

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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July 31, 2012

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RE: *Vincent Delapo v. Alphonse Pinero*
C.A.No. S11C-05-029 ESB

Date Submitted: April 3, 2012

Dear Counsel:

This is my decision on Defendant Alphonse Pinero's Motion for Summary Judgment in this case involving an accident between a vehicle and a pedestrian. Plaintiff Vincent Delapo was walking across the northbound lanes of Route 1 between Rehoboth Beach and Lewes. Pinero was driving his vehicle in one of the northbound lanes of Route 1 in the same area when Delapo stepped into Pinero's lane of travel and was struck by his car. Delapo alleges that Pinero was negligent in operating his vehicle in a host of ways, and that Pinero's negligence proximately caused his injuries. I have granted Pinero's Motion for Summary Judgment, concluding that Delapo's failure to look to see if it was clear to cross the road before he walked in front of Pinero's vehicle was the sole cause of the accident.

STATEMENT OF FACTS

Delapo was driving his vehicle on Route 1 when it ran out of gas. He pulled over and parked his vehicle on the east side of Route 1, approximately 65 yards south of the intersection of Route 1 and Dartmouth Drive. Route 1 has four lanes of travel going north and four lanes of travel going south. The northbound and southbound lanes are separated by a median. Delapo got out of his vehicle and walked across the northbound and southbound lanes of Route 1 to the Wawa store located adjacent to the southbound lanes of Route 1 where he purchased a gasoline container and gasoline. He then crossed the southbound lanes of Route 1 and went to the median. Traffic in some of the northbound lanes was stopped for the stoplight at the intersection of Route 1 and Dartmouth Drive. Delapo crossed the first two lanes of stopped vehicles without a problem. As he approached the third lane he saw a Toyota sport utility vehicle that was moving slowly. Delapo made eye contact with the driver of the Toyota, who waved him across. He crossed the third lane and walked into the fourth lane and was hit by Pinero's vehicle. Before the accident, Pinero and his wife were driving northbound on Route 1. They were going to make a right hand turn onto Dartmouth Drive and go into Lewes for dinner. As Pinero approached the intersection, he moved into the special use lane in order to turn right onto Dartmouth Drive. Delapo then suddenly appeared in front of him. Pinero saw Delapo, but could not stop in time to avoid hitting him. Delapo was not in a pedestrian crosswalk when he was hit.

STANDARD OF REVIEW

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact.¹ Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence

¹ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

of material issues of fact.² The Court views the evidence in a light most favorable to the nonmoving party.³ Where the moving party produces an affidavit or other evidence sufficient under *Superior Court Civil Rule 56* in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.⁴ If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, then summary judgment must be granted.⁵ If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is not appropriate.⁶

DISCUSSION

Delapo must establish that Pinero operated his car in negligent manner that caused the vehicle-to-pedestrian impact that injured him. Negligence is never presumed from the mere fact that a plaintiff has suffered an injury.⁷ However, generally speaking, issues of negligence are not susceptible of summary adjudication.⁸ It is only when the moving party has established the absence of a genuine issue of any material fact respecting negligence that summary judgment may be

² *Id.* at 681.

³ *Id.* at 680.

⁴ *Super. Ct. Civ. R. 56(e); Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

⁵ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. den.*, 112 S.Ct. 1946 (1992); *Celotex Corp.*, 477 U.S. 317 (1986).

⁶ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁷ *Wilson v. Derrickson*, 175 A.2d 400, 401 (Del. 1961).

⁸ *Ebersole*, 180 A.2d at 468.

entered.⁹ Pinero argues that summary judgment in his favor is appropriate because the facts demonstrate that Delapo was solely the negligent party. Delapo makes the following allegations:

I. Driving upon sidewalk or bicycle path by vehicles and bicycles

Delapo alleges that Pinero operated his vehicle in the bicycle and bus lane in violation of 21 *Del.C.* § 4136. § 4136(a) states that “[n]o person shall drive any motor vehicle upon a sidewalk or bicycle path or sidewalk area or bicycle path area except upon a permanent or duly authorized temporary driveway.” Pinero did not violate this section. Pinero was driving on the roadway and in an authorized turn lane and not on a bike path or sidewalk. In order to make a right turn from the northbound lanes of Route 1 onto Dartmouth Drive Pinero had to move into the turn lane. Thus, Pinero was properly in the “bus lane.”

II. Obedience to and required traffic control devices

Delapo alleges that Pinero operated his vehicle in violation of a traffic control device in violation of 21 *Del.C.* § 4107, et al. § 4107(a) states that the “driver of any vehicle shall obey the instructions of any traffic-control device applicable thereto placed in accordance with this title...” Pinero did not violate this section. There was a red light up ahead and cars in the other lanes were stopped, but Pinero did not have to stop until he reached the red light, which he had not yet reached. There is simply no evidence to suggest that Pinero should have been stopped for the red light when Delapo walked in front of his vehicle.

