NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MAYRA MOLINA, Appellant v. AMERICAN PATRIOT AMBULANCE SERVICE, INC., PATRIOT AMBULANCE, INC., TEMPLE UNIVERSITY HEALTH SYSTEM, INC., TEMPLE UNIVERSITY HOSPITAL, INC. AND TEMPLE UNIVERSITY HOSPITAL, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2003 EDA 2012

Appeal from the Judgment Entered August 14, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 03494 December Term, 2009

BEFORE: BOWES, OTT, and STRASSBURGER,* JJ.

MEMORANDUM BY BOWES, J.: **FILED OCTOBER 10, 2013**

Mayra Molina appeals from the judgment entered on the jury verdict in favor of American Patriot Ambulance Service, Inc. ("American") in this personal injury action and challenges the trial court's June 27, 2012 order denying her motion seeking a new trial.[1] She alleges that the trial court erred in precluding her from pursuing a negligence *per se* theory against

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* Retired Senior Judge assigned to the Superior Court.

[1] Non-suit was entered at trial in favor of all Temple defendants. Ms. Molina subsequently sought removal of the non-suit, but she withdrew that request in her brief in support of her motion for post-trial relief.

American based on its employee's violation of a statute prohibiting parking on a sidewalk, 75 Pa.C.S. § 3353. The trial court ruled that Appellant was not a member of the class of persons the statute was designed to protect. After thorough review, we affirm.

The facts giving rise to this action occurred on October 31, 2008, near the Tioga Street entrance to Temple University Hospital ("Hospital"). On that morning, Ms. Molina accompanied her grandmother in an American private duty ambulance to a previously-scheduled doctor's appointment at the Hospital. When the ambulance arrived at the Hospital, all of the designated parking spaces were occupied. The driver, Brian Wax, parked on the thirty-foot-wide sidewalk across from the Hospital entrance, where on-site personnel had instructed him to park when the spaces were filled.

Ms. Molina was seated in the front passenger seat of the ambulance. Mr. Wax asked if she needed assistance in exiting the vehicle, and when Ms. Molina responded in the negative, he proceeded to the rear of the ambulance to assist his co-worker, Matthew McGurn, with their patient. Ms. Molina opened the front door of the ambulance, held onto the doorframe, and, with her back to the street, placed one foot down onto the running board. Without looking at the ground, she stepped down on her right foot. She testified that, as she did so, her foot twisted backwards on the curb, resulting in an avulsion fracture of her fifth metatarsal, *i.e.*, her little toe, and ligament damage to her ankle.

Ms. Molina maintained that it was a violation of 75 Pa.C.S. § 3353 to park the ambulance on the sidewalk, and that American was *per se* negligent. Ms. Molina alleged further that the driver parked the ambulance too close to the curb to permit her to exit the vehicle safely. Finally, she averred that American's employees should have offered to assist her from the elevated seat. American countered that the passenger door of the vehicle was two feet from the curb and that its driver did offer to assist Ms. Molina, but she declined his offer. It also asserted that Ms. Molina was negligent in failing to look at the ground before stepping from the ambulance.

Prior to trial, the court ruled that violation of the statute was not negligence *per se* as Ms. Molina was not a pedestrian, within the class of persons the statute was intended to protect. Consistent with that ruling, Ms. Molina was not permitted to argue at trial that negligence was established and the trial court denied her request for a negligence *per se* instruction to the jury. During jury deliberations, however, the jury submitted a question regarding the legality of parking the ambulance on the sidewalk. The court instructed the jury that, while as a general rule, it is illegal to park on a sidewalk, the legality or illegality of parking on the sidewalk in this instance was irrelevant to its considerations. The jury returned a verdict in favor of American, finding no negligence on the part of that entity or its employees.

