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

TANYA L. VANSANT AND JULES VANSANT,	)	
Plaintiffs,	)	
v.	)	C.A. No. 09C-05-113 JOH
DENISE L. EVANS, DELAWARE TRANSIT CORPORATION, A DELAWARE CORPORATION,	)	
Defendants.	)	

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

CONNIE A. THOMAS,	)	
Plaintiff,	)	
v.	)	C.A. No. 08C-05-103 JOH
TANYA L. VANSANT, JULES VANSANT, DENISE L. EVANS, and DELAWARE TRANSIT CORPORATION,	)	
Defendants.	)	

Submitted: August 24, 2009
Decided: September 23, 2009

MEMORANDUM OPINION

Upon Defendants' Denise Evans and
Delaware Transit Corporation's Motion in Limine - **GRANTED**

Appearances:

Douglas T. Walsh, Esquire, of Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware, attorney for Defendants Denise Evans and Delaware Transit Corporation.

David C. Malatesta, Jr., Esquire of Kent & McBride, P.C., Wilmington, Delaware, attorney for Defendants Tanya and Jules VanSant.

HERLIHY, Judge

Plaintiff, Connie Thomas ("Thomas"), was a passenger on a DART paratransit minibus which is owned by defendant Delaware Transit Corporation ("DTC") and driven by Denise Evans ("Evans"). The minibus collided with a vehicle driven by Tanya VanSant ("VanSant").[1] Thomas claims both were at fault and that she has suffered injuries due to the collision. Evans and VanSant claim that the other was at fault, and VanSant alleges she was injured by Evans's negligent driving. This case has been divided into two parts with the liability-only trial scheduled to start on September 21, 2009.

The issue presented to the Court arises from the fact that Evans's superiors at DART determined that she was at fault in a number of minor accidents. None involve circumstances such as this accident, and there has been no finding offered to the Court about what DART determined in this matter. Evans seeks to exclude evidence of their findings and the VanSants seek to admit them.

This Court finds that these records are not probative of the issues in this case, and even if they are, their probative value is substantially outweighed by the dangers of unfair prejudice or confusion.

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[1] The vehicle was owned by Jules VanSant, Jr who is also a defendant. It is unclear what the claim is against him.

Factual Background

On May 19, 2007 Thomas was a passenger in a DART paratransit minibus owned by DTC and driven by DTC employee Evans. It is undisputed that the paratransit minibus and a vehicle operated by defendant VanSant collided on Delaware Route 2, Kirkwood Highway. As a result of the accident, Thomas and VanSant claim they suffered physical injuries.

Officer Baxley of the Delaware State Police prepared an accident report on scene after interviewing both drivers. They agreed that the DART minibus slowed to a stop while driving in the far left lane of Kirkwood Highway eastbound near Huntington Drive. When the bus slowed down, VanSant attempted to pass it on the left lane. While attempting to pass, her van collided with the minibus. This caused damage to both vehicles and injuries to the extent that Thomas and VanSant were transported to the hospital. Officer Baxley cited VanSant for improperly passing on the left. One hour following the initial investigation, VanSant then stated that the minibus crossed two lanes of traffic and struck her van. She also denied making the initial statement to Officer Baxley.[2] Evans and DTC maintain that VanSant was the sole cause of the accident. The VanSants allege that Evans's negligence was the cause of the accident and resulting injury.

[2] Thomas Compl. at Ex. A.

They claim that as the DART minibus was slowing down, VanSant shifted into the left lane and attempted to pass it. When she was trying to pass, the minibus made a sharp left turn and drove directly into her path. She states that she attempted to evade it but was unable to do so and struck the minibus.

Between May 4, 2001 and March 1, 2007, Evans was the subject of twelve DART accident reports. The findings by her superiors over that time span were that each accident was "preventable." With one exception, the findings were that Evans misjudged a distance and struck a fixed object. A few examples are illustrative:

1. May 4, 2001: "This accident occurred as you misjudged clearance while backing up, striking the vehicle behind you."[3]
2. November 7, 2002: "This accident occurred as you misjudged clearance and hit a parked car while pulling over to drop off passengers."[4]
3. April 29, 2003: "The accident occurred as you misjudged clearance

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[3] VanSants' Mot. in Opp'n of Defs. Evans and DTC's Mot. to Exclude, Ex. 2

[4] *Id.*

while turning out of a driveway, and hit a pole."[5]

4. January 31, 2006: "This accident occurred as you misjudged clearance and scraped a parked car."[6]

The other seven findings not cited above were of a similar nature, misjudging her distance between her vehicle and a fixed, non-moving object. The one notable exception is from a report dated April 7, 2006, in which her superiors found the accident preventable. "This accident occurred as you left the bus unattended with one passenger aboard when it began rolling down the street and struck three (3) parked cars."[7]

Parties' Contentions

Evans and DTC argue that evidence of Evans's prior accident record is irrelevant under D.R.E. 401 and 402. In support of that position, they rely on *Jewell v. Pennsylvania Railroad Company*[8] for the proposition that reference to

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[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] 183 A.2d 193 (Del. 1962).

other accidents is irrelevant except for a narrow, not applicable, exception. Further, they argue that evidence of this nature is inadmissible under D.R.E. 403 because its probative value is substantially outweighed by the dangers of unfair prejudice, confusion of the issue, and misleading the jury.

