IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JOANNE ENRIQUE,	:	
	:	08C-07-026 WLW
Plaintiff,	:	
	:	
v.	:	
	:	
STATE FARM MUTUAL AUTOMOBILE INS. COMPANY,	:	
	:	
Defendant.	:	

Submitted: July 10, 2009
Decided: July 16, 2009

ORDER

Upon Defendant's Motion for Summary Judgment as to Punitive Damages.
Granted.

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover, Delaware; attorneys for Plaintiff.

Colin M. Shalk, Esquire of Casarino Christman Shalk Ransom & Doss, P.A., Wilmington, Delaware; attorneys for Defendant.

WITHAM, R.J.

FACTS

On September 26, 2005, Joanne Enrique ("Plaintiff") was involved in a motor vehicle accident with Bridgett Roy, an uninsured motorist. State Farm Mutual Automobile Insurance Company ("Defendant" or "State Farm") provided a motor vehicle insurance policy to Jason Garber, the owner of the vehicle Plaintiff was driving. Plaintiff was a permissive user of the Garber vehicle, and the policy provided uninsured motorist ("UM") protection for the benefit for Plaintiff.[1]

The motor vehicle accident at the core of this litigation occurred on Little Creek Road in Dover, DE near the Safeway shopping center. Plaintiff was traveling westbound on Little Creek Road, while Ms. Roy was traveling eastbound. The roadway was wet, and Ms. Roy's vehicle allegedly fish-tailed as she used the left-hand turn lane to pass the vehicle in front of her,[2] resulting in a loss of control of her vehicle. Ms. Roy's vehicle ended up directly in front of Plaintiff's vehicle in the opposing lane, which caused the accident. There is conflicting deposition testimony regarding whether Ms. Roy left the scene of the accident.[3] Ms. Roy was charged

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[1] The UM coverage policy limit is $100,000.

[2] Ms. Roy was in the left-hand turn lane into the Safeway parking lot when her vehicle fish-tailed. The turn lane does not directly face oncoming traffic, but rather, it is adjacent to two opposite lanes of travel. It is disputed whether Ms. Roy's intent was to use the turn lane to turn into the parking lot or to pass the vehicle in front. Drawing all reasonable inferences from the evidence in a light most favorable to the non-moving party, the Court will assume Ms. Roy was using the turn lane to pass the slower-moving vehicle in front of her.

[3] One witness, Fred Hengst ("Hengst"), testified that he saw Ms. Roy leave the scene of the accident. Hengst stated that he followed Ms. Roy for approximately a mile on South Little Creek

with, and pleaded guilty to, failure to yield the right of way. She was later charged with driving with a suspended license, but only pleaded guilty to failure to reinstate her driver's license.

Plaintiff filed a complaint against State Farm on July 22, 2008, seeking payment of the $100,000.00 UM policy limit as well as punitive damages for Ms. Roy's alleged reckless conduct in causing the accident.[4] On May 27, 2009, State Farm filed a motion for summary judgment as to the punitive damages sought by Plaintiff. Plaintiff filed a response in opposition to State Farm's motion on July 7, 2009. Oral arguments were heard on July 10, 2009. This is the Court's decision.

STANDARD OF REVIEW

Summary judgment should be rendered only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.[5] The facts must be viewed in the light most favorable to the non-moving party.[6] Summary judgment may not be granted if the record indicates that a

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road after the accident and witnessed her pull into a driveway in a trailer park. The officer at the scene, Officer Firavaniti testified at deposition that he did not know whether Ms. Roy left the scene, but that he did not believe her vehicle had left because his police report estimated the damage to both vehicles and indicates that both vehicles were towed. The officer also testified that he believed he saw Ms. Roy's vehicle at the scene. Drawing all reasonable inferences from the evidence in a light most favorable to Plaintiff, the Court will assume Ms. Roy left the scene of the accident.

[4] Count II of the complaint, which sought punitive damages for State Farm's alleged bad faith in refusing to pay the UM policy limits was dismissed by the parties without prejudice.

