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472 F.3d 59

Marie M. YURECKA, Individually and as Administratrix of the Estate of William J. Yurecka, Deceased, and as Natural Guardian of M.M. Yurecka and K.W. Yurecka, Minors; Brian R. Yurecka, Appellants

v.

Jeffrey ZAPPALA; Arlene Piccioni-Zappala, Defendants-/Third-Party Plaintiffs

v.

Ronald M. Rockwell; Pennsylvania Turnpike Commission; Ronald C. Rockwell, Third-Party Defendants.

*No. 05-2468.*

**United States Court of Appeals, Third Circuit.**

*Argued September 27, 2006.*

*Filed December 28, 2006.*

Paul T. Sheppard, Esquire (Argued) Hinman, Howard & Kattell, Binghamton, NY, for Appellants.

Louis E. Bricklin, Esquire (Argued) Lawrence R. Berger, III, Esquire Bennett, Bricklin & Saltzburg, LLP, Philadelphia, PA, for Appellees.

Before McKEE and AMBRO, Circuit Judges, and RESTANI,\* Judge.

OPINION OF THE COURT

RESTANI, Judge.

1 Plaintiffs-Appellants Marie Yurecka, individually and as administratrix of the Estate of William Yurecka, and as natural guardian of M.M. Yurecka and K.W. Yurecka, and Brian Yurecka appeal from a judgment of the United States District Court for the Middle District of Pennsylvania. The District Court granted a motion for summary judgment in favor of Defendants-Appellees Jeffrey Zappala and Arlene Piccioni-Zappala on the ground that the rescue doctrine does not support the Yureckas' claims arising from two automobile accidents on the Pennsylvania Turnpike, the second of which caused the death of William Yurecka. For the reasons that follow, we conclude that a genuine issue of material fact exists as to whether the rescue was ongoing at the time of the second accident, and reverse and remand for further proceedings.

### **BACKGROUND**

2 This action arises from two automobile accidents that occurred on the Pennsylvania Turnpike on the evening of May 12, 2002. The following facts are undisputed.

3 While driving north on the Turnpike in heavy rainfall, William Yurecka, his wife  
Marie Yurecka, and their three children saw a white Toyota 4-Runner pass their  
« up vehicle and travel out of sight. The Toyota 4-Runner was driven by Jeffrey Zappala,  
and seated in the front passenger seat was his wife, Arlene Piccioni-Zappala. The  
Yureckas later noticed the Toyota 4-Runner lying overturned off of the right side of  
the highway. They decided to stop to provide assistance, as both Mr. and Mrs.  
Yurecka were trained and certified in first aid by the Red Cross. The Yureckas  
pulled to the side of the highway, parked their minivan with the "hazard lights"  
flashing, exited the vehicle and walked downhill toward the 4-Runner.

4 As the Yureckas approached the Zappalas' vehicle, which was visibly totaled as a  
result of the accident, the Zappalas managed to climb out through the rear of their  
vehicle.<sup>1</sup> Although the Zappalas said that they were "all right" and appeared  
externally uninjured, they followed the Yureckas to their minivan, where the  
Yureckas made room for them to sit under the minivan's rear hatch to provide  
shelter from the heavy rain. Mr. Yurecka walked to a nearby emergency call box to  
phone the police and then returned to the minivan to assist the Zappalas. The  
Yureckas' three children remained inside the passenger compartment.

5 While the Zappalas sat beneath the rear hatch of the Yureckas' minivan, the  
Yureckas verbally comforted them, provided them with warm blankets and a pair of  
shoes for Mrs. Zappala, who had lost hers in the accident, and stayed with them to  
monitor for possible shock and other injuries while the Zappalas waited for police  
to arrive.

6 Approximately seventeen minutes later, while the Zappalas waited inside the  
Yureckas' minivan, a third vehicle, driven by Third-Party Defendant Robert  
Rockwell, lost control on the wet highway. His vehicle swerved and hydroplaned  
into the Yureckas' parked vehicle. Mr. Yurecka, who had been standing near the  
rear corner of the minivan, was hit by the Rockwell vehicle and dragged north into  
the left lane of the Turnpike. The police arrived after Mr. Yurecka was hit, and he  
was transported to the hospital, where he died as a result of multiple traumatic  
injuries from the collision.

