

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

M. JANE BRADY
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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WILMINGTON, DE 19801-3733
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November 27, 2007

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**Re: Balderson v. Freeman
C.A. No. 05C-01-222 MJB**

*Opinion Decision
Submitted: August 3, 2007
Decided: November 27, 2007*

Counsel:

I have reviewed, again, the testimony in this matter, the authorities cited by the parties, and the jury instructions. I remain convinced that this Plaintiff did not receive a fair trial, and that the reason for that was the introduction of concepts in the jury instructions that were not sustained by the evidence.

The language of the instruction used quite forceful words, such as "suddenly" and "create a hazard". The intent of the instruction, and the statute upon which it is based, is to assure that persons who, by their own inadvertence, or by their willingness to risk injury by taking chances, place themselves in the path of an oncoming vehicle at a time that the driver is unable to avoid a collision. There is no evidence in the record to support that instruction. Indeed, the uncontroverted evidence is that the Plaintiff stood and waited for the light to

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change before entering the street. There was no testimony that she entered the street suddenly, and the only evidence regarding where the vehicle was when she entered the street is the driver's testimony that he was approximately one half block away when the light changed.

The strongest argument made by the defense to sustain the verdict is that the jury found no negligence on the part of the Defendant in response to the first question on the verdict sheet. Therefore, the defense contends, what the Plaintiff did, or did not do, is irrelevant. The Court disagrees. The instructions were heard by the jury and sent into the jury room during deliberations. It would be unreasonable to believe that they could fail to consider concepts which they had heard, from the Court itself, in answering the questions on the verdict sheet.

Having presided over the trial, heard all of the witnesses, and delivered the instructions, I cannot conclude other than that the errors "undermined ... the jury's ability to intelligently perform its duty in returning a verdict."¹

For those reasons, the previous decision of this Court, that the verdict is flawed and must be reversed, will stand.

Very truly yours,

/s/

M. Jane Brady
Judge

MJB/jf

¹ *Flamer v. State*, 490 A.2d 104, 128 (Del. 1983).