In response, the VanSants argue that their theory of liability is based upon Evans traveling across two lanes of traffic quickly, thus forcing VanSant to strike the minibus. They argue that evidence of prior accidents is relevant because Evans testified at a deposition that any cars behind the minibus were "quite some distance" before she started to move from the right lane to the left lane. They represent that this places Evans's ability to judge distances at issue, making the previous accidents relevant to show that she does not judge them well. Further, the VanSants argue that evidence of Evans's prior accidents indicate that DTC was negligent for allowing her to continue to drive a bus. Finally, they contend that *Jewell* is not applicable because it applies only to railroads and *Jewell* dealt with factual scenarios that were not comparable.

Discussion

The VanSants do not raise any claim of negligent entrustment in their complaint against DTC or Evans. Therefore, the argument that DTC is negligent for allowing Evans to continue to drive a bus is not proper and will not be considered as it is inappropriate at this late stage of the case.

The previous accidents are not relevant and excluded under D.R.E. 401 and 402

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[9] The facts in consequence to this case are whether the minibus unexpectedly shifted into VanSant's lane, or did she strike it while illegally trying to pass it.

Jewell v. Pennsylvania Railroad is on point. Jewell was injured while attempting to drive his car across railroad tracks. He sued the railroad, alleging it did not have proper warnings for oncoming cars. At trial, Jewell was permitted to introduce evidence of accidents that occurred at the same crossing three and four years prior to his accident. The Supreme Court reversed the Superior Court's decision to admit the evidence and held that previous accidents at railroad crossings should be rejected "as entirely unrelated to the particular accident and

[9] D.R.E. 401.

serving no purpose beyond prejudice to the defendant and the raising of collateral issues."[10] The Court went to further explain:

> The rationale of the exclusion rule is that every damage case stands upon its own particular facts and the jury's verdict should be reached without the necessity of passing upon other confusing and irrelevant issues. That the admission of such evidence would permit irrelevant issues to creep into the case being tried is apparent when it considered that if a plaintiff is permitted to show a prior accident, then in common fairness the railroad must be given the right to prove that the accident was not caused by its negligence; . . . The jury would be called upon to decide the additional issues of negligence thus created. It is possible that as many collateral issues would be presented as there were accidents proved. A real danger, therefore, exists that the jury might decide the case before them upon the irrelevant issues of fault for a prior accident. Under the circumstances, we think, no matter upon what theory such evidence is admitted, that the only real result of its admission is to prejudice the defendant. On the other hand, no prejudice can result to the plaintiff by its exclusion. We think it best, therefore, to exclude such irrelevant proof.[11]

The VanSants argue that *Jewell* should not be applied to this case because it only applies to negligence involving railroads. In support of that position they cite *Delmarva Power & Light Company v. Kirlin*.[12] While the Supreme Court in *Delmarva* recognized that *Jewell* involved a railroad, at no point did it limit the

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[10] *Jewell*, 183 A.2d at 197.

[11] *Id*. at 197-98.

[12] 608 A.2d 726 (Table), 1992 WL 53413 (Del. Feb. 19, 1992).

rule of law espoused by it. To the contrary, *Delmarva* held that *Jewell*, decided before the adoption of the Delaware Rules of Evidence, was consistent with the Rules in its approach to relevancy and admissibility of evidence,[13] thus broadening its applicability.

There is an additional reason why Evans's "accident history" is irrelevant. None of the prior accidents involved circumstances such as this case. All but one, the incident where she left a bus unattended, involved misjudging a close distance between her bus and a fixed object, such as a pole or parked car. None involved judging her speed and distance from a moving vehicle, or, more accurately, between two moving vehicles. The one exception does not involve an act of driving. In accordance with precedent and the Delaware Rules of Evidence, this Court holds that the evidence of Evans's prior accidents is inadmissible under D.R.E. 402.[14]

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[13] *Id*. at 1992 WL 53413, at *8-9.

[14] *See* N.J. Marini, annotation, *Admissibility in Civil Motor Vehicle Accident Case, of Evidence that Driver was or was not Involved in Previous Accidents*, 20 A.L.R.2d 1210 (West 2009).

The previous accidents' probative value is significantly outweighed by its prejudicial value

Assuming *arguendo* that the evidence has some relevancy as defined by Rule 401, the Court holds that its exclusion is mandated by D.R.E. 403, which states:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by consideration of undue delay, waste of time or needless presentation of cumulative evidence.[15]

Admitting evidence of twelve prior accidents creates a danger of unfair prejudice and the possibility to mislead the jury. Evans and DTC have the right to defend this suit by presenting evidence to the jury that Evans was not the negligent actor in the accident involving the minibus and VanSant. If evidence of a dozen prior accidents involving Evans is permitted, then the jury could find that Evans was negligent based solely on the fact that she has a checkered driving history; reasoning that because she was the cause of a number of earlier accidents, she must have been the cause of the accident in question.

Furthermore, admitting this evidence would create an unmanageable number of collateral issues for the jury to consider. Evans would be given the opportunity

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[15] D.R.E. 403.

to defend these allegations and show that she was not negligent in each previous accident. Furthermore, the Court is not convinced that Evans was legally negligent because the incident reports state the accident was "preventable." There is not enough information in the DART accident reports to begin to form a legal conclusion concerning Evans's negligence in each previous accident. These additional considerations would create the potential for substantial jury confusion and waste the Court's time by presenting evidence irrelevant to the accident central to this litigation.

The dangers of admitting the evidence outweigh the very slight probative value that could arguably be created by Evans's recollection of the accidents. Even if the accidents were relevant, which this Court holds are not, the evidence would still be excluded under D.R.E. 403.

Conclusion

For the above reasons, Defendants Denise Evans and Delaware Transit Corporation's motion *in limine* is **GRANTED**.

IT IS SO ORDERED.

/s/ Jerome O. Herlihy
Judge Jerome O. Herlihy