IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

PAULINE F. DAUB,	)	
	)	C.A. No. 11C-03-037 JTV
Plaintiff,	)	
	)	
v.	)	
	)	
SAMUEL G. DANIELS, WILLIAM BAKER, and BESTFIELD HOMES, LLC.,	)	
	)	
	)	
Defendants.	)	

Submitted: June 10, 2013
Decided: September 30, 2013

I. Barry Guerke, Esq., Parkowski, Guerke & Swayze, Dover, Delaware. Attorney for Plaintiff.

Miranda D. Clifton, Esq., Law Office of Cynthia G. Beam, Newark, Delaware. Attorney for Defendant Daniels.

Mary E. Sherlock, Esq., Weber, Gallagher, Simpson, Stapleton, fires & Newby, LLP, Dover, Delaware. Attorney for Defendants Baker and Bestfield Homes.

Upon Consideration of Plaintiff's
Motion for New Trial
DENIED

VAUGHN, President Judge

Daub v. Daniels, et al.
C.A. No. K11C-03-037
September 30, 2103

OPINION

The plaintiff, Pauline Daub, moves for a new trial in this personal injury action involving a motor vehicle accident after a jury found that the defendants, Samuel Daniels, William Baker, and Baker's employer, Bestfield Homes, LLC,[1] were not negligent.

FACTS

The basic facts of this case were stated by this Court in its previous order denying Mr. Baker's motion for summary judgement:

> On May 6, 2009 at around 6:30 a.m., Samuel Daniels was driving northbound in the left lane of Route 1 when the tailgate of his pickup truck fell off of his vehicle. Daniels testified that after he pulled his vehicle over to retrieve the tailgate from the road, he saw seven to nine vehicles swerve into the right lane to avoid hitting the tailgate. Baker, who was traveling several vehicles behind Daniels, testified that he was traveling one or two car lengths behind the vehicle in front of him. When that vehicle swerved into the right lane, Baker saw the tailgate lying on the road approximately 30 to 50 feet in front of him. Baker testified that he could not avoid hitting the tailgate, because there was traffic in the right hand lane, and he could not swerve onto the shoulder because he would have lost control of his vehicle. As a result, Baker ran over the tailgate, traveling between 60 and 65 miles per hour. The tailgate flew into the air and struck the plaintiff's windshield and then hit a truck operated by Brad

[1] I will refer to Mr. Baker and Bestfield Homes, LLC collectively as "Mr. Baker" because Bestfield Home's liability was vicarious through its employee, William Baker

> Garthwaite, who were also traveling northbound on Route 1. Daniels and Garthwaite testified that traffic was "light" that morning, and Garthwaite testified that he did not see any other vehicles on the road at the time of the incident other than the four vehicles involved in the accident.[2]

After a trial, the jury ultimately determined that Mr. Baker was not negligent because the accident was the result of a sudden emergency caused by Daniels' fallen tailgate and that Mr. Daniels was not negligent in a manner proximately causing injury to the plaintiff.[3]

The plaintiff now moves for a new trial pursuant to Superior Court Civil Rule 59 as to all of the defendants.

DISCUSSION

Superior Court Civil Rule 59(a) states in pertinent part that "[a] new trial may be granted as to all or any of the parties, and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in the Superior Court."[4] In considering a motion for a new trial, there is a presumption that the jury verdict is correct.[5] The jury's verdict should be set aside only "when the verdict is manifestly and palpably against the weight of the evidence, or for some reason, justice would miscarry if the verdict were allowed

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[2] *Daub v. Daniels*, 2012 WL 6846320, at *1 (Del. Super. Dec. 26, 2012) (footnote omitted).

[3] *See* Jury Verdict Sheet.

[4] Super. Ct. Civ. R. 59(a).

[5] *Mills v. Telenczak*, 345 A.2d 424, 426 (Del. 1975).

to stand."[6] As the Delaware Supreme Court noted, "[t]his standard gives recognition to the exclusive province of the jury as established by the Delaware Constitution, while preserving the separate common law function of the motion for a new trial where all of the evidence can be reviewed from the unique viewpoint of the trial judge."[7]

Mr. Daniels

The plaintiff contends that she is entitled to a new trial as to Mr. Daniels for two reasons: first, the jury's verdict was against the great weight of the evidence because Mr. Daniels violated two motor vehicle statutes, and therefore, he was negligent as a matter of law; second, the Court erred when it failed to give the jury a separate instruction that the owner or operator of a vehicle has a common law duty to inspect his or her vehicle before taking it out on the roadway. For the reasons that follow, I find that the plaintiff's claims are without merit.