7 In May 2004, the Yureckas brought an action for wrongful death, survival claims,  
and negligent infliction of emotional distress against the Zappalas in the Luzerne  
County, Pennsylvania, Court of Common Pleas. The case was then removed to the  
Middle District of Pennsylvania on the basis of diversity jurisdiction. The Yureckas'  
claims were based on the Zappalas' negligence in causing the first accident, which  
prompted the Yureckas to come to their rescue, placing Mr. Yurecka in the way of  
harm that ultimately led to his death. The Zappalas argued that any rescue was  
completed at the time of the subsequent accident, and that the rescue doctrine no  
longer applied.

8 The District Court agreed, granting a motion for summary judgment on the  
grounds that the rescue doctrine did not apply at the time of the second accident.<sup>2</sup>  
The Court also found, however, that the Zappalas were driving at an unsafe speed at  
the time of their accident, and that the Yureckas had been rescuers at the time they  
stopped to provide assistance. *Yurecka v. Zappala*, No. 04-CV-1352, slip op. at 3, 12  
(M.D.Pa. Apr. 20, 2005). On April 20, 2005, the District Court granted the motion  
for summary judgment on all counts of the complaint in favor of the Zappalas. The  
Yureckas appeal.

#### ***JURISDICTION AND STANDARD OF REVIEW***

9 We have jurisdiction to review a final decision of the District Court pursuant to  
 28 U.S.C. § 1291. A district court's grant of summary judgment is reviewed *de novo*.  
 « up *Fertilizer Inst. v. Browner*, 163 F.3d 774, 777 (3d Cir.1998). In reviewing a grant of  
 summary judgment, we apply the same standard as the District Court to determine  
 whether there exists a genuine issue of material fact. *Id.*; see also Fed. R.Civ.P. 56  
 (c). All facts must be viewed "in the light most favorable to the party opposing the  
 motion," *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quoting *United States v. Diebold, Inc.*,  
 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962)), and the burden is on the  
 party moving for summary judgment to demonstrate the absence of any material  
 issues of fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d  
 265 (1986).

10 A federal court sitting in diversity is required to apply the substantive law of the  
 state whose laws govern the action. *Robertson v. Allied Signal, Inc.*, 914 F.2d 360,  
 378 (3d Cir.1990). In the absence of any clear precedent of the state's highest court,  
 we must predict how that court would resolve the issue. *Polselli v. Nationwide Mut.*  
*Fire Ins. Co.*, 126 F.3d 524, 528 n. 3 (3d Cir.1997). In making such a prediction, we  
 should consider "relevant state precedents, analogous decisions, considered dicta,  
 scholarly works, and any other reliable data tending convincingly to show how the  
 highest court in the state would resolve the issue at hand." *Nationwide Mut. Ins.*  
*Co. v. Buffetta*, 230 F.3d 634, 637 (3d Cir.2000) (quoting *McKenna v. Ortho*  
*Pharm. Corp.*, 622 F.2d 657, 663 (3d Cir.1980)).

### **DISCUSSION**

11 Although the Pennsylvania Supreme Court has not clearly defined the scope of  
 Pennsylvania's rescue doctrine, other existing case law indicates that a rescuer  
 plaintiff may recover for injuries suffered in the course of a rescue if it can be shown  
 that: 1) the defendant negligently caused the dangerous situation; 2) the person  
 requiring rescue was in imminent peril or the rescuer reasonably believed that such  
 peril existed; and 3) the rescuer's actions during the rescue were not reckless. See  
*Pachesky v. Getz*, 353 Pa.Super. 505, 510 A.2d 776, 780-83 (1986). *Altamuro v.*  
*Milner Hotel, Inc.*, states that "[i]n applying the rescue doctrine, [the court] must  
 first determine the negligence *vel non* of the [defendant]." 540 F.Supp. 870, 875  
 (E.D.Pa.1982). The Pennsylvania Superior Court has also recognized that "the  
 situation precipitating the 'rescue' must warrant a reasonable belief that the peril  
 facing the object of the rescue was urgent and imminent." *Bell v. Irace*, 422  
 Pa.Super. 298, 619 A.2d 365, 369 (1993). This approach reflects the broadly  
 accepted rescue doctrine principle that "a plaintiff remains in the course of a rescue  
 attempt where the plaintiff acts under a reasonable belief that the endangered  
 party's peril continues." *Sweetman v. State Highway Dept.*, 137 Mich.App. 14, 357  
 N.W.2d 783, 790 (1984); see also *Wagner v. Intl. Ry. Co.*, 232 N.Y. 176, 133 N.E.  
 437, 438 (1921); *Estate of Keck By and Through Cabe v. Blair*, 71 Wash.App. 105,  
 856 P.2d 740, 746 (1993). Finally, *Pachesky* states that rescuer plaintiffs may  
 recover for injuries suffered in the course of a rescue if they acted "in the exercise  
 of ordinary care for their own safety under the circumstances, short of rashness and  
 recklessness." *Pachesky*, 510 A.2d at 781 (quoting *Walker Hauling Co. v. Johnson*,  
 110 Ga.App. 620, 139 S.E.2d 496, 499 (1964)).<sup>3</sup>

