non remota causa sed proxima spectatur*" ("In law, the immediate, not the remote, cause is considered"). *Wichita City Lines, Inc. v. Puckett*, 295 S.W.2d 894, 898 (Tex. 1956) (attributing the Latin phrase to Sir Francis Bacon (1561–1626)).

We have described proximate cause as requiring application of "a practical test, the test of common experience, to human conduct when determining legal rights and legal liability." *Hous. Lighting & Power Co. v. Brooks*, 336 S.W.2d 603, 607 (Tex. 1960) (quoting *City of Dallas v. Maxwell*, 248 S.W. 667, 670 (Tex. Comm'n App. 1923, holding approved, judgm't adopted)). Our precedents divide proximate cause into two elements: (1) cause in fact, and (2) foreseeability. *Pediatrics Cool Care v. Thompson*, 649 S.W.3d 152, 158 (Tex. 2022). The two elements are distinct, but they often entail overlapping considerations because they

operate together to focus liability on those with a sufficient connection to and responsibility for the injuries.

Cause in fact has two components: (1) "but-for" causation, and (2) "substantial-factor" causation. *Id.* The defendant's negligence is the "but-for" cause of an injury if, "without the act or omission, the harm would not have occurred." *Id.* (quoting *Gunn v. McCoy*, 554 S.W.3d 645, 658 (Tex. 2018)). But-for causation is essential to liability, but proving but-for causation alone does not establish that the defendant's negligence was a cause in fact of the plaintiff's injuries. "[I]t is not enough that the harm would not have occurred had the actor not been negligent." *Lear Siegler*, 819 S.W.2d at 472 (quoting RESTATEMENT (SECOND) OF TORTS § 431 cmt. a). The plaintiff must also prove that "the [negligent] act or omission was a substantial factor in bringing about the injury." *Rogers v. Zanetti*, 518 S.W.3d 394, 402 (Tex. 2017); *see also Pediatrics*, 649 S.W.3d at 158.

The slippery word "substantial" can be difficult to nail down in many contexts. But in this context, our precedents provide useful contours. We have on several occasions described the "substantial-factor" requirement with reference to the following instructive passage from the Restatement:

> The word "substantial" is used to denote the fact that the defendant's conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility, rather than in the so-called "philosophic sense," which includes every one of the great number of events without which any happening would not have occurred.

RESTATEMENT (SECOND) OF TORTS § 431 cmt. a; *see Lear Siegler*, 819 S.W.2d at 472; *Crump*, 330 S.W.3d at 224; *Zanetti*, 518 S.W.3d at 402; *Borg-Warner Corp. v. Flores*, 232 S.W.3d 765, 770 (Tex. 2007).

A key insight of this passage, to which we have pointed before, is that within the concept of proximate cause, there "always lurks the idea of responsibility." *Lear Siegler*, 819 S.W.2d at 472; *Crump*, 330 S.W.3d at 224; *Flores*, 232 S.W.3d at 770. The requirement of proximate causation—with its subsidiary requirement of substantial-factor causation—compels inquiry into whether, given the nature of the defendant's causal connection to the accident, it is reasonable to conclude that he is "actually responsible for the ultimate harm." *Crump*, 330 S.W.3d at 224. If, on the other hand, the defendant's conduct "merely creates the condition that makes the harm possible, it is not a substantial factor in causing the harm as a matter of law." *Stanfield v. Neubaum*, 494 S.W.3d 90, 97 (Tex. 2016) (internal quotation omitted). In other words, "cause in fact is not established where the defendant's negligence does no more than furnish a condition which makes the injuries possible." *IHS*, 143 S.W.3d at 799.

**B.**

By answering "yes" to the question about Ali's liability, the jury found that Ali's negligence was a substantial factor in bringing about the Blakes' injuries. To overcome that finding on appeal, the defendants must demonstrate that no reasonable juror could have so found. *See City of Keller v. Wilson*, 168 S.W.3d 802, 823 (Tex. 2005) ("Judgment without or against a jury verdict is proper at any course of the proceedings only when the law does not allow reasonable jurors to decide

otherwise."). We "must credit favorable evidence if reasonable jurors could, and disregard contrary evidence unless reasonable jurors could not." *Id.* at 827.

We conclude the defendants have made this demanding showing. The jury charge distinguished between but-for causation and substantial-factor causation and required the jury to find both. Given a proper understanding of substantial-factor causation—an understanding consistent with the jury charge given in this case—no reasonable juror could assign responsibility for these injuries to anyone other than the driver who lost control of his vehicle and hurtled across a 42-foot median into oncoming highway traffic, thereby causing this accident and these injuries in every legally relevant sense of the word.[1]

In defense of the verdict, the Blakes point to evidence that if Ali had been going fifteen miles per hour, then "[t]he pickup would have spun safely across the roadway and into the grass because there was nothing for it to hit." They also emphasize that Ali knew that passenger vehicles are more likely than 18-wheelers to slide on ice, and he knew what the consequences of such a loss of control in front of an 18-wheeler would be. He also knew or should have known the conditions were

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[1] Regarding the question—"[w]as the negligence, if any, of Shiraz Ali in the operation of the Werner truck on December 30, 2014, a proximate cause of the injuries in question?"—the jury charge defined proximate cause as:

> a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a commercial truck driver using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.

hazardous, and he therefore should have driven more carefully or perhaps stayed off the road altogether. And ultimately his excessive speed at least exacerbated the Blakes' injuries, as compared to what the injuries would have been had Ali been traveling at a safe speed. The Blakes thus argue that Ali's negligent speed was a proximate cause, not merely a furnishing condition, of their injuries. Ali's negligent speed was plainly a but-for cause of the accident, they contend, and because his negligence did not terminate before the injury, Ali can be liable for it. Moreover, the causal connection was not so attenuated as to foreclose liability, they urge. The bottom line, for the plaintiffs, is that Ali was negligently driving too fast on ice, and because of that fact, he was unable to avoid colliding with the vehicle carrying the Blakes. He therefore caused them greater injury than if he had been traveling more slowly, and a reasonable juror could consider Ali's speed a proximate cause of the Blakes' injuries.

The court of appeals agreed. 672 S.W.3d at 578. It considered Ali's testimony that he knew that passenger vehicles are more likely to lose control on ice than 18-wheelers and that he knew what the consequences of a passenger vehicle losing control on an icy highway in front of an 18-wheeler would be. *Id.* at 577. The court of appeals also looked to both parties' accident-reconstruction expert testimony, which indicated that if Ali had been driving fifteen miles per hour, the collision would not have happened. *Id.* Evaluating this evidence in the light most favorable to the jury finding, the court of appeals concluded that the evidence enabled a reasonable juror to find that Ali's negligence was a substantial factor in bringing about the injuries, that his negligence

was a but-for cause of the injuries, and that it was reasonably foreseeable that the injuries could result from his negligence. *Id.* at 577–78. The court of appeals thus held that sufficient evidence supported the jury's finding that Ali's negligence was a proximate cause of the Blakes' injuries. *Id.* at 578.

We can assume sufficient evidence that Ali's speed—and even his presence on the icy road at all—was negligent under these weather conditions. And we can assume that Ali's negligent driving was a but-for cause of the injuries, in that "without [Ali's negligence] harm would not have occurred." *Zanetti*, 518 S.W.3d at 402. The Blakes focus their defense of the verdict primarily on the abundant evidence impugning Ali's driving and his decisions in the hours and moments leading up to the accident. They do not fault Ali, however, for his reaction once Salinas lost control. To the contrary, their expert testified that Ali did the best he could during the two seconds preceding the crash.[2] Ali's

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[2] Q. And I think you testified that it only took Mr. Salinas'[s] vehicle 2.1 seconds to get across the grassy median?

A. To the area of impact, yes, that's about right.

Q. Okay.

A. About two seconds.

Q. And that you testified that Mr. Ali had reacted within a half a second?

A. Yeah, he -- Mr. Ali reacted basically as soon as he saw that pickup truck beginning to enter the center median by taking his foot off the gas and moving it towards the brake. So his reaction was appropriate to the conditions that he saw coming up ahead of him.

negligence, instead, was to be found only in the manner of his driving *before* Salinas lost control across the median from him. The plaintiffs' principal theory of the case is that if Ali had not been driving too fast in the icy conditions, things would have turned out much differently for the Blakes, who would be alive and well if not for Ali's unsafe driving.

Powerful as this line of argument may be in the wake of such terrible consequences for the blameless victims, it addresses only but-for causation. It does not account for the requirement of substantial-factor causation, which we conclude is lacking here as a matter of law. That is so because the sole substantial factor in bringing about this accident—the singular fact that substantially explains why the accident happened and who is responsible for the plaintiffs' injuries—was Salinas's losing control of his F-350 and crossing a 42-foot grassy median into oncoming highway traffic before Ali had time to react. The Blakes are correct, of course, that there can be more than one proximate cause of an injury. *Lear Siegler*, 819 S.W.2d at 471. That does not mean there is always more than one proximate cause. On these facts, we hold that there was only one.