The plaintiff's first contention is that the jury's verdict was so against the great weight of the evidence that no reasonable jury could render such a verdict and that allowing the verdict to stand would amount to a miscarriage of justice. This is so, the plaintiff contends, because the jury was instructed on two motor vehicle statutes—21 *Del. C.* § 4355(a) and 21 *Del. C.* § 2115—that impose a duty on all drivers not to drive a vehicle that is in such an unsafe condition as to endanger any person. Those statutes, the plaintiff contends, are strict liability laws which Mr. Daniels violated

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[6] *Burgos v. Hickok*, 695 A.2d 1141, 1145 (Del. 1997).

[7] *Id.*

when his tailgate fell from his truck while driving on Route 1. Thus, the plaintiff contends, Mr. Daniels was negligent *per se* and the jury verdict should be set aside because it was against the great weight of the evidence.

I agree that § 4355(a) and § 2115 are strict liability statutes. In *Hoover v. State*,[8] the Delaware Supreme Court answered the certified question of whether 21 *Del. C.* § 4176A, regarding the Operation of a Vehicle Causing Death, was a strict liability law or whether the state of mind provisions of 11 *Del. C.* § 251(b) applied to § 4176A. There, the Court held that § 4176A was a strict liability law because "a violation of section 4176A is an offense defined by a statute (the Motor Vehicle Code) other than the Criminal Code and the General Assembly's intent to impose strict liability for deaths proximately caused by a moving violation of the Motor Vehicle Code 'plainly appears' in both the unambiguous language of the statute and its legislative history."[9] Similarly, because the statutes at issue here unambiguously reflect the intent of the legislature not to otherwise provide a requisite mental state for committing the offenses, Sections 4355(a) and 2115 are strict liability statutes.

While the plaintiff argued a theory that the tail gate had been tied on with bailor twine or some such similar twine or rope, there was evidence to rebut that argument; and apart from the plaintiff's argument, there was little or no evidence to explain how it came to be that the tailgate fell off. Under these circumstances, in the absence of any further evidence explaining the condition of the truck before the

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[8] 958 A.2d 816 (Del. 2008).

[9] *Id.* at 820.

tailgate fell off, I am not persuaded that I should disturb the jury's finding that Mr. Daniels conduct did not amount to a violation of the statutes or that such negligence was not a proximate cause of her injuries.

The plaintiff's second contention as it relates to Mr. Daniels is that the Court should have, but did not, give the jury a separate instruction that the owner or operator of a vehicle has a common law duty to inspect his or her vehicle before taking it out on the roadway. The plaintiff cites a Maine case from 1939 and a Pennsylvania case from 1936 to support her proposition that such a common law duty exists.[10] She contends that the failure to give such a warning was in error and "could have confused or mislead [sic] the jury on Defendant Daniels [sic] duties and liability."

Mr. Daniels contends that 21 *Del. C.* § 4355(a) and 21 *Del. C.* § 2115, which were read to the jury, "theoretically encompassed, if not exceeded, the purpose that an additional instruction of the duty to inspect would have accomplished."

I continue to hold the view that there is no common law duty in this state for an owner or operator of a vehicle to conduct an inspection of his or her vehicle before taking it out on the roadway that requires the giving of an instruction on the point. There is no applicable traffic statute. Because there is no applicable motor vehicle statute, I continue to hold the view that the plaintiff was not entitled to a specific instruction on duty to inspect and that the issue was appropriately covered by the

[10] *Dostie v. Lewiston Crushed Stone Co.*, 8 A.2d 393 (Me. 1939); Delair v. McAdoo, 188 A. 181 (Pa. 1936).

general negligence instruction.

Mr. Baker and Bestfield Homes, LLC

The plaintiff makes four contentions with regard to her motion for new trial as to Mr. Baker.

First, the plaintiff contends that "the evidence preponderates so heavily against the verdict in favor of Defendant Baker on the issue of the defense of sudden emergency a new trial should be ordered to prevent an injustice and as a matter of fairness." As she did in her motion for judgment as a matter of law, the plaintiff contends that Mr. Baker was negligent as a matter of law in following the vehicle in front of him too closely in violation of 21 *Del. C.* § 4123(a) and for failing to maintain proper control of his vehicle. She also contends that "Defendant Baker was not entitled to an instruction on sudden emergency because of the overwhelming evidence supporting that his own prior conduct placed him in the situation of peril." The Court, however, addressed these claims in its order denying the plaintiff's motion for judgment as a matter of law, and it again finds that the plaintiff's contentions are not persuasive for the reasons stated in that order.

Next, the plaintiff contends that the Court's jury instructions were inadequate because the Court used the pattern sudden emergency jury instruction rather than the plaintiff's proposed instruction, which allegedly was "more tailored to the specific facts of the case, and less of an abstract proposition," and identified what conduct the plaintiff believed disentitled Mr. Baker from benefitting from the sudden emergency defense.