The Zappalas do not dispute for summary judgment purposes that Mr. Zappala  
 was negligent in causing the first accident, and have not alleged that the Yureckas  
 acted recklessly in carrying out the rescue. Rather, the Zappalas contend that there  
 was no imminent peril at the time of the second accident, and that the Yureckas had  
 no reasonable belief that such peril existed. Therefore, the decisive issue in this case  
 is the second element of the rescue doctrine test: whether there existed either

12 continued peril or a reasonable belief of such peril in the minds of the rescuers at  
« up the time of Mr. Yurecka's fatal injury.

13 Under the rescue doctrine, peril is defined as risk of "suffering serious injury or death." *Bell*, 619 A.2d at 369. The peril must be "imminent and real, and not merely imaginary or speculative." *Holle v. Lake*, 194 Kan. 200, 398 P.2d 300, 304 (1965). Reasonable belief of such peril requires "more than a suspicion of danger," but does not require actual injury or unmistakable knowledge on the part of the rescuer. *Gifford v. Haller*, 273 A.D.2d 751, 753, 710 N.Y.S.2d 187 (2000). A reasonable belief cannot "exist in a case where the negligent act causing the victim's injuries has run its course . . . unless the knowledge of the rescuer gave him reason to believe that the peril to the victim's life was continuing." *Marks v. Wagner*, 52 Ohio App.2d 320, 370 N.E.2d 480, 484 (1977). The determination of reasonableness is generally a "question for the trier of fact." *Gifford*, 273 A.D.2d at 753, 710 N.Y.S.2d 187. Because the parties to this case focus on the reasonable belief of the rescuers, the discussion here will also take that focus, although the possibility of actual ongoing peril has not been ruled out.

14 In support of their claims, the Yureckas argue that they reasonably believed that the Zappalas were in imminent danger and required immediate and ongoing assistance following the initial accident. The Yureckas point to evidence on the record to indicate a genuine factual issue as to the reasonableness of that belief. If such an issue exists, the Zappalas' motion for summary judgment must be denied. Fed. R.Civ.P. 56(c).

15 In order to determine whether a genuine issue exists under the second factor of the rescue doctrine test, we must consider all circumstances surrounding the initial and subsequent collisions, as well as factors that could have affected the parties' states of mind during the rescue. *See Bell*, 619 A.2d at 370 (court looks to "the facts alleged . . . together with the reasonable inferences deducible from those facts" to determine reasonableness of belief); *see also Truitt v. Hays*, 33 Pa. D. & C.2d 453, 463 (Ct.Com.Pl.Pa.1963) (court states that "[a] rescuer is not to be charged with errors of judgment that result from the excitement and confusion of the moment"). To demonstrate the reasonableness of their belief of imminent peril, the Yureckas point to evidence of the dangerous weather and other conditions of the accident scene during the time that they provided assistance, the proximity to a busy highway that had already proved perilous, the possibility of shock and other latent injuries, and the influence of Red Cross training principles on their states of mind.

16 First, the conditions of the accident scene provide evidence that the Yureckas could reasonably have believed that the Zappalas faced imminent and ongoing peril. In the aftermath of the accident, the Zappalas' vehicle laid overturned and visibly impaired beside the Turnpike, leaving only a rear hatch through which to escape. The Zappalas were stranded on the side of the Turnpike, drenched from the rain, shaken up by their accident, and Mrs. Zappala was left barefoot by the accident. The Zappalas were in close proximity to a busy highway that was wet and slick from the continuing heavy rain. Both the Yureckas and the Zappalas had firsthand knowledge of the peril that could be presented by a roadway under such conditions, as the parties stood between a rain-soaked, highspeed and heavily-traveled highway and the visible aftermath of a serious accident that had occurred just moments before.