Ms. Molina asserts four issues on appeal, all of which rise and fall on the propriety of the trial court's pre-trial ruling precluding her from proceeding on a negligence *per se* theory based on American's violation of 75 Pa.C.S. § 3353:

> 1. Whether the trial court erred in precluding Appellant from presenting any evidence or arguing at trial that Defendant American Patriot Ambulance was negligent *per se* when it violated 75 Pa.C.S. § 3353 (prohibitions in specified places).
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> 2. Whether the trial court erred in determining that Appellant was not within the class of individuals designed to be protected by 75 Pa.C.S. § 3353 (prohibitions in specified places).
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> 3. Whether the trial court erred in failing to charge the jury regarding negligence *per se* regarding 75 Pa.C.S. § 3353 (prohibitions in specified places).
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> 4. Whether the trial court erred in directing the jury, in response to its question, to disregard that it was illegal for Defendant American Patriot Ambulance's vehicle to park on the sidewalk pursuant to 75 Pa.C.S. § 3353 (prohibitions in specified places).

Appellant's brief at 2-3.

Our review of the trial court's denial of Ms. Molina's motion for new trial starts from the premise that "the decision whether to grant a new trial, in whole or in part, rests in the sound discretion of the trial court." ***Mendralla v. Weaver Corp.***, 703 A.2d 480, 485 (Pa.Super. 1997). "[O]ur standard of review when faced with an appeal from the trial court's denial of a motion for a new trial is whether the trial court clearly and palpably committed an error of law that controlled the outcome of the case or

constituted an abuse of discretion. In examining the evidence in the light most favorable to the verdict winner, to reverse the trial court, we must conclude that the verdict would change if another trial were granted." ***Schuenemann v. Dreemz, LLC***, 34 A.3d 94 (Pa.Super. 2011). Since the crux of Ms. Molina's position is that the trial court erred in ruling, as a matter of law, that she could not proceed on a negligence *per se* theory, we review the trial court's denial of a new trial on that point for legal error.

Negligence *per se* has been defined as "conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances." ***Wagner v. Anzon, Inc.***, 684 A.2d 570, 574 (Pa.Super. 1996) (quoting ***White by Stevens v. Southeastern PA. Transp.***, 518 A.2d 810, 815 (1986) (quoting Black's Law Dictionary, p. 933 (5th ed. 1979)). Its application begins with the recognition that, since ordinances and statutes regulate conduct, they also may impose legal obligations on individuals. ***McCloud v. McLaughlin***, 837 A.2d 541, 545 (Pa.Super. 2003). Negligence *per se* is the law's acknowledgement that through an individual's violation of a statute or ordinance, it is possible to show that the individual breached his duty to behave as a reasonable person, *i.e.*, that the individual was negligent. ***Id***.

However, a court will not use a statute or regulation as the basis of negligence *per se* where the purpose of the statute is to "secure to individuals the enjoyment of rights or privileges to which they are entitled

only as members of the public." ***Centolanza v. Lehigh Valley Dairies***, 635 A.2d 143, 150 (1993), *aff'd*, 658 A.2d 336 (Pa. 1995) (quoting Restatement (Second) of Torts, § 288(b) (1965)). Furthermore, before an individual can be held to be negligent *per se*, his violation of the statute or ordinance must "cause harm of the kind the statute was intended to avoid and to a person within the class of persons the statute was intended to protect." ***See*** Dan B. Dobbs, The Law of Torts § 134 (2000). The reason for these requirements is to determine "whether the policy behind the legislative enactment will be appropriately served by using it to impose and measure civil damages liability." ***Lutz v. Chromatex, Inc.***, 718 F. Supp. 413, 428 (M.D. Pa. 1989). Even then, proof that an applicable statute exists and that the defendant violated that statute establishes only the first two elements of negligence: duty and breach. ***Cabiroy v. Scipione***, 767 A.2d 1078, 1079 (Pa.Super. 2001). A plaintiff cannot recover under such a theory unless he proves that such negligence was the proximate cause of his injury. ***Lux v. Gerald E. Ort Trucking, Inc.***, 887 A.2d 1281 (Pa.Super. 2005).