[5] Super. Ct. Civ. R. 56(c).

[6] *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. 1995).

material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.[7] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[8]

DISCUSSION

Unlike compensatory damages, punitive damages are not awarded to make a plaintiff whole, but rather, are awarded to deter or punish the tortfeasor's conduct.[9] Whether punitive damages are available to a plaintiff turns on whether the plaintiff can establish a *prima facie* case that the tortfeasor's driving exhibited a wilful and wanton disregard for the safety of others.[10] "For a [tortfeasor's] conduct to be found wilful or wanton, the conduct must reflect a 'conscious indifference' or 'I don't care' attitude."[11] A plaintiff must show that the tortfeasor, in the formation of his

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[7] *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

[8] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

[9] *Short v. Drewes*, 2006 WL 1743442, at *1 (Del. Super. Jun. 21, 2006) (citing *Jardel Co. v. Hughes*, 523 A.2d 518, 528 (Del. Super. 1987).

[10] *Porter v. Turner*, 954 A.2d 308, 312 (Del. 2008) (affirming the trial court's denial of summary judgment where a jury could find that the defendant faced a red light for eight seconds and, nevertheless, decided to accelerate his tractor-trailer through an intersection in a wilful and wanton disregard for the safety of others).

[11] *Estate of Rae v. Murphy*, 956 A.2d 1266, 1270 (Del. 2008) (affirming the trial court's grant of summary judgment where the defendant drove slightly over the speed limit and failed to notice a red light as he approached it, explaining that the facts did not elevate the culpability of the defendant's conduct from negligence to the level of conscious indifference or an "I don't care" attitude) (quoting *Porter*, 954 A.2d at 312).

judgment, consciously ignored the precise harm that resulted, and that the precise harm was reasonably apparent.[12] Post-accident conduct, such as leaving the scene of an accident, may be relevant to a tortfeasor's state of mind at the time of the accident.[13] A plea to a criminal statute which requires clear reckless conduct may be sufficient to allow punitive damages to be submitted to a jury.[14] Punitive damages are not awarded for "mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary negligence."[15]

In the case *sub judice*, the Court finds that Plaintiff has failed to show that Ms. Roy's driving rose to the level of conscious indifference or an "I don't care" attitude, as required to permit punitive damages. Plaintiff has not shown that Ms. Roy, in the formation of her judgment, consciously ignored the possibility that she would collide with Plaintiff's vehicle, and that it was reasonably apparent that she would collide with Plaintiff's vehicle. Rather, the Court finds that, at most, Ms. Roy's acceleration when entering the left-hand turn lane of a wet roadway was ill-considered and an error in judgment. This error in judgment led to the fish-tailing and loss of control of Ms. Roy's vehicle, which propelled it into the westbound lane of Little Creek Road

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[12] *Jardel*, 532 A.2d at 530.

[13] *Thompson v. Starratt,* 1991 WL 53838, at *1 (Del. Super. Feb. 12, 1991) (denying the defendant's motion for summary judgment as to punitive damages where the defendant left the scene of the accident after hitting a pedestrian child with her vehicle, failing to render assistance, and instead going to an appointment, and then to work).

[14] *Short*, 2006 WL 1743442, at *2.

[15] *Id.*

immediately prior to the collision with Plaintiff's vehicle. Because an error in judgment constitutes mere negligence, punitive damages are not appropriate.

At oral argument, the parties discussed *Elliott v. Jewell*,[16] where the Court denied the defendant's motion for summary judgment on the issue of punitive damages. The case *sub judice* can be distinguished with *Elliott*. Like Ms. Roy, the defendant in *Elliott* lost control of his vehicle and collided with an oncoming vehicle. However, the defendant in *Elliott* entered an unmarked, sharp, blind curve at approximately 70-75 miles per hour, and attempted to brake when he noticed the plaintiff's oncoming vehicle.[17] The defendant's back tires spun out and he crossed into the middle of the road, colliding with the plaintiff's vehicle. The Court determined that a genuine issue of material fact existed as to whether the defendant's conduct was reckless, based on the facts of the case.[18]

Unlike the *Elliott* case, there is no evidence in this case to conclude that Ms. Roy was exceeding the speed limit by an extreme amount or attempting a sharp turn when she lost control of her vehicle. The evidence in the record suggests that Ms. Roy was accelerating her vehicle on a wet roadway, in an attempt to pass the vehicle ahead of her, when she lost control immediately before colliding with Plaintiff. Based on these facts, the Court finds that no genuine issue of material fact exists for

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[16] 1997 WL 364051 (Del. Super. Apr. 23, 1997).