The Yureckas protected the Zappalas from these hazards by providing shelter from the rain and risks of the roadway, remaining on hand to monitor for injuries and provide first aid if it became necessary, and supplying blankets to reduce the risk of shock. Mrs. Yurecka indicated in her deposition that she and her husband

17 were aware that the Zappalas were at risk for shock and other latent injuries  
associated with accidents of this severity. See M. Yurecka Dep. 31:2-14, Jan. 5,  
« up 2005. The deposition also provides evidence that the Yureckas knew that such  
injuries could be exacerbated by exposure to rain and cold. See *id.* at 31:12-14.  
There was no way for the Yureckas to determine the extent of the Zappalas' injuries  
until medical help arrived on the scene, and the Yureckas' Red Cross training had  
taught them the importance of remaining with the victims to monitor for possible  
injuries until professional help arrived. The fact that the Yureckas had some  
specialized knowledge of such principles of first aid provides additional evidence to  
support the reasonableness of their belief that the peril was ongoing. See *Marks*,  
370 N.E.2d at 484. ("[T]he knowledge of the rescuer [may give him or her] reason  
to believe that the peril to the victim's life is continuing.").

18 The Yureckas have presented considerable evidence of the circumstances  
surrounding their assistance to the Zappalas, as well as of their belief in the  
continuing need for such assistance. The conditions of the accident scene provided  
numerous reasons to believe that the situation presented serious and ongoing risks  
to life and limb of all who were present. In providing assistance, the Yureckas  
sought to reduce these risks to the Zappalas. From the evidence on the record, a  
jury could reasonably infer that the Yureckas believed that there existed ongoing  
and imminent peril and that the Zappalas were in need of continued post-accident  
emergency assistance through the time of the subsequent fatal accident. Therefore,  
this case presents a genuine issue on the second element of the rescue doctrine test  
and should proceed for a factual finding on the reasonableness of the Yureckas'  
belief that a condition of imminent and ongoing peril existed.

19 This outcome is not inconsistent with existing Pennsylvania case law. In granting  
summary judgment, the District Court erroneously relied on the Pennsylvania  
Superior Court's opinion in *Bell v. Irace*, 422 Pa.Super. 298, 619 A.2d 365. The  
District Court mistook factual distinctions in the case law as evidence of a  
divergence in legal approaches to the rescue doctrine.<sup>4</sup> In construing *Bell*, the  
District Court also presupposed the outcome of the factual issue in this case by  
asking whether the law of Pennsylvania recognizes a rescuer's right to recover for  
injuries after a rescue has definitively ended, rather than the correct question of  
whether the Yureckas' rescue was ongoing under the second element of the rescue  
doctrine test.

20 The facts of *Bell* underpin the Pennsylvania court's ruling in that case, and  
distinguish it from the facts of our case. In *Bell*, the plaintiff was an emergency  
medical technician who was called in her capacity as a medical professional to the  
scene of a collision between a motorist and a pedestrian. *Bell*, 619 A.2d at 367. Bell  
arrived only after other medical help had arrived, and she was injured by the  
accident victim's involuntary spasms during the course of treatment. *Id.* Bell sought  
recovery on the grounds that she was acting as a rescuer at the time of her injury,  
and that she was therefore entitled to relief under the rescue doctrine. *Id.* The court  
in *Bell* held that the plaintiff's injuries were beyond the scope of the rescue doctrine  
because the reasonable belief of continuing peril requirement was not fulfilled.<sup>5</sup> *Id.*  
at 370. The court explained that "the situation precipitating the `rescue' must  
warrant a reasonable belief that the peril facing the object of the rescue was urgent  
and imminent," and that "Bell was not injured while attempting a heroic rescue of  
the nature contemplated by the rescue doctrine." *Id.* at 369-70.

Unlike our case, *Bell* did not present a factual question of whether the rescue had  
ended at some point between Bell's arrival and her injury. The *Bell* court concluded  
that Bell could not reasonably have believed that the need for rescue was ongoing  
because she was called to the scene in her capacity as a medical professional,

21 arrived after other emergency professionals were on the scene, and provided  
« up assistance only after the accident scene clearly had been stabilized. The question in  
this case is not whether the Yureckas were acting as rescuers at all, as in *Bell*. It is  
undisputed that the Yureckas were acting as rescuers within the rescue doctrine at  
the time that they approached the accident scene. Instead, our case presents a  
genuine issue as to whether the rescue was ongoing at the time of Mr. Yurecka's  
injury. This basis for reversing the District Court's grant of summary judgment is in  
line with *Bell's* holding that the rescue doctrine provides relief only where the peril  
is ongoing or the rescuer reasonably believes that such peril exists. *See id.* at 369.  
The current holding is also consistent with other cases interpreting Pennsylvania  
law. In *Pachesky*, the Pennsylvania Superior Court denied recovery to a rescuer on  
the ground that she had acted unreasonably in performing the rescue, and was  
therefore subject to a jury's apportionment under the state's comparative  
negligence statute. *Pachesky*, 510 A.2d at 783. In reaching this conclusion, however,  
the *Pachesky* court reinforced "rescuers' favored status in the eyes of the law," *id.* at  
783 n. 8, and used the second part of the rescue doctrine test to determine that the  
rescue was ongoing. *See id.* at 781 (citing *Walker*, 139 S.E.2d at 499). Unlike the  
case before us, *Pachesky* addressed the rescuer's comparative negligence in  
performing the rescue, necessarily assuming that the rescue was ongoing at the  
time.

