IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ROBERT S. McKINLEY and	:	
DEBORAH McKINLEY	:	
Plaintiffs,	:	
v.	:	C.A. No. N10C-09-192 PLA
MICHELE J. CASSON,	:	
Defendant.	:	

UPON DEFENDANT MICHELE J. CASSON'S MOTION FOR SUMMARY JUDGMENT

DENIED

Submitted: February 17, 2012
Decided: March 20, 2012

This 20th day of March, 2012, it appears to the Court that:

1. The Court has before it a motion for summary judgment pursuant to Superior Court Civil Rule 56 in this personal injury case. The defendant has moved for summary judgment, asserting that the plaintiff's negligence *per se* was more than fifty percent responsible for the plaintiff's injuries and as such, the plaintiff cannot recover. After reviewing the record in this case, the Court finds that there remain disputed issues of fact and that this case is not amenable to summary judgment. Accordingly, the defendant's motion is denied.

2. This case arises from an automobile accident that occurred on the night of October 3, 2009, near the Summit Bridge on Route 896 in Glasgow, Delaware. The undisputed facts are as follows: Michele J. Casson ("Casson"), the

defendant, was approaching Summit Bridge from the south on her way home from dinner with a friend. Casson has a fear of bridges and had elected to use the Summit Bridge because she felt more comfortable driving over that bridge than the St. Georges Bridge. On the night of the accident, construction work on the bridge had reduced the number of traffic lanes to two. Casson admitted that the construction on the bridge and the narrowed lanes caused her to feel anxious as she was approaching the bridge. The speed limit on the bridge and the surrounding road was 45 miles per hour. At or near the base of the bridge, Casson slowed or stopped her vehicle and was struck by plaintiff Robert McKinley ("McKinley"), who was driving a motorcycle without a helmet. McKinley suffered serious injuries to his head and face and was treated in the emergency room at Christiana Hospital immediately following the accident. Delaware State Police Trooper Robert Downer ("Downer"), who investigated the accident, determined that Casson had caused the accident by stopping suddenly in the road and issued her a citation for careless driving. No eyewitnesses to the accident were identified.

3. There is considerable disagreement between the parties as to what precipitated the collision. McKinley testified in his deposition that he does not remember the accident itself.[1] As such, the plaintiff's version of events largely coincides with the version of events related by Downer in the police report.

[1] Robert S. McKinley Dep. Tr., at 27: 8-11 (Sept. 30, 2011).

According to McKinley, Casson suffered an anxiety attack as she approached the bridge and slammed on the brakes, causing the sudden stop that led to the collision.

At her deposition, Casson recalled feeling "confined" and increased anxiety because of the construction barriers and cones as she approached the bridge.[2] When asked to describe what she was feeling as she approached the bridge, she described being overwhelmed:

> What I'm remembering, the bridge, the cones, the barriers, just everything, like I was just trying my best to do it and have him [her ex-husband] on the phone, you know, just easing me, and just approaching the bridge and here's all the construction and feeling very confined, and just, oh, God, I can't do this, and there was this little opening and so I moved over into it, get myself off the road.[3]

Later, she testified that when she first started feeling nervous, she noticed another vehicle traveling behind her in her rearview mirror and "started looking for a space to pull over."[4] She admitted that she did not remember using a turn signal before she started to pull over.[5] She also admitted that she had "slow[ed] down to almost a snail's pace when [she] pulled over to the right," but testified that she only came to a complete stop in the right lane.[6] The police report indicates that she told the police officer that she takes anti-anxiety medication for her fear of bridges; however, in the deposition, Casson denied that she takes medication specifically

[2] Michele J. Casson Dep. Tr., 33: 17-24 (Sept. 12, 2011).
[3] *Id.* at 35: 8-17.
[4] *Id.* at 41: 16-18.
[5] *Id.* at 41: 19-22.
[6] *Id.* at 42: 11-12; 16-22.

for her bridge phobia and that she does not use her prescribed medications (for epilepsy and anxiety) when she is driving.[7]

4. In her version of events, Casson acknowledges that she felt anxious and pulled to the side of the road, but she denies stopping suddenly in the middle of the road, as McKinley suggests. As she explained, she was traveling a "reasonable speed" down Route 896 when she started to "feel a little confined" because of the construction:

> I notice that there's somebody in my rearview mirror and I see all the construction, the barriers, and I started to slow down because I'm feeling nervous, and I pull – I – well, I start to look for a place to pull off. I notice there's […] barriers, there's cones, so I slow down and I pulled over and then that's when I felt a bump. Right as I started to pull over is when I felt the bump….[8]

In her deposition, Casson adamantly denied that she came to a complete stop at the foot of the bridge.[9]

Casson's ex-husband, who was on the phone with her at the time of the accident, testified that he had offered to pick his wife up if the bridge construction made her too nervous. She told him that she would be fine, then screamed and said someone had hit her.[10] He testified that he understood that the accident had occurred on Route 896 itself, and not on the shoulder.[11]

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[7] *Id.* at 53: 7-17; 23: 3-6.
[8] *Id.* at 32: 10-20.
[9] *Id.* at 55: 18-22.
[10] Terry M. Casson Dep. Tr., at 16: 9-22 (Nov. 21, 2011).
[11] *Id.* at 37: 21-24.