"Where the initial act of negligence was not the active and efficient cause of plaintiffs' injuries, but merely created the condition by which the second act of negligence could occur, the resulting harm is too attenuated from the defendants' conduct to constitute the cause in fact of plaintiffs' injuries." *IHS*, 143 S.W.3d at 799. Likewise, the

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> Q. Okay. So no criticisms about how fast he reacted to seeing Mr. Salinas come across?
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> A. No, not at all. He reacted very quickly.

"'happenstance of place and time' may be too attenuated for liability to be imposed under the common law." *Id.* (quoting *Lear Siegler*, 819 S.W.2d at 472).[3]

Under the undisputed facts of this case, the Blakes' injuries happened because Trey Salinas, in the course of two or three seconds, lost control of his F-350, hurtled across the median into oncoming traffic on I-20, and collided with a vehicle driving below the speed limit in its proper lane on the other side—a vehicle which, tragically for the Blakes, happened to be an 18-wheeler. Ali's "initial act of negligence"—whether it was his speed in icy conditions or his presence on the highway—"merely created the condition by which the second act of negligence [Salinas's loss of control] could" bring about the injury. *Id.* "[T]he resulting harm is too attenuated from [Ali's] conduct to constitute the cause in fact of plaintiffs' injuries." *Id.*

Nothing Ali did or didn't do contributed to Salinas's truck hitting ice, losing control, veering into the median, and entering oncoming traffic on an interstate highway. However Ali was driving, the presence of his 18-wheeler in its proper lane of traffic on the other side of I-20

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[3] The dissenting justices emphasize distinctions between the facts of this case and the facts of *Lear Siegler* and other precedents of this Court on which we rely. *Post* at 7–8 (Bland, J., dissenting). We do not rely on *Lear Siegler* and our other precedents describing the law of substantial-factor causation because of factual similarities between those cases and this one. We rely on them, instead, because in our view the legal rule to which they give rise, when applied to the facts of this case, dictates the result we reach. Our two precedents that bear some factual similarity to this case are *Biggers v. Continental Bus System, Inc.*, 303 S.W.2d 359 (Tex. 1957), and *Baumler v. Hazelwood*, 347 S.W.2d 560 (Tex. 1961). As discussed in Part II.C., we upheld the jury verdict in *Biggers* but reversed it in *Baumler*, as we do today.

at the precise moment Salinas lost control is just the kind of "happenstance of place and time" that cannot reasonably be considered a substantial factor in causing these injuries. Instead, Salinas losing control and hurtling across the median was *the* substantial factor in bringing about the injuries. The presence of Ali's truck on the other side of the median at that precise moment was merely "the condition that ma[de] the harm possible." *Stanfield*, 494 S.W.3d at 97 (quoting *IHS*, 143 S.W.3d at 800).

Surely, as the plaintiffs urge, if Ali had been driving more slowly, Salinas would not have collided with him. Just as surely, however, if Ali had been driving 100 miles per hour, Salinas would not have collided with him. Had either driver been driving much slower or faster, this accident would not have happened as it did. *See Myers v. Bright*, 609 A.2d 1182, 1188 (Md. 1992) ("[H]ad [the plaintiff] been going much faster she also would have avoided the accident."). And if no vehicle at all had been in Salinas's path as he crossed into oncoming traffic, the Blakes would not have been injured. On the other hand, if the vehicle in that spot had been a small car rather than an 18-wheeler, Salinas's F-350 could have killed or severely injured its occupants.

The position and speed of the vehicles on the other side of a broadly divided highway when an oncoming F-350 suddenly hurtles across the median toward them is precisely the kind of "happenstance of place and time" that can have enormous consequences for the victims of an accident but cannot reasonably be considered the proximate cause of the accident or the resulting injuries. As between the two drivers involved in a head-on collision, substantial-factor causation requires us

to assign legal responsibility to the driver whose negligence made *the collision* happen—not to a driver whose negligence merely happened to bring him to a time and place at which another driver unexpectedly and negligently collided with him before he had time to react. The environment on the other side of the divided highway is "the condition that ma[de] the harm possible," *Stanfield*, 494 S.W.3d at 97 (quoting *IHS*, 143 S.W.3d at 800), but the proximate cause of the harm is the out-of-control vehicle entering oncoming traffic. The only contribution Ali's speed (or his decision to stay on the road) made to bringing this accident about was that it put him, in that fateful moment, directly in the path of Salinas's careening F-350—a tragic "happenstance of place and time" if ever there was one, but not a happenstance for which Ali or his employer can reasonably be held responsible under this Court's precedents.[4]

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[4] We are concerned here only with the assignment of responsibility as between two drivers for injuries caused by the collision of their vehicles. In other words, the question is whether Salinas's driving errors or Ali's driving errors—or some combination of the two—proximately caused the plaintiffs' injuries. As between Salinas's driving and Ali's driving, we hold that Salinas's driving was the sole proximate cause of the Blakes' injuries as a matter of law. We do not thereby hold that the at-fault driver's negligence is *always* the sole proximate cause of the injuries arising from a collision. If the allegation were that a defect in the design of either vehicle contributed to the injuries, for instance, our analysis of causation would require additional considerations that are not required when assigning responsibility as between the driving errors of the two drivers involved in the accident. *See, e.g.*, *Hyundai Motor Co. v. Rodriguez ex rel. Rodriguez*, 995 S.W.2d 661, 665 (Tex. 1999) (discussing vehicle-manufacturer liability under a products-liability theory). Or, if the allegation were that injury-causing conduct apart from the way the two vehicles were driven exacerbated the plaintiffs' injuries, responsibility could be apportioned to the injury-enhancing party. *See Nabors Well Servs., Ltd. v. Romero*, 456 S.W.3d 553, 562–64 (Tex. 2015) (holding that failure to wear a

**C.**

The Blakes rely on our decision in *Biggers v. Continental Bus System, Inc.*, 303 S.W.2d 359 (Tex. 1957). *Biggers* involved a collision between a car and a commercial bus on a rural stretch of two-lane highway eight miles north of Huntsville in 1951. *Id.* at 361. The road was wet with rain. *Id.* at 362. At the point of collision, just north of a small bridge, the highway was 24-feet wide. *Id.* at 361. The bus was driving at an excessive speed northward but was properly on the right side of the two-lane road. *Id.* at 361–62. At the same time, three passenger vehicles were traveling southward in a single line toward the bridge. *Id.* As they approached the bridge, the first vehicle "slowed down to observe the creek to ascertain if it was too muddy for fishing." *Id.* at 362. Reacting to the first car, the second and third cars traveling behind the first car also slowed, but the third car slid into the car in front of it. *Id.* The contact "propelled" the second car "somewhat diagonally eastward into the bus'[s] right-hand side of the highway," where it collided with the bus. *Id.*

*Biggers* focuses on the foreseeability aspect of proximate cause, not on the requirement of substantial-factor causation we apply today. We determined that the possibility of such a collision was foreseeable under the circumstances:

> It would be wholly out of keeping with reality to hold that an operator of an automobile traveling on a modern, heavily-traveled public highway cannot and should not, under any circumstances, reasonably foresee that an automobile approaching from the opposite direction may,

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seatbelt can be considered alongside driver error in assessing proportionate responsibility for injuries caused by a collision).

> for some reason, enter the wrong traffic lane and thus be endangered by excessive speed which makes stopping, deceleration or turning aside to avoid a collision impossible or more difficult.

*Id.* at 364.

*Biggers* is legally distinguishable from our decision today in part because it primarily addresses foreseeability and but-for causation rather than focusing on the requirement of substantial-factor causation as enunciated in our more recent decisions. That is not to suggest these discrete inquiries are sealed off from one another. Just as the substantial-factor inquiry incorporates "the idea of responsibility" into the question of proximate cause, *Lear Siegler*, 819 S.W.2d at 472, the foreseeability inquiry likewise "addresses the proper scope of a defendant's legal responsibility for negligent conduct," *Zanetti*, 518 S.W.3d at 402. Both inquiries involve "practical" application of the "test of common experience, to human conduct." *Brooks*, 336 S.W.2d at 607 (quoting *Maxwell*, 248 S.W. at 670). And both inquiries serve a common purpose, which is to ask, under the banner of proximate cause, "whether a defendant's blameworthy act was sufficiently related to the resulting harm to warrant imposing liability for that harm on the defendant." *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 839 (1996) (discussing proximate cause generally). Naturally, similar considerations will often bear on both substantial-factor causation and foreseeability.

The two are nevertheless distinct. Foreseeability asks "what should reasonably be anticipated in the light of common experience applied to the surrounding circumstances." *Biggers*, 303 S.W.2d at 364.

Substantial-factor causation asks, also in light of common experience, whether "the defendant's conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility." *Crump*, 330 S.W.3d at 224 (quoting *Lear Siegler*, 819 S.W.2d at 472).