22 Similarly, *Altamuro* granted rescuer status on the ground that the rescuer had  
not acted unreasonably in reentering a burning hotel to assist guests in peril.  
*Altamuro*, 540 F.Supp. at 877. The court assumed without discussion that the  
rescue was ongoing due to the nature of the facts, and questioned only whether the  
hotel had been negligent in causing the fire, and whether the rescuer acted "so  
unreasonabl[y] as to preclude recovery." *Id.* at 876. This approach follows that of  
the Pennsylvania Supreme Court in *Corbin v. City of Philadelphia*, an early rescue  
doctrine case that found rescuer status so long as the rescuer acted without  
"rashness [or] imprudence" in carrying out the rescue. *Corbin v. City of Phila.*, 195  
Pa. 461, 45 A. 1070, 1073 (1900). Like *Pachesky*, the question in each of these cases  
was not whether the rescue was ongoing, as in our case, but whether the rescuer  
acted recklessly in performing the rescue.

23 This case presents a genuine issue as to whether the rescuers reasonably believed  
that the peril was imminent and ongoing under the second element of the rescue  
doctrine test. As mentioned previously, the determination of a rescuer's belief of  
continued peril is generally a question for a trier of fact. Consistent with prior  
approaches to the rescue doctrine under Pennsylvania law, this case presents a  
triable issue sufficient to overcome summary judgment.

24 Therefore, we reverse the District Court's grant of summary judgment in favor of  
the Zappalas and remand for further proceedings on the factual issue of whether  
there was continuing imminent danger or a reasonable belief of continued peril in  
the minds of the Yureckas.

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Notes:

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\* Honorable Jane A. Restani, Chief Judge of the United States Court of International  
Trade, sitting by designation

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<sup>1</sup> It is not clear in the record whether another vehicle arrived on the scene prior to the  
Yureckas' arrival, or whether the occupants of that vehicle assisted the Zappalas in  
leaving the overturned 4-Runner. Following the Zappalas' exit from their vehicle,  
however, it is undisputed that the Yureckas were the sole providers of assistance

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<sup>2</sup> The District Court held that legal approaches to the rescue doctrine "after the threat of imminent peril has ceased" may be separated into distinct "narrow" and "broad" categories, and that the peril in this case had ended at the time of Mr. Yurecka's fatal injury. J.A. at A-12

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<sup>3</sup> For the purposes of apportioning damages under a comparative fault standard, the *Pachesky* court further distinguishes between rescuers who acted negligently but not recklessly and those who acted non-negligently:

When a plaintiff performs a rescue in a reasonable manner, he/she is entitled to full recovery from the negligent defendant for all damages occasioned thereby. However, when a plaintiff acts unreasonably, that is, in a negligent fashion, in performing a rescue, the relative causal negligence of the parties should be apportioned in accordance with [the law].

*Pachesky*, 510 A.2d at 783.

In this case, however, the third element of the rescue doctrine test is not contested, and there has been no claim of either negligence or recklessness on the part of the Yureckas.

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<sup>4</sup> Because we conclude that the proper question here under Pennsylvania law is whether the plaintiffs have a reasonable belief that a condition of imminent and ongoing peril exists, we find it unnecessary to adopt the District Court's approach. We note, however, that the District Court's "narrow" versus "broad" categorization depended heavily on *Bell*, which will be distinguished below, and on cases from jurisdictions outside of Pennsylvania that may be distinguishable on their facts rather than on any clear divergence in legal approaches to the rescue doctrine.

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<sup>5</sup> That court did not address whether the "Firefighter's Rule" also prevented Bell's recovery under the rescue doctrine *Bell*, 619 A.2d at 370 ("Because we conclude that the rescue doctrine does not apply in this case, it is not necessary for us to decide the question raised by Appellants whether the rescue doctrine is available to 'involuntary,' or professional, rescuers."). The Firefighter's Rule is a narrow exception to the rescue doctrine, stating that the rescue doctrine does not apply to professional rescuers injured in the line of duty. *See* 57B Am.Jur.2d *Negligence* § 783.