

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PANAGIOTA G. SAXTON,)
) CIVIL ACTION NUMBER
 Plaintiff)
) 08C-09-102-JOH
 v.)
)
 LOUIS J. DIBIASE and)
 PHYLLIS R. SCULLY)
 Defendants)
)

Submitted: June 14, 2010

Decided: June 25, 2010

MEMORANDUM OPINION

Upon Motion of Defendant Louis Dibiase to Admit Into Evidence Photographs of Damages to the Parties' Vehicles - DENIED, in part, and GRANTED, in part

Upon Motion of Defendant Louis Dibiase to Extend Expert Deadlines - DENIED

Appearances:

Roger D. Landon, Esquire, of Murphy & Landon, Wilmington, Delaware, Attorney for Plaintiff Panagiota G. Saxton

Sherry R. Fallon, Esquire, of Tybout Redfearn & Pell, Wilmington, Delaware, Attorney for Defendant Louis J. DiBiase

Sarah B. Cole, Esquire, of Casarino Christman & Shalk, Wilmington, Delaware, Attorney for Defendant Phyllis R. Scully

HERLIHY, Judge

Defendant Louis J. DiBiase moves to admit photographs of three vehicles involved in an accident at the intersection of Old Capital Trail and Centerville Road, located behind the Price's Corner Shopping Center. Plaintiff Panagiota Saxton was the first vehicle in line on Old Capital Trail stopped at a red light. It is a T intersection. DiBiase's and Phyllis Scully's vehicles collided while heading in opposite directions on Centerville Road.¹

According to Saxton, the DiBiase pick-up truck hit her vehicle twice after the Scully vehicle hit the DiBiase vehicle.² DiBiase denies his truck hit Saxton's vehicle. His truck had construction debris in the bed which he contends was ejected from his truck landing at the front of Saxton's truck. Thus, he claims, appears to explain any "impact" Saxton felt.

There are three color photographs which counsel have supplied to the Court as well as around sixty-five or so others DiBiase has attached to his motion to admit. These three photos clearly show construction debris on the highway immediately at the front of Saxton's truck, debris on the grill, hood and at the base of the windshield. The vast majority of photos DiBiase attached to his motions are of various vehicles, vehicle parts, etc., which are not particularly tied to the accident on the issue of whether any photographs should be admitted.

¹ She and her husband, Thomas, have settled their case with DiBiase.

² Scully remains a defendant in Saxton's action.

Saxton opposes the admission of any photos. She has attached to her response a repair estimate, but it, too, is not very enlightening about the issue at hand. There is a line noting a \$345.00 replacement part to the front bumper and more cost for some other bumper parts.³ The trouble is there is no explanation offered why these parts needed replacing. Was it due to the impact of the debris or to an impact with another vehicle? The Court is left to guess. Saxton offers a Delaware State Police report which seems to indicate that debris from DiBiase's truck *and* his truck hit Saxton's truck.⁴ The report, of course, does not reveal how the investigating trooper made that determination.

Scully supports DiBiase's motion, except as to pictures of her vehicle. She claims there is a factual dispute over whether debris from DiBiase's truck hit Saxton's pick up or whether his truck did or did not hit Saxton's truck as well. Like DiBiase, she argues the pictures will assist the jury in resolving that factual dispute.⁵

The parties' arguments primarily revolve around *Davis v. Maute*.⁶ In *Davis*, the issue was whether, without appropriate accompanying expert testimony, photos of the plaintiff's vehicle showing minimal damage should have been admitted. The Supreme

³ Def.'s Resp. to Pl.'s Mot. *in Limine*, Exhibit D.

⁴ *Id.* at Ex. E.

⁵ Saxton argues that DiBiase is not presenting a "medical defense." That statement applies to Scully, too. But the "defense" is that Saxton suffered no injury in this accident. Her conditions were all pre-existing.

⁶ 770 A.2d 36 (Del. 2002).

Court said that because an improper inference of little damage equals little or no injury could be created, it was improper to admit them without the appropriate expert testimony.⁷ In addition, the Court found that the trial court's failure to give a limiting instruction that the jury was to make no correlation that minor damage implied minor injury was in error.⁸

The parties's reliance on *Davis* is misplaced . This is not the type of case that attempts to correlate the severity of the vehicle's damage, or lack there of, to the severity of the bodily injury for which compensation is sought. The issue here is whether there was one impact or two, and which vehicle collided with what. Three of the pictures clearly show construction debris all over the front of Saxton's truck. What is far from clear, however, is whether there may be damage to the front bumper of Saxton's pick-up (at left center) or what damage, if any, to her truck may have been caused by an impact from DiBiase's truck.

The bulk of the photos do not appear to have any relevance to whether there was an impact between DiBiase's truck and Saxton's truck. Several do appear to lend support to at least one impact from construction debris from DiBiase's truck. At this point, however, on the record presented, the Court cannot specify which of the other photographs besides those three, are admissible either to support there was another impact or that there was not. That record will have to be developed at trial.

⁷ *Id.* at 41.

⁸ *Id.* at 41-42.

Scully also argues no pictures of her vehicle should be admitted. She presumably makes this argument based on (1) her vehicle never hit Saxton's and (2) she is settled out of the case. Again, it is unclear why photos of Scully's vehicle are relevant, but the Court, with the record before it, is reluctant to rule with finality at this point.

Finally, DiBiase states that if an expert is needed to explain the photos in to make them admissible, he would like more time to obtain an expert.⁹ His reasons for wanting an expert and what that expert might say are unclear. Candidly, the Court sees no reason to extend any deadlines.

Conclusion

For the reasons stated herein:

1. Defendant Louis DiBiase's motion to admit photographs is **DENIED, in part, without prejudice, and GRANTED, in part.**

2. The three photographs of plaintiff Panagiota Saxton's truck will be admitted should DiBiase deny construction debris from his vehicle struck the Saxton vehicle.

3. The admission of any remaining photos is subject to a trial ruling.

4. DiBiase's request to extend the expert deadline is **DENIED.**

IT IS SO ORDERED.

J.

⁹ The trial is scheduled to start September 13, 2010.