*Biggers* is also factually distinguishable from today's case, primarily because it involved vehicles traveling in close proximity on a narrow, two-lane highway crossing a bridge. Applying a "practical, common sense test, the test of common experience," *Biggers* rejected the defendants' contention that, in such circumstances, the excessive speed of the vehicle traveling in its proper lane can *never* be a proximate cause of a collision with an oncoming car that moves unexpectedly into oncoming traffic. 303 S.W.2d at 364.

The very same "practical, common sense test, the test of common experience" yields a different result, in our view, when applied to the modern experience of driving on a four-lane highway divided by a broad, grassy median. The vehicles in *Biggers* were operating in narrow quarters at a bridge crossing, sharing a two-lane road, approaching each other in close proximity. Vehicles on a divided highway, by contrast, operate on what are essentially two different roads. The possibility that a driver on a two-lane rural highway will mistakenly enter oncoming traffic, while still remote as a matter of common experience outside of designated passing zones, is vastly more likely than the possibility that a driver on a broadly divided highway will cross the median and enter oncoming traffic. Nothing in *Biggers* suggests we must extend its

reasoning about the practical realities of driving on a two-lane highway in 1951 to the much different practical reality of driving on a four-lane, divided interstate highway in the twenty-first century.[5] We need not overrule *Biggers*, but neither does it compel the result of this case.

Even in the context of two-lane highways divided only by a stripe of paint, we made clear after *Biggers*, in the factually similar case of *Baumler v. Hazelwood*, that the defendant's excessive speed is not necessarily a proximate cause of a collision with an oncoming driver who suddenly veers onto the wrong side of the road. *See Baumler v. Hazelwood*, 347 S.W.2d 560, 561 (Tex. 1961). Distinguishing *Biggers*, we held that liability in such circumstances "depends upon the facts." *Id.* at 565. We overturned a jury verdict assigning liability to a driver who was struck when another vehicle entered his side of the road, just as we do today. *Id.*

A key fact, in both *Baumler* and *Biggers*, was the reaction time available to the driver traveling in his correct lane. The reaction time was just a split second in *Baumler*. *Id.* at 564. Yet in *Biggers*, "the car which got into the pathway of the bus got there at least 3 1/2 seconds before the collision." *Id.* at 565. Indeed, as we noted in *Baumler*, the Court in *Biggers* hypothesized that if, instead of 3.5 seconds, the car had "entered the bus'[s] lane of traffic less than two seconds before the

[5] According to the Texas Department of Transportation, Texas's first interstate highway was the Gulf Freeway (I-45) in Houston, the first major portion of which opened in 1952, one year after the accident in *Biggers*. *See Interstate and U.S. Highway Facts*, TEX. DEP'T OF TRANSP., https://www.dot.state.tx.us/tpp/hwy/ihhwyfacts.htm (last visited June 25, 2025).

collision," then "we might find justification for setting aside" the verdict. *Biggers*, 303 S.W.2d at 363. In today's case, the Blakes' expert agreed that the *entire* sequence of events—from Salinas losing control to the moment of collision all the way across the median—lasted no more than roughly two seconds. Ali's reaction time after Salinas "got into the pathway" of the 18-wheeler on the wrong side of the interstate was therefore much lower than the 3.5 seconds available to the bus driver in *Biggers*. Indeed, as mentioned above, the plaintiffs' expert witness found no fault in the way Ali reacted once Salinas's vehicle started hurtling toward him. *See supra* note 2.

Both *Biggers* and *Baumler* demonstrate, as we would expect, that identifying the proximate cause of an accident on the road "depends upon the facts." *Baumler*, 347 S.W.2d at 565. That does not mean, however, that a jury may always answer as it chooses, irrespective of the facts. As in *Baumler*, an appellate court must overturn a jury verdict if the facts in evidence, taken in the light most favorable to the verdict, do not support a reasonable theory of proximate causation. In these prior cases, as today, one key fact informing our assessment of proximate cause is the defendant driver's reaction time. Yet, as discussed above, the most decisive fact distinguishing this case from *Biggers* is the vast difference between a 24-foot-wide two-lane highway and an interstate highway divided by a 42-foot grassy median.

We are directed to just one other reported American case in which an out-of-control vehicle crossed the wide median of a modern, divided highway and the injured plaintiff sued a driver who had insufficient time to react before colliding with the errant vehicle. *See Creel v. Loy*,

524 F. Supp. 3d 1090 (D. Mont. 2021). As here, the court granted the possibility that the defendant was driving too fast given the rainy conditions. *See id.* at 1100. The court nevertheless concluded that the injuries "were not foreseeably and substantially caused by [the defendant's] alleged negligence." *Id.* at 1100–01 (applying Montana law on proximate causation).[6]

Neither the dearth of such cases nor the outcome of the Montana case should be surprising. Head-on collisions tragically do happen. But as a "practical" matter of "common experience," we normally would not blame the driver who stayed in his lane and was struck, before he had time to react, by an out-of-control vehicle careening unexpectedly across a wide median into oncoming traffic. *Brooks*, 336 S.W.2d at 607 (quoting *Maxwell*, 248 S.W. at 670). Even in treacherous conditions—perhaps especially in treacherous conditions—each driver has a personal responsibility to maintain control of his vehicle and to stay on his side of the road. Our shared sense that each driver on the road bears that basic responsibility is what makes modern high-speed driving possible. Every driver proceeds in unspoken reliance on other drivers maintaining control of their vehicles and staying on their side of the road. Our lives are in each other's hands every second we spend on a highway in the multi-ton steel projectiles we drive. In most cases, we

[6] The dissenting justices conclude that the evidence of causation in *Creel v. Loy* was weaker than the evidence adduced against Ali. *Post* at 8 (Bland, J., dissenting). Perhaps so. We do not mention *Creel* because it is factually indistinguishable from this case or because it plays any particular guiding role in our thinking about Texas law. *Creel*'s significance is that it highlights the striking scarcity of precedent from *any* jurisdiction validating the theory of traffic-accident liability advanced in this case.

are able to move about the world safely and reliably on modern highways, but that is only because we trust other drivers not to lose control of their deadly vehicular weapons and careen head-long into us. Our modern economy—indeed, our modern way of life—is built on that trust. When a driver breaks that trust and causes a deadly accident, legal responsibility lies with him, not with the driver he hits after losing control.

That general rule may be subject to some variance, as in *Biggers* and *Baumler*, when the accident involves vehicles driving in close proximity on two-lane roads. But we struggle to imagine a scenario in which the law could ever reasonably fault a driver on one side of a broadly divided highway for a collision caused by an oncoming vehicle that loses control, crosses the median, and strikes him before he has time to react.

For these reasons, as a matter of law, Ali's negligence was not a substantial factor in bringing about the Blakes' injuries, the sole proximate cause of which was Salinas's loss of control. The defendants also argue that the injury to the Blakes was not foreseeable and that Ali owed no duty to oncoming drivers and passengers under these circumstances. We need not confront these issues, which are rendered superfluous by our holding regarding the substantial-factor element of proximate causation.

**III.**

We turn now to the effect of our holding regarding Ali's liability on the liability of Ali's employer, Werner. For the following reasons, the

judgment against Werner cannot stand given that its driver, Ali, did not proximately cause the plaintiffs' injuries.

The jury was asked to assign both (1) "derivative" liability to Werner for inadequate training and supervision of Ali, and (2) "direct" liability to Werner independent of its training and supervision of Ali. The jury did so. The court of appeals affirmed on both counts, but only after reaching the conclusion—which we reverse above—that sufficient evidence supports the jury's finding that Ali's negligence proximately caused the plaintiffs' injuries. 672 S.W.3d at 578, 602, 605.

As for Werner's "derivative" liability, the court of appeals upheld the jury's finding that Werner's negligent training and supervision of Ali proximately caused the injuries. *Id.* at 605. It pointed to evidence that Ali lacked the training and experience to safely drive an 18-wheeler in hazardous conditions and that Werner knew or should have known that he was unfit for the assignment. *Id.* at 603–05.

Werner's negligent training and supervision, even if proved, could not have been a proximate cause of the Blakes' injuries because Ali's negligent driving was not a proximate cause. We have not recognized negligent training or supervision as an independent theory of tort liability. But with respect to the analogous allegation of negligent hiring, we have determined that any such claim "requires negligence by two separate parties: the employer's negligence in hiring the employee and the employee's subsequent negligent act or omission. Both negligent acts must proximately cause the injury." *Endeavor Energy Res., L.P. v. Cuevas*, 593 S.W.3d 307, 311 (Tex. 2019).

Assuming that claims for negligent training and supervision have independent viability apart from an employer's usual respondeat superior liability, such claims would be subject to the same requirement we have applied to negligent hiring claims. Under that rule, because Ali's driving was not a proximate cause of the accident, there can be no derivative liability imposed on Werner for its failure to adequately train or supervise him. In other words, because Ali's unsafe driving did not proximately cause the injuries, Werner cannot be separately liable for facilitating Ali's unsafe driving.

