

104.40 CONTRIBUTORY NEGLIGENCE - DOCTRINE OF SUDDEN EMERGENCY.

A person who, through no negligence of *his* own¹, is suddenly and unexpectedly confronted with imminent danger to *himself* or to others,² whether actual or apparent, is not required to use the same care that would be required if there were more time to make a decision. The person's duty is to use that degree of care which a reasonable and prudent person would use under the same or similar circumstances.³ If, in a moment of sudden emergency, ⁴ a person makes a decision that a reasonable and prudent person would make under the same or similar circumstances, *he* does all that the law requires, even if in hindsight a different decision would have been better or safer.⁵

1. The doctrine of sudden emergency is not applicable to one who by his own negligence has brought about or contributed to the emergency. *See Day v. Davis*, 268 N.C. 643, 645-46, 151 S.E.2d 556, 558 (1966) ("[O]ne cannot escape liability for acts otherwise negligent because done under the stress of an emergency if such emergency was caused, wholly or in material part, by his own negligent or wrongful act."); *see also Brunson v. Gainey*, 245 N.C. 152, 156, 95 S.E.2d 514, 517 (1937) ("One cannot, by his negligent conduct, permit an emergency to arise and then excuse himself on the ground that he was called upon to act in an emergency.").

2. Where the emergency results from an animal in the roadway, the "trial court [should] take care to ensure that any sudden emergency instruction that is given focuses on whether the driver was 'suddenly and unexpectedly confronted with imminent danger to himself or others.'" *Ligon v. Strickland*, 176 N.C. App. 132, 142, 625 S.E.2d 824, 831 (2005) (citation omitted).

3. *See Sorzzak v. Vorholt*, 181 N.C. App. 629, 638, 640 S.E.2d 805, 812 (2007) ("The sudden emergency doctrine provides that one confronted with an emergency situation is not liable for an injury resulting from his acting as a reasonable person might act in an emergency. Two elements must be satisfied before the sudden emergency doctrine applies: (1) an emergency situation must exist requiring immediate action to avoid injury, and (2) the emergency must not have been created by the negligence of the party seeking the protection of the doctrine.").

4. "An 'emergency situation' has been defined by our courts as that which 'compels [defendant] to act instantly to avoid a collision or injury[.]'" *Reed v. Abrahamson*, 108 N.C. App. 301, 308, 423 S.E.2d 491, 495 (1992) (quoting *Schafer v. Wickstead*, 88 N.C. App. 468, 471, 363 S.E.2d 653, 655 (1988)), *cert. denied*, 333 N.C. 463, 427 S.E.2d 624 (1993); *see also Allen v. Efird*, 123 N.C. App. 701, 703, 474 S.E.2d 141, 143 (1996), *disc. review*

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denied, 345 N.C. 639, 483 S.E.2d 702 (1997) ("A sudden emergency instruction is improper absent evidence of a sudden and unforeseeable change in conditions to which the driver must respond to avoid."), *Banks v. McGee*, 124 N.C. App. 32, 34, 475 S.E.2d 733, 734 (1996) (sudden emergency instruction improper because the plaintiff should have seen puddles of water on a rainy day had she exercised due care), and *Bumgarner v. Southern R.R.*, 247 N.C. 374, 379-80, 100 S.E.2d 830, 833-34 (1957) (discussing a circumstance of a person attempting to rescue a one placed in peril by another's negligence).

5. See *Foy v. Bremson*, 286 N.C. 108, 120, 209 S.E.2d 439, 446 (1974) ("The sudden emergency rule is a mere application of the rule of the prudent man. It raises no separate issue with reference to the burden of proof. (citation omitted). The burden of proof rested upon plaintiff to satisfy the jury by the greater weight of the evidence that negligence on the part of defendant . . . proximately caused her injuries.").