

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

MICHELE J. REID,)
) C.A. No. 01C-10-046 JTV
Plaintiff,)
)
v.)
)
MICHELLE A. HINDT and DAISY)
CONSTRUCTION COMPANY,)
)
Defendants,)
)
v.)
)
HIGHWAY TRAFFIC CONTROLLERS,)
)
Third-party Defendant.)

Submitted: August 12, 2005

Decided: August 17, 2005

William D. Fletcher, Jr., Esq., Schmittinger and Rodriguez, Dover, Delaware. Attorney for Plaintiff.

Jeffrey A. Young, Esq., Young & McNelis, Dover, Delaware. Attorney for Defendant Hindt.

Sherry Ruggiero Fallon, Esq., Tybout, Redfearn & Pell, Wilmington, Delaware. Attorney for Defendant Daisy Construction Company.

Mary E. Sherlock, Esq., Brown, Shiels, Beauregard & Chasanov, Dover, Delaware. Attorney for Third-party Defendant.

*Upon Consideration of Defendants'
Motion for Summary Judgment*

GRANTED

Vaughn, President Judge

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ORDER

Upon consideration of the motion for summary judgment filed by defendant Daisy Construction Company ("Daisy"), the plaintiff's opposition, and the record of the case, the Court finds and concludes as follows:

1. The motion is joined by third-party defendant Highway Traffic Controllers.
2. The pertinent facts are the following: Daisy Construction Company was performing highway construction activity on U.S. Route 13 northbound, north of the Woodside intersection. There were some cones in the right-hand lane which closed off that lane so that traffic passed through the immediate construction area in the left lane. Traffic had come to a stop at the construction site. The stopped traffic included the vehicle of the plaintiff, Michele J. Reid, and at least one vehicle in front of her (the Maher vehicle). Defendant Michelle A. Hindt failed to stop and rear-ended the plaintiff, who in turn struck the Maher vehicle. Ms. Reid's pre-trial testimony is that she saw signs on both sides of the road stating that traffic should slow down. She also testified that she saw a flagger on the north side of the Woodside intersection who was indicating that traffic should "come to the side," which I infer meant move to the left-hand lane. She also testified that she slammed on her brakes to avoid hitting the Maher vehicle in front of her. Her brief statement to the investigating police officer as recorded in the police report is that vehicles in front of her stopped suddenly.

3. In her deposition, Ms. Hindt stated that she did not know why vehicles were stopping. She stated that her vision was obstructed by the vehicle in front of her, which she believed to be a Suburban, in any event a large vehicle. She stated that the

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Suburban swerved to the left, which I infer means it swerved onto the median. She then struck the plaintiff. She was charged with and paid her fine for inattentive driving. Ms. Hindt testified that she was traveling 40 to 50 miles an hour before braking. The police report notes that her vehicle left 99 feet of skid marks before impact.

4. The police officer's diagram indicates that the accident was about .2 miles north of the Woodside intersection. On a drawing prepared by the officer, he shows five construction cones, three of which are in the right-hand lane and two of which are right on the center line. Other than brief statements recorded from William Maher, the plaintiff and defendant Hindt, the police report indicates that there were no witnesses.

5. In her response to the motion, the plaintiff asks me to consider deposition testimony of William Maher which was given in a separate case. I have reviewed the pre-trial stipulation which has been signed by all parties (but not executed by the Court), and Mr. Maher does not appear to be listed as a witness by any party. Nonetheless, I will consider the deposition testimony of Mr. Maher in deciding this motion. His testimony is that his vehicle was stopped for construction. He said he was at a "dead stop" and had been stopped "a couple of minutes." He said "they were letting some heavy construction machinery out up on the road a ways." He said he was then hit from behind. He also testified that he "was afraid more cars would be coming because there was cars flying all kinds of ways" and that "[t]here was a car that went across the median, whatever you call it, and another car went out in the field to avoid it." In his brief statement recorded by the investigating police officer, he said

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that he was stopped and saw a red vehicle come along side of his car on the grass and then his vehicle was struck in the rear.

6. Summary judgment should be rendered 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.¹ The facts must be viewed in the light most favorable to the non-moving party.² Summary judgment may not be granted if the record indicates that a 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.³ However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.⁴

7. Negligence actions are not ordinarily determined on motion for summary judgment, but this is not an absolute rule.⁵ When the record is such that the evidence is so one-sided that one party should prevail as a matter of law, summary judgment

¹ Superior Court Civil Rule 56(c).

² *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995); *Figgs v. Bellevue Holding Co.*, 652 A.2d 1084, 1087 (Del. Super. Ct. 1994).

³ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁴ *Wooten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

⁵ *Wooten*, 226 A.2d at 239 (explaining summary judgment is proper in automobile collision where only reasonable inference was that plaintiff's failure to see that which was in plain sight to be seen was the proximate cause of the accident).

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is appropriate.⁶

8. The plaintiff alleges that Daisy breached a duty to control the construction area and failed to warn approaching drivers of the hazardous conditions ahead. In support of her allegations, the plaintiff relies, in substance, on the evidence that vehicles had to stop, or try to stop, suddenly and were “flying all kinds of ways”; that there was heavy machinery being moved across the road ahead at the construction site; that Daisy failed to have at least two flaggers at the scene as required by its contract with the State of Delaware; and that it had an insufficient number of cones in place. This last argument has to do with the length of the line of cones in the right lane which funneled traffic to the left lane. The drawing of the police officer who investigated the accident shows only five cones (it is unknown from the record whether the officer intended his drawing to be to scale or not). Three of the cones are in the right-hand lane and the last two are right on the center line. The plaintiff contends that there are disputed issues of fact, including what caused cars to “fly all kinds of ways,” the number of flaggers at the site, and the number of cones.

9. Based upon this record, however, I conclude that the plaintiff cannot meet her burden of proving by a preponderance of the evidence that negligence on the part of Daisy Construction Company proximately caused the accident. Even when the evidence is viewed in the light most favorable to the plaintiff, the event, act or omission which caused traffic to have to stop suddenly is unexplained, apart from the

⁶ *Thurmon v. Kaplin*, 1999 Del. Super. LEXIS 288, *at 2 (citing *Burkhart v. Davies*, 602 A.2d 56, 59 (1991)).

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inference of inattention on the part of one or more drivers. Even if there were less than two flaggers on the site and even if the line of cones was unusually short, a jury could not, on the record of this case, conclude by a preponderance of the evidence that these factors, or any other acts or omissions by Daisy, were a proximate cause of the accident. The evidence does not establish a connection between Daisy's conduct and the accident. Any judgment against Daisy would be based on conjecture and speculation.

10. No evidence has been presented which would serve as a basis for liability for Highway Traffic Controllers.

11. I conclude that the factual disputes that do exist are not material, that there is no genuine issue as to any material fact, and that Daisy Construction Company and Highway Traffic Controllers are entitled to judgment as a matter of law. The motion for summary judgment is ***granted*** as to both of these defendants.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File