Thus, in order to state a claim for negligence *per se*, the plaintiff must show that: (1) the purpose of the statute is "at least in part, to protect the interest of a group of individuals, as opposed to the public generally;" (2) the statute clearly applies to the conduct of the defendant; (3) the defendant violated the statute; and (4) the violation was the proximate cause of the plaintiff's injuries. ***Wagner***, ***supra*** at 574; ***See*** RESTATEMENT

(SECOND) OF TORTS § 286 (1965); ***In re Reglan/Metoclopramide Litig.***, 2013 PA Super 214 n.13.

Herein, the statutory provision in question is § 3353 of the Motor Vehicle Code. 75 Pa.C.S. § 3353. Section 3353 generally prohibits the stopping, standing, and parking of a vehicle in certain places, including on a sidewalk, "[e]xcept when necessary to avoid conflict with other traffic or to protect the safety of any person or vehicle or in compliance with law or the directions of a police officer or official traffic-control device . . . " It also precludes double parking, *i.e.*, parking on the roadway side of any vehicle stopped or parked at the edge or curb of a street, (a)(1)(i); parking within a crosswalk, intersection, or tunnel, parking on a bridge or railroad tracks, or "alongside or opposite street excavation or obstruction when stopping, standing or parking would obstruct traffic." 75 Pa.C.S. §§ 3353(a)(1)(i)–(viii). It was undisputed that the American ambulance driver, Mr. Wax, parked the ambulance on the sidewalk. Ms. Molina maintained that this constituted negligence *per se* and that she should have been entitled to proceed on this theory. American countered that the statute deals with the obstruction of access to either pedestrian walkways or vehicle roadways, and that Ms. Molina was not a pedestrian when she was alighting from the vehicle.

The trial court determined that Ms. Molina did not fall within the group of people the statute was designed to protect. It concluded the purpose of

the statute was to protect pedestrians from the dangers occasioned by having to avoid a vehicle parked on the sidewalk. The statutory provision, viewed in its entirety, pertains to the obstruction of either pedestrian or vehicle roadways, not persons alighting from motor vehicles.

Ms. Molina claims that the court's determination that she did not meet the first requirement, *i.e.*, that she was not within the class of persons the statute was intended to protect, was not based on the language of the statute or its legislative history, and that it is contrary to a reasonable interpretation of the statute and its purpose. Appellant's brief at 6. She contends that the statute was intended to protect not only pedestrians using sidewalks, but passengers using sidewalks to enter and alight from, and to load and unload their vehicles as well. She urges us to employ statutory interpretation to ascertain the legislature's intent in enacting this statute and relies upon the four-prong test set forth in ***Wagner***, ***supra***, for determining whether the purpose of the statute is:

> a) to protect a class of persons which includes the one whose interest is invaded, and
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> b) to protect the particular interest which is invaded, and
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> c) to protect that interest against the type of harm which has resulted, and
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> d) to protect that interest against the particular hazard from which the harm results.

Wagner, 684 A.2d at 574.

On prior occasions, our courts have been required to discern the legislature's intent in promulgating provisions of the Motor Vehicle Code, and the analysis is instructive herein. ***Clevenstein v. Rizzuto***, 266 A.2d 623 (Pa. 1970), involved an intersection collision between plaintiff on a motorcycle and defendant driving a car. The defendant joined as an additional defendant the owner of an automobile that was parked too close to the intersection in violation of 75 P.S. § 1021(4), and which he alleged obstructed his view at the intersection. The defendant pled that he was forced to proceed into the intersection where the collision occurred just to ascertain whether there was oncoming traffic and that the additional defendant's illegally parked car was the sole cause of the accident.

While the precise issue before our Supreme Court was whether the defendant stated a valid cause of action against the additional defendant, rather than negligence *per se*, the Court's analysis is applicable herein. First, the Court examined the statute at issue therein, 75 P.S. § 1021(4), which prohibited "the parking of vehicles within 25 feet of the curb lines at an intersection, or if no curb lines exist, then within 15 feet of the property lines at the intersection of highways." The Court concluded that the purpose of the statute was to protect against the hazard of obstruction to visibility at intersections, the hazard present therein, and the attendant risk of accident. Furthermore, it held that both drivers were members of the class of persons the statute was intended to protect. Thus, the Court reversed the sustaining

of the demurrer and permitted defendant to proceed against the additional defendant.

