SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Nicole M. Faries, Esquire
Stephen E. Smith, Esquire
Prickett, Jones & Elliott
11 North State Street
Dover, DE 19901

Dawn L. Becker, Esquire
Citizens Bank Center
919 Market Street, Suite 550
Wilmington, DE 19801

Mr. Tevin Risper
21759 Mill Park Drive
Bridgeville, DE 19933

Re: ***Tull v. Risper et. al.***
C.A. No. S11C-02-011 RFS

Submitted Date: May 17, 2012
Decided Date: June 26, 2012

Dear Counsel:

This is a negligence action filed by Plaintiff Melissa Tull ("Tull") against Tevin Risper ("Risper") and Alysha Randall ("Randall"). A default judgment has been entered against Risper. This is my decision denying Randall's motion for summary judgment.

On July 3, 2009, Tull was a passenger on a motorcycle driven by Craig Moorefield ("Moorefield"). Moorefield's wife was driving her motorcycle slightly behind her husband. They were traveling west through the town of Bethel, Delaware. Traveling in the oncoming lane, Randall was driving a motor vehicle with Risper as a passenger in the front seat. As Randall's car passed Moorefield and Tull, Risper reached out the passenger-side window and threw a cup of ice across the lane striking the face plate of Tull's helmet. The face plate cracked and Tull was injured.

When reviewing a motion for summary judgment, the Court examines the record to determine whether any genuine issues of material fact exist or if the evidence is so one-sided that one party should prevail as a matter of law.[1] The record must be viewed in the

[1]*Burkhart v. Davies*, 602 A.2d 56, 59 (Del.1991), *cert. denied*, 504 U.S. 912 (1992).

light most favorable to the non-moving party,[2] and if it seems desirable to inquire more thoroughly into the facts, summary judgment will not be granted.[3]

The elements of negligence are duty, breach, proximate cause and damages.[4] In this case, it is undisputed that Randall had a duty to exercise reasonable care in driving her car. Nor is it disputed that Tull was injured. Generally, negligence actions are not fodder for summary judgment because the moving party must show the absence of all material issues of fact relating to negligence.[5]

Randall argues first that the record shows she was not negligent in any way. Randall points to the fact that Tull did not testify that Randall was careless or inattentive or otherwise negligent in her driving. Rather Tull felt that Randall was responsible for Risper's conduct and that Randall should have stopped her car after the accident. Moorefield, the driver of the motorcycle, testified in similar fashion. In other words, the deposition testimony confirms Randall's assertions regarding those particular statements.

However, as Tull argues, the record raises other questions of material fact as to Randall. Tull testified that Randall did not vary the speed of her car during or after the incident, raising questions of inattentive driving and failing to keep a proper lookout. Randall acknowledged that she did not notice other cars on the road that day and that she did not quite pay attention to the motorcyclists. She did not pay attention to whether Risper buckled his seatbelt or not. She said she did not really notice anything until after the accident was over.

Randall also stated that she was unaware of Risper's intention to throw the cup. Her statements differed during entry of her guilty plea to hindering the prosecution by giving police officers a false name for Risper, possibly showing consciousness of guilt. She told the Family Court Commissioner that just prior to the accident she knew Risper was looking at the cup of ice and suspected he was going to throw it out the window. She stated that she told him not to do it. The statements raise questions as to whether Randall breached the duty of reasonable care while driving, pursuant to 21 *Del.C.* § 4176(b), as pled. Moreover, her false statement about Risper shows a consciousness of guilt,[6] meaning here that she was aware of not having done anything whatsoever to prevent

---

[2]*Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del.Super.1995).

[3]*Id.* (citing *Wilson v. Triangle Oil Co.*, 566 A.2d 1016, 1018 (Del.Super.1989)).

[4]*Fanean v. Rite Aid Corporation of Delaware, Inc.*, 984 A.2d 812, 823 (Del.Super.2009).

[5]*Hedrick v. Webb*, 2004 WL 2735527, at *3 (Del.Super.).

[6]*State v. Charbonneau*, 2003 WL 22232811, at *6 (Del.Super.).

Risper's dangerous act.

Furthermore, Tull argues that Risper testified that on occasion after the accident Randall would kid around about closing his windows, possibly showing that Randall had time to prevent the accident but failed to do so.

The record presents additional fact questions as to whether Randall was aware of Risper's intention, whether Risper sat on the car window ledge or remained in the car and whether Randall had a duty and opportunity to stop Risper's actions.

Next, Randall argues that Risper's actions were abnormal, unforeseeable, and/or extraordinarily negligent, constituting an intervening/superceding cause severing the chain of negligence. Tull argues that the question of foreseeability is a fact question for the jury. She correctly states that even if Risper's conduct is one proximate cause of her injuries, there can be more than one cause and more than one person responsible for the injuries.[7] She also points out that the creation of a dangerous situation, to wit, Randall's negligent driving, may constitute negligence.[8]

For the reasons stated above, Randall's motion for summary judgment is **DENIED.**

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary

---

[7] *Hedrick v. Webb*, 2004 WL 2735517, at *4 (Del.Super.).

[8] *Pipher v. Parsell*, 930 A.2d 890 (Del.2007)(where actions of automobile passenger that cause accident are not foreseeable, there is generally no negligence attributable to driver, but when passenger's actions that interfere with driver's safe operation of vehicle are foreseeable, failure to prevent such conduct may be breach of driver's duty of care to other passengers or to public).