[17] *Id*. at *1. "An observer testified that an appropriate speed for taking that curve is fifteen (15) miles per hour." *Id.*

[18] *Id*. at *3.

a jury to conclude that Ms. Roy was driving recklessly.

In addition, while making its determination concerning Ms. Roy's state of mind at the time of the accident, the Court considered the allegation that Ms. Roy left the scene immediately following the accident. In *Thompson v. Starratt*, the Court allowed punitive damages to be submitted to the jury. The judge held, as follows:

> As to the issue of punitive damages, the Court may not grant summary judgment at this time. It is alleged that defendant acted wilfully and wantonly in operating her vehicle, striking the child, and leaving the scene of the accident. This Court cannot conclude that a reasonable juror would be unable to find wilful and wonton disregard for human life in a case where a small child is hit by an automobile that continues on its way.[19]

This case is distinguishable from *Thompson*. In that case, the defendant struck a small child with her vehicle and proceeded about her business without regard for the child's well being. In fact, following the accident, the defendant went to an appointment and then to work. In this case, it is disputed whether Ms. Roy left the scene of the accident. However, viewing the facts in a light most favorable to Plaintiff, the Court will assume Ms. Roy did leave the scene. Deposition testimony provides that after the accident, Ms. Roy got back onto the road and left the scene very slowly. About a mile from the scene, the Roy vehicle turned into a trailer park and pulled into a driveway. This behavior, while not prudent, does not show the blatant conscious indifference and "I don't care" attitude exhibited in the *Thompson* case.

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[19] *Thompson,* 1991 WL 53838, at *1.

The Court also takes into consideration the traffic violations Ms. Roy committed in conjunction with the accident in its determination of her state of mind. Ms. Roy pled guilty to failure to yield the right of way and failure to reinstate her driver's license. Unlike a guilty plea to reckless driving, which admits a wilful or wanton disregard for the safety of persons or property at the time of the incident,[20] failure to yield the right of way does not include any such admission.[21] Similarly, Ms. Roy's admitted guilt in the failure to reinstate her driver's license lacks an admission of wilful or wanton disregard for other drivers.[22] Therefore, the Court finds that the traffic violations committed by Ms. Roy do not implicate the *mens rea* required to allow punitive damages to be submitted to a jury.[23]

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[20] 21 *Del. C*. § 4175(a); *Short*, 2006 WL 1743442, at *2 (denying the defendant's motion for judgment as a matter of law, finding that defendant's guilty plea to reckless driving after consuming alcohol was sufficient to allow the question of punitive damages to be submitted to the jury).

[21] 21 *Del. C*. § 4132. Vehicle turning left.
The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is so close as to constitute an immediate hazard.

[22] 21 *Del. C*. § 2701(b); *see Henderson v. Your Kar*, C.A. No. 06C-03-131 (Del. Super. Jun. 30, 2009) (finding that driving with a suspended driver's license was not proof that defendant was unfit to drive at the time of the accident in a negligent entrustment case applying Virginia law).

[23] The Court declines to include Ms. Roy's driving history as a factor in determining her state of mind at the time of the accident. In concluding that the accident resulted from an error in judgment based on the acceleration in speed coupled with the wet road condition, the Court finds that any prior traffic violations listed in Ms. Roy's driving record are irrelevant to her state of mind at the time of the accident.

CONCLUSION

For the foregoing reasons, State Farm's motion for partial summary judgment as to punitive damages is ***granted***. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution