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Permitted Breach of Rules by Association Does Not Create Liability for Resulting Accident

By **Laura Manning-Hudson** | February 22, 2019


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Lack of parking can be an extremely troublesome issue for many South Florida community associations. For HOAs with rules that prohibit on-street parking, the dearth of available spaces for residents and their guests can leave many homeowners feeling stymied and annoyed.

To remedy the angst of its residents, the HOA for the Seminole Lakes community in Palm Beach County decided to forgo its rule against on-street overnight parking. However, that decision nearly ended up causing the association major legal and financial liabilities, which it was only able to avoid after it appealed a jury's verdict to Florida's Fourth District Court of Appeal.

The case of *Seminole Lakes Homeowner's Association v. Esnard* arose from a 2013 car accident in the community between the Esnards and another motorist, who rear-ended their vehicle while they were stopped waiting for two trucks to pass between two parked cars on the street. The Esnards, who were injured in the accident and had their car completely totaled, filed suit against the other driver as well as Seminole Lakes on the basis that the community was negligent and had proximately caused their damages by permitting homeowners and their guests to park on both sides of its streets—contrary to its governing documents.

The association's restrictive covenants prohibited owners and guests from parking on the street and required that vehicles be parked in driveways or garages, or in designated common-area spaces. In 2009, the board recognized that there was a severe parking problem in the community and decided to allow street parking, even though the municipality in which the community is located prohibits any street parking that interferes with the flow of traffic. By allowing on-street parking, vehicles could park on both sides of the street throughout the community, at times resulting in only one car at a time being able to pass between two parked vehicles.

At the conclusion of the trial, the jury found that Seminole Lakes' negligence was a legal cause of the Esnard's damages, and it apportioned 30 percent of the fault to the HOA.

Seminole Lakes appealed the decision based, in part, on its motion for a directed verdict which maintained that allowing cars to park on its streets was not a proximate cause of the accident. In its unanimous decision, the Fourth DCA found that while proximate causation is generally an issue for the trier of fact, there are instances in which the issue should be decided as a matter of law. It cited several cases concluding that the "question of proximate cause is one for the court where there is an active and efficient intervening cause," and a remote condition or

conduct which furnishes only the occasion for someone else's supervening negligence is not a proximate cause of the result of the subsequent negligence.

Given these prior rulings, the appellate panel concluded that in the immediate action, conduct prior to an injury or death is not legally significant unless it is a legal or proximate cause of the injury or death, as opposed to a cause of the remote conditions or occasion for the later negligence.

The opinion goes on the cite 1980 and 1983 rulings by the Third DCA over an accident also involving parked vehicles. While there was causation-in-fact in that case, the accident was too extraordinary and too unforeseeable to be considered a proximate cause of the defendant's negligence.

Applying the same analysis, the court concluded that even though the vehicles parked on the sides of the street in Seminole Lakes caused traffic to slow or even stop, it cannot be said that this condition was a proximate cause of the Esnards' damages. "It is within common experience while driving on the streets of Florida to encounter traffic that is slowed or stopped for any number of reasons. The law requires every driver to maintain a safe distance from the traffic in front of them to avoid rear-end collisions," the panel concluded.

The Fourth DCA found that the Esnards had been stopped for a period of time before being rear-ended, and the parking situation in the community was patently obvious to all drivers using its streets. There was no evidence that they were forced to make a sudden emergency stop or take any actions to avoid the parked vehicles, so the court saw no difference between this situation and a car being stopped behind a city bus picking up passengers.

After considering all of the evidence, including the lack of any prior incidents of this nature, the panel concluded that the negligence of the culpable driver was not reasonably foreseeable by the HOA, and its failure to enforce its parking rules

was not the proximate cause of the Esnards' injuries. Accordingly, the appellate court reversed the trial court's denial of Seminole Lakes' motion for directed verdict, and it remanded the case for judgment in the association's favor.

While this is a positive ruling for Florida community associations, by no means does it shield them from potential liability stemming from decisions to not enforce restrictions found in their governing documents. Factors such as the foreseeability of an incident, the reasons behind the lack of enforcement, and the specific actions and negligence of other culpable parties will continue to hold sway in such cases. However, due to the potential for significant legal liabilities arising from incidents involving rules enforcement and rule changes, boards of directors should always consult with highly experienced association legal counsel when considering such actions.

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