The principal theory of "direct" liability, which the court of appeals affirmed, was that Werner created unreasonable risk for other travelers by sending an inexperienced, trainee driver like Ali into winter weather unable to access important updates about the weather. 672 S.W.3d at 591–99. Werner breached this duty, the court of appeals held, by sending Ali on the run without access to important weather updates, allowing him to drive despite his receiving a low score on a recent driving exam, and sending him into the storm untrained to deliver a time-sensitive load. *Id.* at 599. The Blakes rest their theory of Werner's direct liability on this Court's recent observation that "a party who takes affirmative acts that create a danger on a public highway can be held responsible for the results of those actions, along with other responsible actors." *See United Rentals N. Am., Inc. v. Evans*, 668 S.W.3d 627, 639 (Tex. 2023).

This theory of liability cannot be separated from the predicate question of Ali's responsibility for the accident. Like the "derivative" liability theory of negligent hiring and supervision, this "direct" liability

theory takes for granted that Ali's driving proximately caused the injuries and then seeks to assign responsibility for Ali's unsafe driving to Werner. This ostensibly "direct" theory of liability is therefore just as "derivative" of Ali's liability as the negligent hiring and supervision claim.

There are no viable theories of liability alleged against Werner that are independent of Ali's responsibility for the Blakes' injuries. All the claims against Werner are, in that sense, "derivative" of Ali's liability—for which Werner would bear responsibility as Ali's employer, whether or not the Blakes alleged additional theories of Werner's liability.[7] As a result, all claims against Werner fail for the same reason that all claims against Ali fail: Ali's driving did not proximately cause this accident or the resulting injuries, the sole proximate cause of which was Salinas's catastrophic loss of control of the vehicle carrying the Blakes.

## IV.

The foregoing holdings dispose of all claims and require rendition of judgment for the defendants. We therefore do not reach the parties' remaining issues. The court of appeals' judgment is reversed, and judgment is rendered for the defendants.

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[7] The defendants and some amici ask us to adopt the "Admission Rule," under which defendants who admit that an employee was acting in the course and scope of employment need not also defend against other derivative theories of negligence. Because our holding regarding proximate cause disposes of all claims against Werner even in the absence of the Admission Rule, we need not consider the matter further.

James D. Blacklock
Chief Justice

**OPINION DELIVERED:** June 27, 2025

# Supreme Court of Texas

No. 23-0493

Werner Enterprises, Inc. and Shiraz A. Ali,

*Petitioners*,

v.

Jennifer Blake, individually and as next friend for Nathan Blake, and as heir of the estate of Zackery Blake, deceased; and Eldridge Moak, in his capacity as guardian of the estate of Brianna Blake,

*Respondents*

On Petition for Review from the
Court of Appeals for the Fourteenth District of Texas

JUSTICE YOUNG, joined by Justice Huddle, concurring.

The Court resolves today's case by holding that tort liability may not be imposed as a matter of law. Had the court of appeals similarly answered that antecedent tort-law question, it could not have proceeded to address the "admission rule." With respect to that issue, therefore, today's decision wipes the slate clean, and the court of appeals' discussion of the admission rule is no longer a precedent even in that court. The lower courts accordingly remain free to proceed in the normal course until a future case allows this Court to settle the matter.

At the outset, it was possible that this case would be the one in which we could do so. The parties and multiple amici, like the justices of the court of appeals, devoted considerable energy to examining competing perspectives concerning the admission rule's contours. Speaking at least for myself, the prominence and importance of that issue played a meaningful role in the Court's decision to grant the petition. The approach taken by the court of appeals' majority struck me—and still strikes me—as one that cries out for review. I am aware of no other Texas court to have *rejected* the admission rule. And there are strong reasons to think that the court of appeals' rationale for doing so here is seriously flawed.

I therefore write separately to sketch some observations about the admission rule. In doing so, of course, I leave open all possible outcomes in future cases. My hope is that addressing the issues today without finally resolving them will facilitate their presentation when the Court must squarely confront them and thus make it more likely that, when we do, we will do so with a high degree of accuracy.

By way of background, the eponymous "admission" in the so-called "admission rule" is that of an employer that has been sued for its employee's tort. The rule provides that when such an employer admits or stipulates that the employee was indeed acting within the course and scope of his employment, it is pointless—or worse—to submit wholly derivative claims to the jury. *See, e.g.*, *McHaffie v. Bunch*, 891 S.W.2d 822, 827 (Mo. 1995) ("[O]nce the agency relationship was admitted, it was error to permit a separate assessment of fault [as] to [the] defendant . . . based upon the 'negligent entrustment' or 'negligent hiring' theories of

liability. It was also error to admit evidence on those theories.").

Assuming that claims like negligent entrustment, training, hiring, and supervision are proper in the first place, they are derivative in the sense that they cannot succeed on their own but require a predicate finding of negligence by the employee. But finding that the employee was negligent should be the end of the matter given the employer's admission that *it* would be on the hook. All the derivative claims are thus wholly beside the point, so there is no valid reason to submit such claims to the jury or make them the basis for discovery. It is this principle that animates the admission rule. *See, e.g.*, Restatement (Third) of Agency § 7.05, reporter's note b (2006) (observing that, "[i]n at least some jurisdictions, if an employer stipulates that an employee acted within the scope of employment in committing a tort, the employer is not subject to liability" for derivative claims like negligent hiring or supervision).

Consistent with that understanding, our courts of appeals have generally taken it as a given that, at least when only ordinary negligence is alleged, respondeat superior and negligent-entrustment claims are mutually exclusive theories of recovery, so acceptance of respondeat superior with respect to the alleged negligence of the tortfeasor leaves no room for derivative-negligence claims.* Respondeat superior is a way to

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* At least six courts of appeals have recognized the doctrine. *See, e.g.*, *Atl. Indus., Inc. v. Blair*, 457 S.W.3d 511, 517 (Tex. App.—El Paso 2014), *rev'd on other grounds*, 482 S.W.3d 57 (Tex. 2016); *Rosell v. Cent. W. Motor Stages, Inc.*, 89 S.W.3d 643, 654 (Tex. App.—Dallas 2002, pet. denied); *Arrington's Est. v. Fields*, 578 S.W.2d 173, 178–79 (Tex. Civ. App.—Tyler 1979, writ ref'd n.r.e.); *Frasier v. Pierce*, 398 S.W.2d 955, 957–58 (Tex. Civ. App.—Amarillo 1965, writ ref'd n.r.e.); *Luvual v. Henke & Pillot*, 366 S.W.2d 831, 838 (Tex. Civ. App.—Houston 1963, writ ref'd n.r.e.); *Patterson v. E. Tex. Motor Freight Lines*, 349 S.W.2d 634, 636 (Tex. Civ. App.—Beaumont 1961, writ ref'd n.r.e.).

hold an employer responsible *without* having to show the employer's separate negligence. When an employer admits to course and scope, the admission rule requires the plaintiff to accept "yes" for an answer: *yes, as the employer, we will answer for our employee tortfeasor's negligence*.

The admission rule played a significant role in this case. When Werner moved for a directed verdict, it invoked the rule by pointing to its admission that its truck driver was within the course and scope of his employment at the time of the tragic accident. For that reason, Werner contended, submitting the derivative-negligence claims, premised on alleged negligence of employees other than the driver, was improper.

The trial court denied the motion for directed verdict. The court of appeals affirmed the trial court's judgment in full, including as to the admission-rule issue. 672 S.W.3d 554, 586–89 (Tex. App.—Houston [14th Dist.] 2023) (en banc). The court held that the admission rule did not apply because that court had not recognized it and because, even if it had, an exception for gross negligence would allow plaintiffs to press both respondeat superior and derivative negligence. *Id.* at 587–89.

In dissent, Justice Wilson would have formally adopted the admission rule. *Id.* at 629–36 (Wilson, J., dissenting). He would have held, moreover, that the admission rule barred the derivative-negligence claims proffered in this case as wholly derivative of the driver's alleged negligence—that is, Werner's admission of respondeat superior liability already encompassed the entire injury. *Id.* at 643.

The problem is one of judicial administration—keeping pre-trial and trial proceedings from needlessly proliferating—but it is more than that. Admitting evidence of the employer's hiring, training, or supervision

practices, if formally irrelevant, not only jeopardizes efficiency but also threatens the integrity of the results. The damages are what they are; the extent of the injuries is what it is. If the employer accepts full responsibility, inflaming a jury by admitting evidence of alleged negligence of multiple employees other than the driver risks inflating damages beyond their actual amount or distorting the attribution of liability (or both). At least, that rationale seems persuasive and pervasive in judicial opinions adopting the rule.