Downer testified that he did not give a citation to McKinley because Casson "had no reason to stop. She basically admitted that she had an anxiety attack and she slammed on the brakes."[12] Downer said he considered whether McKinley was not following Casson at a safe distance but still concluded that Casson was at fault, because she "had a fear of bridges. As far as I was concerned she shouldn't have been approaching the bridge if she had a fear of bridges and she knew that."[13]

5. Casson argues that she is entitled to summary judgment because McKinley was negligent *per se* in failing to maintain a safe following distance, failing to operate a motor vehicle with due regard to the actual and potential hazards then existing, and to control the vehicle so as to avoid colliding with another vehicle.[14] Casson contends that McKinley's negligent operation of his own vehicle is more than fifty percent the cause of his injuries, and as such, he is not permitted to recover under Delaware's comparative negligence statute.

6. Summary judgment is appropriate where the record presents no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[15] When reviewing a motion for summary judgment, the Court must view all facts in the light most favorable to the non-moving party.[16] Generally

[12] Robert Downer, Jr. Dep. Tr., at 34: 14-16 (Aug. 8, 2011).
[13] *Id.* at 34:23- 35: 1-3.
[14] *See* 21 *Del. C.* §§4123(a), 4168(a), and 4176(a).
[15] Super. Ct. Civ. R. 56(c).
[16] *E.g.*, *Merrill v. Crothall-American*, 606 A.2d 96, 99 (Del. 1992).

speaking, issues of negligence are not susceptible of summary adjudication.[17] Only when the moving party establishes the absence of a genuine issue of any material fact respecting negligence may summary judgment be entered.[18] Similarly, questions of proximate cause except in rare cases are questions of fact ordinarily to be submitted to the jury for decision.[19] Accordingly, the Court may only grant summary judgment to a defendant where the defendant has shown the absence of an issue of material fact relating to the question of negligence or proximate cause.[20] A moving defendant always has the burden of producing evidence of necessary certitude negating the plaintiff's claim.[21] The burden shifts to the plaintiff to produce evidence of a genuine dispute of material fact only when the defendant has satisfied his or her burden.[22] Under no circumstances will the Court grant summary judgment when, from the evidence produced, there is a reasonable indication that a material fact is in dispute.[23] 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.[24]

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[17] *Ebersole v. Lowengrub*, 54 Del. (4 Storey) 463, 469 (1962).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.* at 469-470.
[22] *Id.* at 470.
[23] *Id.*
[24] *Id.*

7. Upon review of the record in this case, the Court is satisfied that the record as presented to the Court does not lend itself resolution to by summary judgment. The defendant has asserted that the plaintiff's own negligence *per se*, in failing to wear a helmet and in failing to maintain a safe following distance behind the defendant's vehicle, is more than fifty percent responsible for the plaintiff's injuries and, as such, the plaintiff cannot recover under Delaware's comparative negligence statute. Meanwhile, the plaintiff contends that the defendant's negligence, in stopping her vehicle suddenly at the foot of the bridge, caused the collision and the plaintiff's resulting injuries.

The record presents a clear dispute of material fact. Assuming the truth of McKinley's allegations that Casson stopped her vehicle suddenly and without warning in the middle of the road, the jury could conceivably find that Casson's negligence exceeded McKinley's and award damages, even if the jury concluded that McKinley was also negligent and that his negligence contributed to the collision.[25] Apportioning negligence between the parties is a question of fact that

[25] Delaware's comparative negligence statute provides that "the fact that the plaintiff may have been contributorily negligent shall not bar a recovery by the plaintiff […] where such negligence was not greater than the defendant […], but any damages awarded shall be diminished in proportion to the amount of negligence attributed to the defendant." 18 *Del. C.* §8132. The Court notes that McKinley will likely face an uphill battle in proving his version of events because he has no memory of the collision and there are no eyewitnesses to the accident. The police officer's opinion that Casson caused the accident by stopping in the middle of the road will only be admissible under D.R.E. 701 if Downer can be qualified as an expert in accident reconstruction. *See Lagola v. Thomas*, 867 A.2d 891, 896 (Del. 2005) (finding that police officer's opinion that the defendant's excessive speed was the primary contributing circumstance

the jury must decide. As such, the record before the Court does not permit the Court to hold, as a matter of law, that McKinley's alleged negligence in failing to maintain a proper following distance exceeded Casson's alleged negligence in stopping suddenly before the bridge. The motion for summary judgment is therefore DENIED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman
Peggy L. Ableman, Judge

Original to Prothonotary
cc: All counsel via File & Serve

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of the accident was an inadmissible lay opinion because it was not testimony based upon facts that the officer perceived); *see also Alexander v. Cahill*, 829 A.2d 117, 122 (Del. 2003) (holding that the investigating officer could not testify that he inferred from what he observed and heard that one driver was the "cause" of the accident because that conclusion is for the jury). *But see Laws v. Webb*, 658 A.2d 1000, 1010 (Del. 1995) (*overruled on other grounds*) (holding that the Superior Court did not abuse its discretion in admitting the testimony of the investigating officer who emphasized the cursory nature of his investigation and testified that he completed the "primary cause" section of the accident report without offering an opinion as to the legal or proximate cause of the accident for purposes of the negligence action). The Court offers no opinion at this time as to the admissibility of Downer's opinion, nor does the Court find that it would be impossible for the plaintiff to prevail on the facts in the record, as such a conclusion would require the Court to engage in undue speculation.