SUPERIOR COURT
OF THE
STATE OF DELAWARE

JOHN A. PARKINS, JR.
JUDGE

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Re: Linda McKinley and John L. McKinley v. Candace N. Schaedel v. John L. McKinley
C.A. No. 07C-12-034 JAP

Submitted: August 13, 2009
Decided: November 30, 2009

On Counterclaim Defendant John L. McKinley's
Motion for Judgment as a Matter of Law
DENIED.

Dear Counsel:

Mr. McKinley's car and Ms. Schaedel's car collided in an intersection when Ms. Schaedel made a left hand turn in front of Mr. McKinley, who had the right of way. The jury in this case found both Ms. Schaedel and Mr. McKinley to be negligent—apportioning 75% fault to Ms. Schaedel and

25% fault to Mr. McKinley. Mr. McKinley now moves for judgment as a matter of law, alleging that there was not sufficient evidence from which the jury could find that his negligence was a proximate cause of the accident. Viewing the evidence in the light most favorable to Ms. Schaedel, the non-moving party, a reasonable jury could find Mr. McKinley's negligence was a proximate cause of the accident and therefore, the motion for judgment as a matter of law must be **DENIED**.

Factual and Procedural History

The relevant facts are not in dispute. Mr. McKinley was traveling westbound on Porter Road approaching the intersection with Route 72 at about 40 mph, the posted speed limit. The traffic light at the intersection was solid green as Mr. McKinley approached.

Ms. Schaedel was travelling eastbound on Porter Road at approximately 40 mph as she approached the intersection with Route 72. Ms. Schaedel paused at the intersection for a second or two before making a left turn at the intersection in front of Mr. McKinley's car, which had the right of way. Mr. McKinley did not see Ms. Schaedel's car until it was right in front of him and struck the passenger side of her vehicle. Mr. McKinley

testified that he slammed on his breaks but that he did not have enough time to avoid the collision.

Ms. Schaedel admitted that she was negligent and that her negligence was a proximate cause of the accident. However, she also alleged that the accident was due, in part, to the negligence of Mr. McKinley. After a three day jury trial, a jury found that Ms. Schaedel was 75% at fault and Mr. McKinley was 25% at fault.

Mr. McKinley now seeks judgment as a matter of law pursuant to Superior Court Civil Rule 50(b). He asserts that he may have been negligent for failure to maintain a proper lookout but that his negligence was not the proximate cause of the accident.

Standard of Review

Pursuant to Rule 50, the Court will grant judgment as a matter of law where there is no legally sufficient evidentiary basis for a reasonable jury to find for a party on a claim or an issue.[1] When reviewing a motion for judgment as a matter of law, the Court must view all facts in the light most favorable to the non-moving party and deny the motion if, under any

[1] Super. Ct. Civ. R. 50(b).

reasonable view of the evidence, the jury could find in favor of the non-moving party.[2]

Discussion

Mr. McKinley testified that he was travelling about 40 mph as he approached the intersection. He further testified that there was nothing obstructing his view of the highway, but that he did not see Ms. Schaedel's vehicle until a second before the collision. Ms. Schaedel testified that Mr. McKinley's car was about 100 yards away from the intersection as she started to make her left had turn at the intersection.

Viewing the evidence in the light most favorable to Ms. Schaedel, Mr. McKinley had a clear view of her vehicle, which was turning directly into his path of travel, about 4 or 5 seconds before his car reached the intersection where the collision occurred.[3] A reasonable jury could infer from this evidence that Mr. McKinley failed to keep a proper lookout because of his testimony that he did not see the turning car until immediately

[2] *Chrysler Corp. v. Chaplake Holdings, Ltd.*, 822 A.2d 1024 (Del. 2003).
[3] If Mr. McKinley's car was travelling at 40 mph or approximately 60 feet/second, and if he was about 100 yards or 300 feet away from the intersection, it would take him 5 seconds to reach the intersection (300 feet/ 60 feet per second = 5 seconds).

before the impact. Under Delaware law the failure to keep a proper lookout constitutes negligence *per se*.[4]

There is also evidence upon which a rational trier of fact could find that Mr. McKinley's negligence was a proximate cause of the accident. As mentioned previously, there is evidence in the record that Mr. McKinley's car was 100 yards away when Ms. Schaedel began to make her left hand turn. The jury could reasonably have concluded that this allowed Mr. McKinley ample opportunity to react and take evasive action to avoid the collision.

There was no expert testimony on stopping distances and it is a close call whether, absent expert testimony, a jury could conclude that Mr. McKinley could have braked to a stop within 300 feet. According to a study published by the Commonwealth of Virginia (and incorporated in that state's motor vehicle statutes) the average stopping distance (including reaction time) for a car travelling 40 mph is between 135 and 195 feet, well within the 300 feet available (according to Ms. Schaedel's testimony) to Mr. McKinley. The Court finds that such information is not within the ken of most laypersons, and thus rejects the argument that the jury could conclude on its own that Mr. McKinley could bring his car to a stop before colliding

[4] 21 *Del. C.* § 4176.

with Ms. Schaedel.[5] This does not end the inquiry, however. There is evidence in the record that there was room for Mr. McKinley to swerve so as to avoid colliding with Ms. Schaedel. Thus, despite the absence of expert testimony on stopping distances, the jury could reasonably have concluded that Mr. McKinley's inattention was a proximate cause of the accident.

The Court may not substitute its own impressions of the evidence, or conclusions from the evidence, for those of the jury. Because there was some evidence, from which a jury could find Mr. McKinley was negligent and that his negligence proximately caused the accident, the Court must deny his motion for judgment as a matter of law.

Conclusion

For the reasons stated above, Mr. McKinley's motion for judgment as a matter of law is **DENIED**.

oc: Prothonotary

[5] *Messina v. Prather*, 42 S.W.3d 753, 763 (Mo. Ct. App. 2001) (stating that "jurors generally do not possess the specialized knowledge and training needed to calculate a vehicle's stopping distance").