Given the Court's disposition today, though, I agree that there is no opportunity to *resolve* the admission-rule issue here; the judgment of rendition subsumes any remand points, including violations of the admission rule. But in light of the airing of the issues in the lower courts and by the parties and amici in this Court, I think it is only fair to state that Justice Wilson's position strikes me as highly convincing, and barring something at least as convincing in a future case, I am inclined to vote to adopt the admission rule for the reasons articulated in his dissent and to apply it in the way that his dissent describes. If this case had *not* been resolved on tort-law grounds, after all, the jury's apportionment of fault seems to illustrate a prime example of the very confusion the admission rule aims to prevent. When assigning percentage of fault between just the two drivers, the jury assigned Werner's driver 45% fault and Salinas (the other driver) 55% fault. But a later question included a negligent hiring, training, and supervision claim against Werner and instructed the jury to consider allegedly negligent acts of Werner employees other than its driver, some of which were quite remote from the accident in time and place. The jury *then*

assigned Werner 70% fault and the driver 14% fault—which is to say, 84% for Werner, given its acceptance of the driver's liability, and only 16% for Salinas. Thus, the inclusion of the derivative-negligence claims in the jury's considerations nearly doubled Werner's percentage of responsibility. *See* 672 S.W.3d at 634 (Wilson, J., dissenting).

All these points may be simple enough, but the case also presents a complicating issue: the viability of an exception that bars the application of the admission rule where the plaintiff presents evidence of gross negligence. The theory behind the exception is that even if the admission rule rightly operates when the derivative claim stems from the same injury and thus should generate only the same compensatory damages, gross negligence can also trigger *punitive* damages against the employer. Proving the *employee tortfeasor's* conduct will *not* suffice to establish the employer's gross negligence, the rationale goes; rather, punitive damages are available

> if, but only if,
>
> > (a) the principal authorized the doing and the manner of the act, or
> >
> > (b) the agent was unfit and the principal was reckless in employing him, or
> >
> > (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or
> >
> > (d) the employer or a manager of the employer ratified or approved the act.

*Hammerly Oaks, Inc. v. Edwards*, 958 S.W.2d 387, 391 (Tex. 1997) (quoting Restatement (First) of Torts § 909 (1939)). Evidence that is clearly superfluous when only *compensatory* damages are at issue is not so obviously superfluous when a plaintiff seeks *punitive* damages

against the employer. At least one Texas appellate court has applied the admission rule with this exception, *see Arrington's Est. v. Fields*, 578 S.W.2d 173, 178–79 (Tex. Civ. App.—Tyler 1979, writ ref'd n.r.e.), and one has applied the admission rule without it, *see Rodgers v. McFarland*, 402 S.W.2d 208, 210 (Tex. Civ. App.—El Paso 1966, writ ref'd n.r.e.).

In this case, the court of appeals held that since the Blakes *pleaded* gross negligence, the admission rule would not apply regardless of whether the court formally adopted it. 672 S.W.3d at 588. The dissent did not contend that there could never be an exception for gross negligence, but it asserted that there must at least be legally sufficient evidence of gross negligence—not a mere allegation—before the exception applies. *Id.* at 637 (Wilson, J., dissenting) ("If an injured party only needs to allege gross negligence, malice, or fraud and seek exemplary damages to avoid application of the Admission Rule, many injured parties may avoid the Admission Rule by so pleading."). Otherwise, the admission rule would be a mere bauble in the law—a vestige easily evaded simply by asserting gross negligence, regardless of how implausibly.

Given that the *only* basis for disregarding the admission rule is to proceed to punitive damages, and given that our State's law imposes onerous burdens before punitive damages are even available, *see, e.g.*, Tex. Civ. Prac. & Rem. Code § 41.003, it is hard to imagine that the admission rule would yield up its benefits with only a formulaic incantation that gross negligence is alleged. Instead, I would be surprised if the law required anything less than a rigorous showing that a jury genuinely *could* find gross negligence that in turn could support punitive damages. Whether and how a gross-negligence exception would apply are

important questions that this Court will presumably need to address in an appropriate case. In the interim, however, trial courts should be very cautious about using a mere allegation of gross negligence as a basis to honor the admission rule in theory but defeat it in practice. If a gross-negligence claim that forms the basis for disregarding the admission rule in a given case turns out to have been ill-founded, I would be inclined to remand for a new trial on that ground—wholly aside from anything else in the case. As always, sound discretion requires discernment and prudence to avoid serious prejudice and legal error.

There are further complexities still, of course, such as whether or to what extent derivative-negligence claims are available at all and, if any are, how to define their scope with precision and how to identify the quantum and quality of evidence necessary to establish them. But I see little need today to dive further into the weeds on that or the other remaining topics. Instead, at least for now, I am content to rely on Justice Wilson's scholarly dissent. As a general matter, his analysis strikes me as presumptively correct. Litigants in future cases would be wise to grapple with that analysis, particularly if they are advancing arguments in this Court.

Evan A. Young
Justice

**OPINION FILED:** June 27, 2025

# Supreme Court of Texas

No. 23-0493

Werner Enterprises, Inc. and Shiraz A. Ali,

*Petitioners*,

v.

Jennifer Blake, individually and as next friend for Nathan Blake, and as heir of the estate of Zackery Blake, deceased; and Eldridge Moak, in his capacity as guardian of the estate of Brianna Blake,

*Respondents*

On Petition for Review from the
Court of Appeals for the Fourteenth District of Texas

JUSTICE BLAND, joined by Justice Boyd and Justice Huddle, dissenting in part.

A driver exercising ordinary care under ordinary conditions cannot be held responsible when another driver loses control on an interstate highway, crosses the median, and causes a collision—all in a matter of seconds. In such circumstances, as the Court holds, the other driver's loss of control is unforeseeable as a matter of law. A driver unable to avoid the head-on collision in such circumstances is not a substantial factor in contributing to the injuries that result from it.

This accident, however, arose during driving conditions that were far from ordinary. The jury heard evidence that the highway was a sheet of ice. The Werner Enterprises driver, Shiraz Ali, had passed no fewer than three highway accidents on the road to this one. With those accidents, and with abundant evidence that ice causes drivers to skid, a reasonable jury could conclude that a Texas driver exercising ordinary care should know that ice presents an increased risk of highway drivers losing control. As a result, the jury heard, reasonably prudent drivers should reduce their speed in icy conditions, for two reasons. First, reduced speed decreases the chance of the driver's losing control. Second, reduced speed may decrease the severity of injuries in a collision caused when *another* driver loses control. The evidence in this case included a similar accident, not long before this one, in which the reduced speed of a truck driver left no one injured after a cross-median collision on this highway.

Because the record contains some evidence that Ali's excessive speed under the circumstances was a contributing cause of the severity of the Blakes' injuries, the trial court did not err in permitting the jury to decide whether the Blakes had proved that Ali was negligent in the circumstances presented, whether such negligence was a contributing cause of the Blakes' injuries, and if so, what proportionate responsibility, if any, Ali (and Werner, through Ali) should bear.

Nevertheless, I agree with the Court that the trial court erred in rendering this judgment on the jury's verdict. While the evidence might support *some* proportionate responsibility against Ali—attributable to excessive speed at the time of the collision—no reasonable juror could

conclude that Ali was *more* responsible for the Blakes' injuries than the driver who lost control in the first place. And while the Blakes alternatively suggest that we render judgment on a comparative fault question limited to Ali and the other driver, in which the jury placed slightly more responsibility for the Blakes' injuries on the other driver, that question, like all the liability questions in this charge, did not adhere to our well-settled pattern jury charge for traffic accidents.

Instead, guided by faulty instructions, having heard evidence and argument about liability theories against trucking companies not recognized in Texas jurisprudence, and having been presented with novel causation theories—like that Ali should not have been driving that day *at all*—the jury was misled into placing disproportionate responsibility for the Blakes' injuries on Ali and Werner. I therefore join the Court in reversing the trial court's judgment.

For the reasons stated by the dissenting justices in the court of appeals and those discussed by Justice Young in his concurrence, this trial was rife with legal error. However, because some evidence would permit a reasonable jury to conclude that Ali bore some proportionate responsibility for contributing to the Blakes' injuries, I would remand the case for a new trial. As the Court renders judgment for Werner and Ali instead, I join in its reversal of the trial court's judgment but respectfully dissent from its disposition.

## I

The Blakes introduced legally sufficient evidence that Ali's conduct was a proximate cause of the Blakes' injuries. The trial court instructed the jury:

> "Proximate cause" . . . means a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that [an actor] using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.[1]

Proximate cause has two elements: cause-in-fact and foreseeability.[2] Cause-in-fact requires proof that, absent a defendant's alleged negligence, the injury would not have occurred, and that such negligence was "a substantial factor in causing the injury."[3] Foreseeability, in turn, requires proof beyond "[c]onjecture, guess, and speculation" that a person of ordinary prudence should anticipate the danger created by the alleged negligence.[4] Foreseeability "does not require that a person anticipate the precise manner in which injury will occur once he has created a dangerous situation."[5] There may be more than one proximate cause of an injury, and all persons "whose negligent

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[1] This instruction matches the definition of proximate cause in the Texas Pattern Jury Charge. *See* State Bar of Tex., Tex. Pattern Jury Charges PJC 2.4 (2018).

[2] *IHS Cedars Treatment Ctr. of DeSoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 798 (Tex. 2004); *Gunn v. McCoy*, 554 S.W.3d 645, 658 (Tex. 2018).

[3] *Gunn*, 554 S.W.3d at 658.

[4] *Stanfield v. Neubaum*, 494 S.W.3d 90, 97 (Tex. 2016).

