IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

LINDA F. PEARSON, as Administratrix of the Estate of **LAURIE W. SHAW**, and as Guardian Ad Litem for **NIKI M. DALEY** and **SEAN G. COLECCHIO,**	)	C. A. No. 01C-03-018 WLW
Plaintiffs,	)	
v.	)	
LARRY ROGERS and **BELL ATLANTIC COMMUNICATIONS INC**., a corporation of the State of Delaware,	)	
Defendants.	)	

Submitted: September 6, 2002
Decided: October 7, 2002

ORDER

On Defendants' Motion for
Summary Judgment. Denied.

Robert B. Young, Esquire, of Young & Young, Dover, Delaware, for the Plaintiffs.

Louis J. Rizzo, Jr., Esquire, of Reger & Rizzo, LLP, Wilmington, Delaware, for the Defendants.

WITHAM, J.

Estate of Laurie Shaw v. Larry Rogers
C.A. No. 01C-03-018
October 7, 2002

I. Introduction

Upon consideration of defendants' ("Rogers" or "Defendants") motion for summary judgment, and the response of plaintiffs, Linda F. Pearson as Administratrix of the Estate of Laurie W. Shaw ("Shaw" or "Plaintiff"), it appears to this Court that summary judgment should not be granted in this matter. There are genuine issues of material fact and further inquiry into these facts is necessary; therefore, Defendant is not entitled to judgment as a matter of law.

II. Background

On March 15, 2001, Plaintiff filed the Complaint against Defendants alleging that Rogers negligently operated his motor vehicle causing the motor vehicle accident that resulted in the death of the plaintiff's decedent, Shaw. The accident occurred when Rogers' vehicle pulled out in Shaw's path causing her to lose control of her vehicle in her attempt to avoid striking Rogers' vehicle.[1] Rogers claims that Shaw was 600 feet away when he pulled onto the road. Defendants have retained an expert who calculated that Shaw was traveling at a speed greater then 60 miles per hour.[2] The police report further revealed that Shaw had a blood alcohol content of 0.126%. Defendants have retained a toxicology expert who offers the opinion that Shaw was intoxicated at the time of the accident in question, and therefore was suffering from impaired reflex and reaction time. Furthermore, Defendants offer evidence that the

[1] According to the police report, the decedent's car never came into contact with the Defendant's vehicle.

[2] The posted speed limit for the road is 35 miles per hour.

State Police investigator and Defendants' accident reconstruction expert concluded that Rogers safely pulled onto the roadway in question because Shaw had ample time to avoid the collision if she had applied her brakes in a timely manner, and further that she would not have been in danger of colliding with Rogers' vehicle had she been traveling at the posted speed limit. Therefore, Defendants contend summary judgment is appropriate because there is no genuine issue of material fact, and that no reasonable jury could conclude that the Defendants' negligence was sufficient to allow recovery under Delaware's Comparative Negligence Statute.

Plaintiff claims that summary judgment is not appropriate because there are issues of material fact. Specifically, the Plaintiff denies that Shaw was traveling above the posted speed limit, and offers testimony of two witnesses that saw Shaw's vehicle as it traveled around Rogers' vehicle. Furthermore, the positioning of Shaw's vehicle at the time that Rogers pulled out of the driveway is also disputed. Plaintiff admits that the on scene BAC was 0.126%, however, the accuracy of the BAC and the resulting intoxication is denied by the Plaintiff. Plaintiff further contends that even if the facts are true as alleged by the Defendants, summary judgment is not appropriate because it is within the province of the jury to determine if Shaw's actions constitute greater than 50% proximate cause of the accident.