In ***Jenkins v. Wolf***, 911 A.2d 568 (Pa.Super. 2006), we reversed and remanded for a new trial because the trial court erred in refusing to instruct the jury on negligence *per se*. Therein, the evidence demonstrated that plaintiff was struck by the defendant's vehicle while she was walking within a pedestrian crosswalk. The Motor Vehicle Code, 75 Pa.C.S. § 3112(a)(1)(i), provided that a pedestrian in a crosswalk has the right of way over a turning driver. The jury found plaintiff sixty-three percent negligent and the driver twenty-seven percent negligent. Plaintiff appealed, arguing that the trial court erred in refusing to charge the jury on negligence *per se.* We agreed that a new trial was warranted as the jury should have been apprised that, if plaintiff was in the crosswalk, defendant was negligent as a matter of law.

Ms. Molina, while decrying the trial court's failure to look to the legislative history of the statutory provision at issue, does not offer any evidence herself of the legislative intent in enacting this legislation. She urges us to apply the ***Wagner*** factors to ascertain the legislative intent, but does not argue how the application of these factors leads to the conclusion that the trial court erred. Rather, Ms. Molina merely asserts without support that, "[s]idewalks exist to provide a safe walkway and a safe area for passengers to load/unload into/out of vehicles." Appellant's brief at 10.

A "sidewalk" is defined in the Motor Vehicle Code as, "That portion of a street between curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians." 75 Pa.C.S. § 102. This Court held in ***City of Pittsburgh v. Reed***, 74 Pa.Super. 444, 446 (Pa.Super. 1920), that the purpose of a sidewalk is to provide "a place for reasonably safe passage by pedestrians along the public highway." ***See***, ***e.g.***, Webster's Third New International Dictionary 2113 (1986) (defining sidewalk as a "walk for foot passengers usu[ally] at the side of a street or roadway"). Our Supreme Court held in ***Auerbach v. Philadelphia Transp. Co.***, 221 A.2d 163, 167 (Pa. 1966), that "[a] pedestrian on a sidewalk is entitled to sanctuary from vehicles on the street as surely as one praying on his knees in a cathedral."

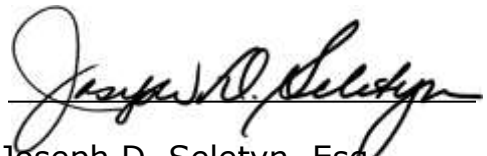
Mindful of the aforementioned, we apply ***Wagner***'s four-prong test as Appellant urges us to do, and conclude that the prohibition against parking on the sidewalk was not enacted to protect Ms. Molina, or others like her, from the hazard at issue herein. We agree with the trial court that the legislature promulgated the statute for the benefit of pedestrians, people who travel on foot adjacent to roadways, and not for persons entering and exiting vehicles. Furthermore, the purpose of that particular provision is to prevent the obstruction of pedestrian traffic on the sidewalk. The prohibition against parking on the sidewalk is not calculated to protect a person alighting from the illegally parked obstructing vehicle, but the pedestrian

who must leave the safety of the sidewalk and proceed either into the street or upon adjacent property to avert the obstruction. We agree with the trial court that Ms. Molina was not within the class of persons the statute was designed to protect.

Since we conclude that the trial court did not err in precluding Ms. Molina to proceed on a negligence *per se* theory, it necessarily follows that the court correctly refused to charge the jury on this basis for liability. Ms. Molina also contends, however, that by informing the jury that it should not consider legality in making its determination, the court "substantially prejudiced and tainted the jury's decision in favor of [American] as evidenced by the jury's inquiry regarding the legality of it parking its ambulance on the sidewalk." Appellant's brief at 13. We find no merit in such a contention. The trial court was not only correct in its statement of the law, it was properly ensuring that the jury's verdict was based on the evidence and the law applicable. For these reasons, Ms. Molina's claim fails.

Judgment affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/10/2013