[5] *Travis v. City of Mesquite*, 830 S.W.2d 94, 98 (Tex. 1992) (plurality op.); *see Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 756 (Tex. 1998) ("Foreseeability requires only that the general danger, not the exact sequence of events that produced the harm, be foreseeable.").

conduct contributes to the injury, proximately causing the injury, are liable."[6]

**A**

The Court concludes as a matter of law that Ali's speed was not a substantial factor in contributing to the Blakes' injuries. Substantial-factor causation permits courts to exclude but-for causes that are too attenuated from the injuries to justify liability, as the defendant's conduct merely sets the condition or scene for the harm to occur.[7]

We have recognized that but-for causation can be too attenuated as a matter of law. In *Lear Siegler, Inc. v. Perez*, a highway department employee pulling a flashing arrow sign stopped his truck on the side of the highway.[8] Another driver fell asleep at the wheel and crashed into the sign, killing the employee.[9] The employee's survivors sued the sign manufacturer, alleging that the employee stopped because the sign had malfunctioned, thereby placing him in the zone of danger posed by the sleeping driver.[10] We upheld summary judgment for the sign manufacturer because the sign's malfunction was too attenuated from the collision to be a legal cause. "If [the employee] had instead taken the

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[6] *Travis*, 830 S.W.2d at 98.

[7] *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 472 (Tex. 1991); *see also Union Pump Co. v. Allbritton*, 898 S.W.2d 773, 776 (Tex. 1995).

[8] 819 S.W.2d at 471.

[9] *Id.*

[10] *Id.*

sign back to the highway department office where the roof caved in on him, we likewise would not regard it as a legal cause."[11]

In *Union Pump Co. v. Allbritton*, a pump caught fire at a chemical plant.[12] After the fire was extinguished, a plant employee slipped on a slick overground pipe rack.[13] The pipe rack was slick due to the liquid used to extinguish the pump fire.[14] The employee sued Union Pump, alleging that its defective pump caused her injuries.[15] Our Court disagreed, holding that "the pump fire did no more than create the condition that made [the employee's] injuries possible."[16] "Even if the pump fire were in some sense a 'philosophic' or 'but for' cause," the fire had been extinguished, the forces at hand had come to rest, and the employee was walking away from the scene.[17] The connection between the pump malfunction and the employee's later injury from a slip and fall was too remote for the malfunction to be a legal cause.[18]

Whether speed is a proximate cause of an injury "depends upon the facts."[19] As discussed further below in the context of foreseeability, the jury heard evidence that a reasonably prudent person would have

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[11] *Id.* at 472.

[12] 898 S.W.2d at 774.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 776.

[17] *Id.*

[18] *Id.*

[19] *Baumler v. Hazelwood*, 347 S.W.2d 560, 565 (Tex. 1961).

reduced his speed to no more than 15 miles per hour at the time of the accident to account for the icy conditions that day. The Blakes' expert testified that, when Ali saw Salinas enter the median, Ali was traveling 50.5 miles per hour. Ali reacted within a half second, taking his foot off the gas and moving it toward the brake. It took Salinas just over two seconds to cross the 42-foot median. By the time Salinas was across, Ali had slowed to approximately 45 miles per hour. Werner's own expert testified that, had Ali been going 15 miles per hour, his truck would have come to a stop "before the crash happen[ed]." The jury also heard evidence presented from a similar incident that day in which a driver lost control, crossed the center median, and struck an 18-wheeler going about 5 miles per hour at the time. The similar collision resulted in no injury to the oncoming driver. This is some evidence from which a jury could reasonably conclude that Ali's speed at the time of the collision was a substantial factor in determining the severity of the injuries the Blakes suffered.

Because Ali's speed was a concurrent cause of the collision, equating the present facts with *Lear Siegler* and *Union Pump* is error. Each of those cases dealt with disconnected instances of negligence, not concurrent negligence. The malfunctioning sign in *Lear Siegler* had no effect on the highway employee's injuries; it merely furnished the condition that placed the driver on the roadside. Likewise, the malfunctioning pump in *Union Pump* had nothing to do with the employee's injuries resulting from slipping on a slick surface. In contrast, Ali's speed was concurrent with Salinas's negligent loss of control, not disconnected from it. In these circumstances, where two

vehicles on icy roads crash, excessive speed is not too attenuated to be a legal cause if some evidence supports the conclusion that speed contributed to the injuries sustained.

The evidence of causation presented in this case is more substantial that that presented in *Creel v. Loy*, a federal District of Montana case that the Court cites.[20] In that case, like this one, the plaintiff was a passenger in a vehicle that lost control, crossed a median, and collided with a commercial truck alleged to be traveling too fast for the road conditions.[21] The plaintiff's expert testified that a threefold increase in speed results in a ninefold increase in impact, but the court held that this testimony was untethered to the facts in the record.[22] The Blakes, in contrast, put on some evidence showing that a change in Ali's speed "would have altered the outcome": namely, Werner's own expert's conclusion. From this evidence, a reasonable jury could conclude Ali's speed was a substantial factor in the Blakes' injuries.

Suppose the collision had happened the same way, but Salinas and the Blakes suffered no injury while Ali was badly hurt. In the trial of Ali, plaintiff, versus Salinas, defendant, Salinas would insist on—and receive—a contributory negligence question permitting the jury to consider whether Ali's speed contributed to Ali's injury because some evidence—like the results of a comparable collision that did not involve

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[20] *Ante* at 23–24; 524 F. Supp. 3d 1090, 1099–1100 (D. Mont. 2021).

[21] *Id.* at 1093.

[22] *Id.* at 1099–100 ("Ultimately, Plaintiff fails to present any evidence that shows a change in [the defendant's] speed or operation of the truck would have altered the outcome.").

negligent speeding—supported a conclusion that the speed contributed to the severity of Ali's injury. Similarly, although the causation evidence in this case was rigorously contested, the record fails to establish as a matter of law that Ali's negligence did not contribute to the Blakes' injuries.

**B**

Foreseeability, like substantial-factor causation, is a fact-intensive exercise.[23] Under this "practical test," we ask "what one should under the circumstances reasonably anticipate as consequences of his conduct."[24] The question here is whether a driver of ordinary prudence, who had driven past multiple wrecks in icy conditions, knew or should have known that excessive speed might exacerbate injuries to passengers in a vehicle that loses control.

Generally, the defendant must anticipate the consequences of his actions as to the plaintiff or one similarly situated to the plaintiff. In *Houston Lighting & Power Co. v. Brooks*, the entity operating powerlines knew its lines ran adjacent to a floor of a newly constructed

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[23] *See Graff v. Beard*, 858 S.W.2d 918, 920 (Tex. 1993) (explaining that considerations of whether to impose a new duty involve the application of social, economic, and political questions, including the foreseeability and likelihood of injury, to the particular facts at hand); *Greater Hous. Transp. Co. v. Philips*, 801 S.W.2d 523, 526–27 (Tex. 1990) (examining the record to conclude that the injury was not foreseeable); *Mellon Mortg. Co. v. Holder*, 5 S.W.3d 654, 657 (Tex. 1999) (plurality op) (same); *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 550–51 (Tex. 1985) (examining the record to conclude that a material fact question exists on foreseeability).

[24] *Hous. Lighting & Power Co. v. Brooks*, 336 S.W.2d 603, 607 (Tex. 1960) (quoting *City of Dallas v. Maxwell*, 248 S.W. 667, 670 (Tex. Comm'n App. 1923 holding approved, judgm't adopted)).

building and knew that construction was ongoing but, we held, could not have foreseen that the plaintiff would bring a fifteen-foot metal-handled mop in the vicinity of the lines from an adjacent building.[25] Unlike a premises owner with power lines presenting an attenuated and inactive danger, Ali's speed was a concurrent cause of the collision. Road collisions due to icy conditions are foreseeable to highway drivers. In *Lofton v. Texas Brine Corp.*, our Court held that a driver speeding in fog could foresee that his speed would prevent him from avoiding an object in a roadway.[26] "The particular manner in which the object ([plaintiff]'s pickup) got in the roadway need not be foreseeable in this impaired visibility situation."[27]

We similarly held that a car crossing the center line was foreseeable in *Biggers v. Continental Bus Systems, Inc.*[28] I agree with the Court that Ali's crossing a divided interstate highway is far different from the facts found to be foreseeable in *Biggers*, which involved a 24-foot-wide two-lane road.[29] And I agree that, as we later said in *Bell v. Campbell*, factual distinctions between motor vehicle accident cases can dictate different conclusions.[30] In *Bell*, Campbell's truck was struck by a vehicle pulling a trailer.[31] The force of the crash caused the trailer

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[25] *Id.* at 605–06.

[26] 777 S.W.2d 384, 387 (Tex. 1989).

[27] *Id.*

[28] *See* 303 S.W.2d 359, 363–64 (Tex. 1957).

[29] *Ante* at 21.

[30] 434 S.W.2d 117, 122 (Tex. 1968).