III. Discussion

Superior Court Rule 56(c) provides that judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any

material fact and that the moving party is entitled to a judgment as a matter of law."[3] The burden is on the moving party to show, with reasonable certainty, that no genuine issue of material fact exists and judgment as a matter of law is permitted.[4] Summary judgment should only be granted when after viewing the record in a light most favorable to the non-moving party, there is no genuine issue of material fact.[5] "If a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts, to clarify the application of the law, summary judgment is inappropriate. Moreover, if it appears to the Court that there is *any reasonable hypothesis*, by which the non-moving party might recover, the motion will be denied."[6] Summary judgment is also inappropriate when there is a "dispute as to the inferences which might be drawn from the facts of the case."[7]

Viewing the facts in the light most favorable to the Plaintiff, and accepting their well-pleaded allegations as true, it appears that there is a dispute as to the facts concerning the March 15th accident. There are numerous factual allegations in

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[3] Super. Ct. Civ. R. 56.

[4] *See Celotex Corp. v. Cattret*, 477 U.S. 317 (1986); *Martin v. Nealis Motors, Inc.*, 247 A.2d 831 (Del. 1968).

[5] *Oliver B. Connors & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. 1973); *see also Christiana Marine Serv. Corp. v. Texaco Fuel & Marine Mktg.*, C.A. No. 98C-02-217WCC, *2 (Del. Super., June 13, 2002); *McCall v. Villa Pizza, Inc.*, 636 A.2d 912 (Del. 1994).

[6] *Christiana Marine Serv. Corp.,* C.A. *No. 98C*-02-217WCC at *2 (emphasis added).

[7] *Schagrin v. Wilmington Med. Ctr., Inc.*, 304 A.2d 61, 63 (Del. Super. 1973) (citing *Vanaman v. Milford Mem'l Hosp., Inc.*, 272 A.2d 718 (Del.1970)).

dispute here including but not limited to: Shaw's speed; Shaw's distance from Rogers when he pulled onto the road; and, the effect on Shaw of having a BAC of 0.126%. In addition, Shaw, as the non-moving party, could recover if a reasonable jury found that Shaw's negligence, if any, did not represent greater than 50% of the cause of the accident.

Furthermore, issues of "negligence either on the part of a defendant or of contributory negligence on the part of a plaintiff, . . . are, *except in rare cases*, questions of fact which ordinarily should be submitted to the jury to be resolved,"[8] and thus are generally not appropriate for summary judgment unless "a moving defendant has demonstrated not only that there are no conflicts in the factual contentions of the parties but that, also, the only reasonable inferences to be drawn from the uncontested facts are adverse to the plaintiff."[9] In this case, as noted above,

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[8]Watson v. Shellhorn & Hill, Inc., 221 A.2d 506, 508 (Del. Supr. 1966) (emphasis added) (determining that summary judgment was inappropriate in this case).

[9] *Id.* (determining that summary judgment was inappropriate in this case).

The defendant also relied upon the case of *Coale v. Rowlands*, 1998 Del. Lexis 468. In *Coale*, the plaintiff was a pedestrian who abruptly walked out into traffic going 50 miles per hour, and was struck by the defendant. The Supreme Court approved the grant of summary judgment in favor of a defendant, stating that the defendant had no duty to anticipate that a pedestrian would attempt to cross a six lane, 50 mile per hour road. *Id.* Rogers claims that in the case at bar he, like the defendant in *Coale*, had no duty to anticipate any negligence by Shaw. However, this case does not lead one to determine that summary judgment is appropriate here because the defendant is relying on controverted facts to make the assumption that he owed no duty to the plaintiff, and that the plaintiff was in fact negligent. In addition, in the case at bar it was Plaintiff that was traveling along the highway and Defendant pulled out from a driveway onto the road in, according to the Plaintiff, violation of 21 *Del. C.* § 4133 (which states "A driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right-of-way to all

there are factual disputes, consequently this case does not seem to fall within the "rare cases" under which summary judgment in a negligence claim is appropriate. Consequently, the Defendants, as the moving party, have not met their burden to prove that in this case a judgment is required as a matter of law.

Wherefore, for the foregoing reasons, Defendants' motion for summary judgment is hereby ***denied.***

IT IS SO ORDERED.

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

WLW/dmh
oc: Prothonotary
xc: Order Distribution
File

vehicles approaching").