

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

KELLY ROOKS,  
Plaintiff,

v.

JOHN FRYE and ALLSTATE  
INSURANCE COMPANY,  
Defendants.

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C.A. No.: S17C-02-010 RFS

**MEMORANDUM OPINION**

Upon Defendant Allstate's Motion for Summary Judgment. Denied.

Date Submitted: July 24, 2018  
Date Decided: August 14, 2018

Edward C. Gill, Esq., Law Office of Edward C. Gill, P.A., 16 North Bedford Street, P.O. Box 824, Georgetown, Delaware 19947, Attorney for Plaintiff

Brian Thomas McNelis, Esq., Young & McNelis, 300 South State Street, Dover, Delaware 19901, Attorney for Defendant Allstate Insurance Company

Daniel P. Bennett, Esq., Mintzer Sarowitz Zeris Ledva & Meyers, LLP, Citizens Bank Center, 919 North Market Street, Suite 200, Wilmington, Delaware 19801, Attorney for Defendant John Frye

STOKES, J.

## I. INTRODUCTION

This matter is presently before the Court on the motion of Defendant Allstate Insurance Company (“Allstate”) for summary judgment against Plaintiff Kelly Rooks (“Rooks”). The Plaintiff opposes the Motion. For the foregoing reasons, Allstate’s Motion for Summary Judgment is **DENIED**.

## II. FACTS AND PARTIES’ CONTENTIONS

This case stems from a three-car automobile accident on Sussex Highway near Bridgeville, Delaware. The first vehicle involved was driven by Kolby Kauffman (“Kauffman”), the second was operated by Rooks, and the third was driven by John Frye (“Frye”). All three vehicles involved were traveling in the left northbound lane of Sussex Highway. As the drivers approached the intersection of Sussex Highway and Redden Road, traffic slowed to a stop. Rooks was unable to stop in time and collided with Kauffman’s vehicle. Frye was also unable to stop and collided with Rooks’ vehicle, causing her to hit Kauffman a second time. There is conflicting testimony concerning whether the stop in traffic was caused by the actions of an unidentified minivan traveling in the left lane in front of Kauffman or the red traffic light at the upcoming intersection.

As a result of the accident, Rooks filed this suit alleging the accident was caused by Frye’s negligence as well as the negligence of the unidentified minivan driver. The claim against the minivan driver was filed under Rooks’ Uninsured Motorist policy with Allstate. Allstate now moves for Summary Judgment against that portion of Rooks’ claim.<sup>1</sup> According to Allstate, no admissible evidence was proffered by Rooks to show that the unidentified minivan committed any negligent act that proximately caused the collision. Rooks opposes the Motion. She claims that sufficient facts have been alleged to allow the claim to proceed to the jury.

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<sup>1</sup> The only portion for which Allstate is involved.

### III. STANDARD OF REVIEW

The Court may grant summary judgment if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law.”<sup>2</sup> The moving party bears the initial burden of showing no material issues of fact are present.<sup>3</sup> If the moving party properly supports their motion, the burden then shifts to the non-moving party to rebut the contention that no material issues of fact exist.<sup>4</sup> In considering a motion for summary judgment, the Court must review the record in a light most favorable to the non-moving party.<sup>5</sup> The Delaware Supreme Court illustrates the parameters of granting summary judgment as follows:

Under no circumstances, however, will summary judgment be granted when, from the evidence produced, there is a reasonable indication that a material fact is in dispute. Nor will summary judgment be granted if, upon an examination of all the facts, it seems desirable to inquire thoroughly into them in order to clarify the application of the law to the circumstances.<sup>6</sup>

### IV. ANALYSIS

Viewing the evidence in the light most favorable to Rooks, the Court finds that issues of material fact remain in this case. After review of their depositions, both Rooks and Kauffman appear to assign some responsibility for the collision to the unidentified minivan. At her deposition, Rooks stated that she did not see the minivan stop, because it was in front of Kauffman, but that she did see the minivan abruptly turn left off of Sussex Highway. She makes no mention of the minivan moving into the left lane and cutting off Kauffman. Furthermore, Kauffman stated

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<sup>2</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>3</sup> *Id.* at 681.

<sup>4</sup> *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

<sup>5</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

<sup>6</sup> *Id.* at 468.

at his deposition that the minivan swerved to the left in order to avoid colliding with the traffic stopped in front of him at the light. There are mentions of an unknown vehicle cutting off Kauffman in the police report written after the accident, but the parties have been unable to make contact with the police officer who authored the report.

While there are some contradictions and inconsistencies in each person's deposition, such concerns will be appropriately addressed through cross-examination. Sufficient evidence has been proffered to show that the possible negligence of the minivan driver is a matter to be determined by the finder of fact. Summary judgment is not appropriate under these circumstances.

#### V. CONCLUSION

Considering the foregoing, Allstate's Motion for Summary Judgment is **DENIED**.

**IT IS SO ORDERED.**