[31] *Id.* at 118.

to disengage and overturn on the highway.[32] When three persons, including Bell, attempted to move the trailer off the road, the trailer was struck by an oncoming car.[33] We held that the drivers in the first crash "could not reasonably foresee that the manner in which they operated their vehicles prior to the first collision might lead to the serious injury or deaths of persons not even in the zone of danger as a result of their being struck by another automobile which was some distance away at the time."[34]

This accident is factually distinct from both *Biggers* and *Bell*. The Blakes adduced evidence that their injuries were of a character reasonably foreseeable to ordinary drivers under icy conditions and that Ali in particular, given the conditions at the time, could have foreseen an increased risk of loss of control by other drivers as well as the potential that excessive speed under the conditions could exacerbate injuries resulting from a collision. Testimony from first responders confirmed that, on their way to the accident, they had to drive "slower than usual" because "the roads were so icy." Ice had built up on both sides of the highway. They estimated that "10 to 15 miles an hour" was the fastest they could safely go, as they "didn't want to hit another car because we were slipping pretty bad . . . [b]ecause of the icy conditions."

One expert testified as to the applicability to commercial truck drivers of "safety rules and the state [Commercial Drivers License] manual," which include rules regarding dealing with ice. These rules are

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[32] *Id.*

[33] *Id.*

[34] *Id.* at 121.

"not only about losing control" but have "to do with those speeds involved." Because "[h]igh speeds greatly increase the severity of crashes," the trucking industry standard is to reduce speed to between "10 to 15 miles an hour or slower . . . to a speed that you can control and gives you time to do the right thing at the right time and if the worst thing happens, when you have an accident, it won't be bad."

Werner's training included a rule requiring drivers, upon encountering icy conditions, to "slow to a crawl, which is 10 or 15 miles an hour or less" and to "stop driving as soon as you can safely do so." Ali was further trained that the reason 18-wheelers must slow down on icy roads "is not because the 18-wheelers are more likely to lose control but because *all* vehicles are more likely to lose control and . . . we know what the consequences are if a passenger vehicle loses control on ice in front of a 30- or 40-ton 18-wheeler going highway speeds."[35]

This evidence was contested, and reasonable jurors could conclude that Ali's speed was *not* a proximate cause of the Blakes' injuries. Such evidence is sufficient, however, to raise a fact issue on the foreseeability of speed as a contributing proximate cause. It is "only the general danger [that] need be foreseeable, not the exact sequence of events that produced the harm."[36] A general danger on an icy highway is a heightened risk that drivers will lose control.[37]

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[35] Emphasis added.

[36] *Lofton*, 777 S.W.2d at 387.

[37] The Court notes the rarity of appellate cases like this one. *Ante* at 24. Such rarity just as easily shows that juror evaluation of proportionate

**C**

The Court assumes there is sufficient evidence to conclude that Ali's speed "was negligent under these weather conditions."[38] The Blakes introduced evidence that Ali's excessive speed contributed to or exacerbated the Blakes' injuries by hitting them at 40 miles per hour rather than at a slower speed. The question the jury faced was whether a driver who maintained a prudent speed, given the same reaction time, would have slowed and lessened the injuries sustained in the accident.

The jury heard conflicting evidence about whether Ali's speed was a cause of the Blakes' injuries. Werner argues that the collision happened in an instant—far too short a time for anything Ali did to have contributed to the accident or to the Blakes' injuries. In its view of the evidence, the reaction time was such that Ali's speed made no difference whatsoever, a view the Court adopts as a matter of law. In some instances, such a conclusion is undisputedly true. For example, had Salinas hit the side of Ali's truck, then Ali's speed would be, as the Court observes, merely a condition of the accident but not a cause of it or relevant to exacerbating the harm. In contrast, had Ali been many lengths behind Salinas's truck, with plenty of opportunity to slow or stop, and had Salinas's truck been at rest in Ali's lane, then the Court likely would not disagree that Ali's excessive speed could be a contributing cause of the Blakes' injuries.

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responsibility for concurrent causes of injuries from traffic accidents is not often a disputed legal concept.

[38] *Ante* at 14.

The evidence about this accident is somewhere in between. Ali slowed, and he exercised care in slowing, but he could not stop, the Blakes argue, because he was going too fast for the icy conditions—faster than a reasonably prudent driver. The Blakes argue that a reasonably prudent driver would have been going no faster than 15 miles per hour, a speed at which Werner's own expert agreed a driver would have been able to stop in time to avoid the collision.

Because some evidence exists from which a jury reasonably could conclude that Ali's excessive speed had "an effect in producing the harm" that brought about the injuries to the Blakes, the trial court did not err in submitting Ali's negligence to the jury for a determination of negligence and proximate cause.[39]

**II**

The Texas statue governing proportionate responsibility requires a factfinder to evaluate the conduct of any party who causes or contributes to cause injury to the plaintiffs "in any way":

> The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's *causing or contributing to cause in any way* the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these: (1) each claimant; (2) each defendant; (3) each settling person; and (4) each

[39] *Borg-Warner Corp. v. Flores*, 232 S.W.3d 765, 770 (Tex. 2007); *see also Nabors Well Servs., Ltd. v. Romero*, 456 S.W.3d 553, 562–63 (Tex. 2015).

> responsible third party who has been designated under Section 33.004.[40]

In *Dugger v. Arredondo*, we made clear that "the language of [Section 33.003(a)] indicates the Legislature's desire to compare responsibilities for injuries."[41] And later, in *Nabors Well Services, Ltd. v. Romero*, we held that the term "in any way" is expansive and can mean "only what it says—there are no restrictions on assigning responsibility to a plaintiff as long as it can be shown the plaintiff's conduct 'caused or contributed to cause' his personal injury or death."[42]

In *Nabors*, a transport truck clipped a suburban, causing the suburban to careen off the highway and roll multiple times.[43] Some evidence suggested that only one of the suburban's occupants wore a seat belt. In a suit against the transport trucking company, the trial court disallowed evidence of the injured occupants' failure to wear seat belts, and the court of appeals affirmed.[44]

Our Court reversed, holding that the proportionate responsibility statute "casts a wide net" over conduct that contributes "in any way" to the injuries claimed.[45] We held that the proportionate responsibility statute calls for an apportionment of negligent conduct that causes the

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[40] Tex. Civ. Prac. & Rem. Code § 33.003(a) (emphasis added).

[41] 408 S.W.3d 825, 832 (Tex. 2013).

[42] 456 S.W.3d at 562.

[43] *Id.* at 555.

[44] *Id.* at 555–56.

[45] *Id.* at 560.

claimed *injuries*, not the *occurrence*.[46] Thus, factfinders must "consider relevant evidence of a plaintiff's pre-occurrence, injury-causing conduct."[47] Although the failure to wear seat belts was not the immediate cause of the collision, a jury could conclude that the failure was a substantial factor in bringing about the plaintiffs' injuries.[48]

Evidence showing that a party's negligence has "an effect in producing the harm," that is, an effect "in bringing about" or exacerbating the plaintiff's injuries, is evidence of proximate cause.[49] "The idea of responsibility" that lurks in proximate cause is responsibility for the root and *the extent* of the injuries claimed.[50] Legally sufficient evidence that a party's negligence caused or contributed to the plaintiff's injuries permits the factfinder to weigh that evidence, determine whether it meets the applicable burden of proof, and assess which negligent parties bear any responsibility in comparison to other negligent parties or responsible third parties.[51]

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[46] *Id.* at 562–63.

[47] *Id.* at 563.

[48] *See id.* at 562–63 ("The sharpest rhetorical argument against admitting seat-belt evidence has been that failure to use a seat belt cannot *cause* an accident, and it is those who cause accidents who should pay. But it is equally true that failure to use a seat belt will sometimes exacerbate a plaintiff's injuries or lead to his death. Accordingly, the conclusion is unavoidable that failure to use a seat belt is one way in which a plaintiff can 'cause[] or contribut[e] to cause in any way' his own 'personal injuries' or 'death.'" (quoting Tex. Civ. Prac. & Rem. Code § 33.003(a))).

[49] *Borg-Warner Corp.*, 232 S.W.3d at 770.

[50] *Id.*

[51] *In re E. Tex. Med. Ctr. Athens*, 712 S.W.3d 88, 91 (Tex. 2025).

Under our existing precedent and the statutory framework for proportionate responsibility, a jury must consider sufficiently supported evidence of a person's causing or contributing to cause the harm at issue, "whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these."[52] With legally sufficient evidence that Ali's excessive speed contributed to the Blakes' injuries, the trial court properly submitted Ali's negligence to the jury.

## III

Werner argues, as an alternative ground for rendering judgment, that Ali owed no duty to the Blakes. All negligence actions require the existence of a legal duty owed by one person to another.[53] Werner does not challenge the existence of the duty drivers generally owe to "observe in a careful and intelligent manner the traffic" and operate their vehicles in a reasonable manner.[54] Werner instead argues that Ali had no duty to anticipate Salinas's negligent conduct or to mitigate the dangers of ice and snow.