III. When overtaking on the right is permitted

Delapo alleges that Pinero illegally passed vehicles on the right in violation of 21 *Del.C.* § 4117. § 4117(a) states that the “driver of a vehicle may overtake and pass upon the right of another

⁹ *Id.*

vehicle only under conditions permitting such movement in safety. In no event, except as permitted in subsection (c) of this section, shall such movement be made by driving off the roadway, main traveled portion or regular moving traffic lane of the highway.” Pinero did not violate this section. Pinero did not pull out of his lane and into the turn lane in order to pass the vehicles in front of him. He properly moved into the turn lane to make a right hand turn. There are four lanes of traffic heading in each direction of Route 1. Vehicles are constantly passing each other in all of the lanes on the right and left. Pinero was not passing or overtaking another vehicle on the right. The reason he continued moving forward in his lane of travel while the vehicles in the other lanes were stopped for the red light was because there was not enough traffic in his lane to cause him to have to stop for the red light. Pinero was properly in the turn lane to make a right turn, not improperly passing stopped vehicles on the right.

IV. Drivers to exercise due care

Delapo alleges that Pinero failed to exercise due care in violation of 21 *Del.C.* § 4144, which states that “every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary...” Pinero did not violate this section. There is no evidence that suggests that Pinero did not exercise due care. Pinero tried to avoid colliding with Delapo, but he could not stop his vehicle in time. There is no evidence that suggests that Pinero was speeding. Moreover, Pinero could not change lanes because he had cars stopped to his left and the edge of the roadway to his right. It was Delapo who did not exercise due care when he walked in front of Pinero’s vehicle without first looking to see if it was safe to do so.

V. Careless or inattentive driving

Delapo alleges that Pinero operated his motor vehicle in a careless and inattentive manner in violation of 21 *Del.C.* § 4176. § 4176(a) states that “[w]hoever operates a vehicle in a careless or imprudent manner, or without due regard for road, weather and traffic conditions then existing, shall be guilty of careless driving.” § 4176(b) states that “[w]hoever operates a vehicle and fails to give full time and attention to the operation of the vehicle, or whoever fails to maintain a proper lookout while operating the vehicle, shall be guilty of inattentive driving.” Pinero did not violate this section. There is no evidence in the record that suggests that Pinero failed to give his full time and attention to the operation of his vehicle. Indeed, the evidence establishes that he was driving within the speed limit and paying attention to what he was doing. When Delapo walked out from the front of another vehicle, the evidence indicates that Pinero stopped his car as soon as he could. It was Delapo who did not give his full attention to the traffic on the highway.

VI. Reckless driving

Delapo alleges that Pinero operated his vehicle in a reckless manner in violation of 21 *Del.C.* § 4175. § 4175(a) states that “[n]o person shall drive any vehicle in wilful or wanton disregard for the safety of persons or property...” Pinero did not violate this section. There is no evidence in the record that suggests that Pinero operated his vehicle in a reckless manner or with a wilful and wanton disregard for the safety of persons or property. Pinero was preparing to properly make a right turn when Delapo walked out in front of his vehicle. Pinero did all he could do to avoid hitting Delapo. However, Delapo was simply too close for Pinero to avoid hitting him.

VII. General Speed Restrictions

Delapo alleges that Pinero operated his vehicle at a speed greater than able to avoid colliding

with persons or property in violation of 21 *Del.C.* § 4168. § 4168(a) states that “[n]o person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and without having regard to the actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway, in compliance with legal requirements and the duty of all persons to use due care.” Pinero did not violate this section. There is no evidence in the record that suggests that Pinero operated his vehicle at a speed greater than was reasonable and prudent when Delapo walked out in front of his vehicle. Moreover, there is no evidence of Pinero’s actual speed or any evidence that he was exceeding the speed limit. The deciding factor here is not how fast Pinero was driving, but the fact that Delapo crossed into the roadway without first looking to make sure it was safe to do so, giving Pinero no time to stop.

VIII. Driving on right side of roadway and roadways laned for traffic

Delapo alleges that Pinero failed to operate his vehicle within his lane of traffic in violation of 21 *Del.C.* § 4114 and 4122. § 4114(a) states that “[u]pon all roadways of sufficient width a vehicle shall be driven upon the right half of roadway...” This code section is simply a declaration of the general law of the road. § 4122 states that “[w]henver any roadway has been divided into 2 or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply: (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety...” Delapo is essentially alleging that Pinero was not driving on a roadway laned for traffic. Pinero did not violate this section. § 4114 is inapplicable because Pinero was on the proper side of the highway and in the proper lane for making a right turn. There is no evidence

in the record that even remotely suggests that Pinero violated § 4122. Pinero moved his vehicle into the turn lane in order to make a right turn and by every account he did so safely. It was only after he positioned his vehicle in the turn lane that Delapo darted out in front of his vehicle.

The simple reality of this case is that Delapo walked out in front of Pinero's vehicle without first making sure it was safe to do so. Pinero did nothing wrong. Therefore, it is appropriate to grant summary judgment in his favor.

CONCLUSION

Defendant Alphonse Pinero's Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

/e/ E. Scott Bradley

E. Scott Bradley