Mr. Baker contends that although the plaintiff did submit a proposed

instruction with the additional language, she did not object to the Court's use of the pattern sudden emergency jury instruction, and that the pattern jury instruction nonetheless was not improper or erroneous.

The Delaware Supreme Court has held that "jury instructions must give a correct statement of the substance of the law and must be 'reasonably informative and not misleading.'"[11] However, the jury instructions do not need to be perfect, and "a party does not have a right to a particular instruction in a particular form."[12] "In evaluating the propriety of a jury charge, the jury instructions must be viewed as a whole."[13]

The plaintiff's proposed sudden emergency jury instruction included the following language: "Plaintiff asserts that Defendants Baker and Bestfield Homes, LLC are not entitled to the protection of the emergency doctrine because the emergency was of Defendant Baker's own making and created by his own negligence, primarily following too closely, failing to allow an assured clear distance between the front of his vehicle and the vehicle he was following and not maintain sufficient control of his vehicle to guide it safely y objects on the highway."

The Court finds that the pattern sudden emergency jury instruction is an accurate statement of law and that the plaintiff's proposed instruction that included

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[11] *Corbitt v. Tatagari*, 804 A.2d 1057, 1062 (Del. 2002) (quoting *Cabrera v. State*, 747 A.2d 543, 544 (Del. 2000)).

[12] *Id.*

[13] *Culver v. Bennett*, 588 A.2d 1094, 1096 (Del. 1991).

her assertions about why Mr. Baker was not entitled to the sudden emergency defense was not appropriate. "The primary purpose of jury instructions is to define with substantial particularity the factual issues, and clearly to instruct the jury as to the principles of law which they are to apply in deciding the factual issues involved in the case before them."[14] The jury instructions in this case described the basic facts of the case[15] and the contentions of the parties.[16] The instructions then instructed the jury on the law to be applied to the facts, including the sudden emergency defense. I find that it is not necessary to tailor every particular legal instruction with the parties' contentions. The jury, after hearing the evidence and the closing arguments of the parties, was capable of applying the law to the facts in this case. Considering the jury instructions as a whole, the Court finds that the sudden emergency instruction was a correct statement of law and it was not misleading.

The plaintiff's third contention is that the Court erred in not using her verdict form, which asked the jury to determine whether Mr. Baker was negligent in a manner proximately causing the injury to the plaintiff before asking the jury to determine whether he was excused from liability under the sudden emergency defense. The plaintiff contends that making the sudden emergency defense the first question on the jury verdict form "unduly emphasized that defense," and thus, the plaintiff is entitled to a new trial.

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[14] *Zimmerman v. State*, 565 A.2d 887, 890 (Del. 1989).

[15] *See* Jury Instructions, at 5.

[16] *Id.* at 6-9.

Mr. Baker contends that there is no legal basis to order a new trial based on the order of the jury verdict form, and the verdict form given to the jury in this case was logical and sensible. He also contends that the plaintiff failed to offer her own proposed verdict form and failed to renew her objection after the jury retired to consider its verdict, and thus, waived her right to challenge the order of the jury verdict form at this time.

I find that the order of the jury verdict form in this case did not unduly emphasize the sudden emergency defense and was not otherwise misleading or confusing. The jury was presented the evidence and arguments of the parties at trial and was given legally accurate jury instructions and interrogatories. The jury was free to determine that the accident did not result from a sudden emergency, but rather, was caused by the negligence of Mr. Baker. To the contrary, however, the jury clearly determined that Mr. Baker was not negligent because the accident resulted from a sudden emergency and he acted reasonably under the circumstances. Therefore, I find that the plaintiff's claim is unpersuasive.

Lastly, the plaintiff contends that it was in error for the Court not to instruct the jury on the "assured clear distance rule." Under that rule, the operator of a motor vehicle is required to drive at a speed that would allow a stop within the assured clear distance ahead.[17] The assured clear distance rule, however, "has no application where an emergency has been created."[18] As mentioned, the jury clearly indicated that the

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[17] *Staker v. McSweeney*, 185 A.2d 892, 893 (Del. Super. 1962).

[18] *Id.* at 894 (citing *Panaro v. Cullen*, 185 A.2d 889 (Del. 1962)).

"accident was the result of a sudden emergency as to Defendant Baker."[19] Accordingly, I find that all of the plaintiff's contentions are persuasive.

CONCLUSION

For the foregoing reasons, I find that the plaintiff's motion for new trial as to all defendants is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File

[19] Jury Verdict Sheet, Question 1. *See also Fernandez v. Davis*, 1991 WL 113607, at *3 (Del. Super. June 4, 1991), *aff'd*, 608 A.2d 726 (Del. 1991) ("It is clear from the verdict that the jury believed the plaintiff was so obscured by darkness, bad weather and his dark clothing to have been invisible to a motorist operating his vehicle with due care.").