Determining the parameters of a legal duty is a question of law.[55] Part of the duty to operate a vehicle in a reasonable manner is to manage

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[52] Tex. Civ. Prac. & Rem. Code § 33.003(a).

[53] *Nabors Drilling, U.S.A., Inc. v. Escoto*, 288 S.W.3d 401, 404 (Tex. 2009).

[54] *Lynch v. Ricketts*, 314 S.W.2d 273, 275 (Tex. 1958).

[55] *Pagayon v. Exxon Mobil Corp.*, 536 S.W.3d 499, 503 (Tex. 2017); *Tex. Home Mgmt., Inc. v. Peavy*, 89 S.W.3d 30, 33 (Tex. 2002).

one's speed to fit the road conditions at hand. The Transportation Code commands drivers not to drive "at a speed greater than is reasonable and prudent under the circumstances then existing."[56] Drivers expressly must reduce speed if "a special hazard exists with regard to . . . weather or highway conditions."[57] The duty to drive appropriately for the conditions has been widely recognized.[58] "Although not required to anticipate negligent or unlawful conduct on the part of others, [a driver is] not entitled to close her eyes to that which [is] plainly visible and

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[56] Tex. Transp. Code § 545.351(a). The statutory admonition to slow one's vehicle due to weather conditions is some evidence of the applicable standard of care.

[57] *Id.* § 545.351(c)(5).

[58] *See Golleher v. Herrera*, 651 S.W.2d 329, 333 (Tex. App.—Amarillo 1983, no writ) ("In exercising ordinary care for her own safety, [the driver] was obligated to operate her automobile at a rate of speed no greater than an ordinarily prudent person would operate a vehicle under the same or similar circumstances."); *Hokr v. Burgett*, 489 S.W.2d 928, 930 (Tex. App.—Fort Worth 1973, no writ) ("Although a motorist may not be exceeding the speed limit, he is under a duty to drive no faster than a person of ordinary prudence under the same or similar circumstances."); *Fitzgerald v. Russ Mitchell Constructors, Inc.*, 423 S.W.2d 189, 191 (Tex. App.—Houston [14th Dist.] 1968, writ ref'd n.r.e.) (noting the driver was under a "common law duty to operate her vehicle at a speed at which an ordinarily prudent person would operate a vehicle under the same or similar circumstances."); *Billingsley v. S. Pac. Co.*, 400 S.W.2d 789, 794 (Tex. App.—Tyler 1966, writ ref'd n.r.e.) ("Although a motorist may not be exceeding the 'legally posted speed limit,' nevertheless, he is under the duty to drive no faster than an ordinarily prudent person in the exercise of ordinary care would drive under the same or similar circumstances."); *Meinen v. Mercer*, 390 S.W.2d 36, 40 (Tex. App.—Corpus Christi–Edinburg 1965, writ ref'd n.r.e.) ("The driver of an automobile should exercise, in operating the vehicle, a degree of care that is commensurate with existing road conditions, so as to keep the vehicle under control on a slippery street or road and not cause injury to another vehicle by skidding into it." (quoting 7 Tex. Jur. 2d *Automobiles (Effect of Road Condition)* § 90)).

which would have been observed by a person of ordinary prudence similarly situated."[59]

Werner argues that property owners do not owe a duty to clear ice from their land and that motor vehicle operators are even less suited to "provide for the safety of the broad area adjacent to where they traverse."[60] That much may be true, but the duties for a premises owner and a driver are different. Slowing down due to icy conditions as an exercise of ordinary care while driving is an existing rule of the road. A driver's duty is not to make the roadway safe, but to avoid increasing the hazard to those around him.[61] A duty to slow down in icy conditions is not the same as the novel duty that Werner suggests; drivers need not clear ice nor make the roadway safe. The jury heard evidence that the icy conditions and the need to proceed slowly were abundantly apparent to drivers on the road that day. Ali's duty to those in the zone of danger around him was to reduce his speed commensurate with the hazard posed by the conditions at hand.[62] The jury, of course, was free to reject

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[59] *Lynch*, 314 S.W.2d at 275.

[60] Pet. Br. at 25 (citing *Scott & White Mem'l Hosp. v. Fair*, 310 S.W.3d 411, 414 (Tex. 2015)).

[61] *See C. & R. Transp., Inc. v. Campbell*, 406 S.W.2d 191, 194 (Tex. 1966) (holding that the jury could have inferred that "a reasonably prudent person exercising ordinary care for his own safety and the safety of others using the highway would have looked to the west before driving from the shoulder into the traffic lanes").

[62] *See, e.g.*, *Parrott v. Garcia*, 436 S.W.2d 897, 900–01 (Tex. 1969) (explaining that the zone of danger in a drag race "would include the area of the two-lane highway to be raced upon, and at least that additional portion of the highway which would be required to stop the cars upon completion of the race").

the Blakes' evidence and conclude that the Blakes were outside Ali's zone of danger until it was too late.

**IV**

Though I do not join the Court in rendering judgment for Ali and Werner, I agree with the Court that the judgment for the Blakes must be reversed.

For the reasons discussed by the dissenting justices in the court of appeals and Justice Young in his concurring opinion, the trial court erred in submitting expanded theories of liability against Werner. Once an employer has accepted responsibility for the actions of its employee, other negligent actions by the employer culminating in the employee's negligence should not be submitted to the jury as independent theories of ordinary negligence. The Blakes point to no case in which our Court has upheld a verdict in such circumstances. When Werner accepted that Ali was acting within the course and scope of his employment at the time of the collision, Werner and Ali ceased to have independent legal significance from each other for the purposes of evaluating Ali's negligence. Instructing the jury in a manner that separated Werner from Ali and arguing that these were independent causes of the Blakes' injuries was error.

Error in a jury charge does not require reversal unless the error probably caused the rendition of an improper judgment or probably prevented the appealing party from presenting its case.[63] The effect of the erroneous charge here is obvious: when permitted to consider

[63] *Horton v. Kan. City S. Ry. Co.*, 692 S.W.3d 112, 137–38 (Tex. 2024).

Werner's negligence apart from Ali's negligence, the jury determined that Werner and Ali collectively bore 84% of the responsibility for the Blakes' injuries. The jury assigned Salinas—the driver who lost control of his vehicle and veered across the median—only 14%. This upside-down apportionment is strikingly flawed. Why did it happen? The jury heard about numerous acts of negligence far attenuated from Ali's driving at the time of the collision. Submitting Werner separately permitted the jury to find responsibility for negligence that, standing alone, could never be a legal cause of the collision.

The Blakes argue, in the alternative, that the Court should render judgment on an apportionment question that omitted Werner as a liable party separate from Ali. However, this liability question deviated from the Pattern Jury Charge by directing the jury to consider Ali's negligence "on December 30, 2014," nudging the jury to consider acts of negligence over the course of a day far too attenuated from the collision to contribute to the Blakes' injuries.[64] It was the collision that caused the injuries, not some attenuated negligence. The question permitted the Blakes to obtain heightened proportionate responsibility based on conduct that was not a legal cause of their injuries from the collision.

Further, the inclusion in the trial of the concept that Werner was liable "directly" or independently from Ali's conduct infected the jury charge overall, clouding the issues the jury was to decide with

[64] *See* State Bar of Tex., Tex. Pattern Jury Charges PJC 4.1 (2018) (charging the jury to answer only whether the negligence of certain parties proximately caused the injury or occurrence in question).

unspecified or invalid legal duties. The submission of erroneous questions can muddle consideration of a legitimate question by shifting a jury's focus or by permitting the submission of prejudicial evidence relevant only to the improper question.[65] Because the trial court's instructions to the jury were faulty both overall and with respect to each liability question, no legally grounded alternative judgment favors the Blakes. A new trial is the proper remedy when faulty jury instructions have caused harmful error.[66]

* * *

The jury heard some evidence that Ali was traveling at an excessive speed for the icy conditions at the time of the collision and that this excessive speed contributed to the severity of the Blakes' injuries. Because the record reflects some legally sufficient evidence of causation, the jury was entitled to consider and weigh the conflicting evidence to determine (1) whether Ali's negligence was a proximate cause of the Blakes' injuries and (2) if so, what proportionate responsibility, if any, Ali (and Werner, through Ali) should bear.[67]

However, the trial court harmfully erred in its instructions to the jury by submitting Werner as an independently liable party and by directing the jury to focus on conduct other than negligence that was a

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[65] *See In re Est. of Poe*, 648 S.W.3d 277, 291–92 (Tex. 2022) (remanding for new trial where three of four questions submitted related to an improper theory of liability and the fourth question included a superfluous instruction).

[66] *Id.* at 291 ("[T]he submission of an erroneous question can be harmful if it confuses or misleads the jury in answering a question that is properly submitted and material to the judgment.").

[67] Tex. Civ. Prac. & Rem. Code § 33.003(a).

proximate cause of the injuries in question. Accordingly, I join the Court in reversing the trial court's judgment for the Blakes. I respectfully dissent from the Court's rendering judgment for Werner. We instead should remand the case for a new trial.

Jane N. Bland
Justice

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