

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRI CANNON, n/k/a	§	
TERRI THORPE,	§	No. 253, 2000
	§	
Plaintiff Below,	§	
Appellant,	§	
	§	
5.	§	Court Below: Superior Court
	§	of the State of Delaware
AMBER RHAЕ HITCHENS,	§	in and for Kent County
	§	C.A. No. 96C-10-034
Defendant Below,	§	
Appellee.	§	

Submitted: November 28, 2000

Decided: February 14, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices.

ORDER

This 14th day of February, 2001, upon consideration of the briefs of the parties, it appears to the Court that:

1) Terri L. Cannon, now known as Terri L. Thorpe, appeals from an adverse jury verdict in her personal injury action against Amber Rhae Hitchens. Thorpe argues that the Superior Court erred in: (i) instructing the jury that it must find her negligent as a matter of law; and (ii) refusing to permit extrinsic evidence of Hitchens' prior inconsistent statements.

2) The accident that forms the basis for Thorpe's claim occurred on a rainy night shortly after Thorpe turned off Milford-Harrington Road onto Deep Grass Lane.

Almost as soon as she turned, Thorpe realized that she was heading in the wrong direction and that she needed to turn around. Thorpe spotted a driveway to a house on the opposite side of the road. She put on her left blinker and started across Deep Grass Lane when Hitchens, who was traveling behind Thorpe, hit the rear driver's side of Thorpe's car. Thorpe testified that she was traveling at about 30 miles per hour and that there was no oncoming traffic preventing her from making a left turn into the driveway. At the time of impact, Thorpe's car was perpendicular to the road, in the opposing lane of traffic.

3) The trial court instructed the jury that, if Thorpe violated any of four motor vehicle statutes, the jury must conclude that Thorpe was negligent. After summarizing each statute, the court said, "I must instruct you that the evidence presented establishes, as a matter of law, that Mrs. Thorpe turned her vehicle so as to proceed in the opposite direction while interfering with other traffic, in violation of 21 *Del.C.* § 4153, and so must be found negligent by you."

4) We find that the trial court erred in giving this instruction. "Generally, questions as to the existence of negligence are reserved for the trier of fact."¹ This issue may be removed from the jury only if, viewing the facts in the light most

¹ *Triebel v. Sabo*, Del. Supr., 714 A.2d 742, 745 (1998).

favorable to Thorpe, no reasonable juror could find in her favor.² Here, the facts could support a finding that Thorpe did not violate any motor vehicle laws in attempting her turn. If, as she claims, Thorpe was attempting to pull all the way into the driveway, after checking for oncoming traffic and putting on her turn signal, the jury could find that Thorpe acted prudently and did not interfere with other traffic.

5) Thorpe also argues that the trial court erred in excluding certain medical records offered to impeach Hitchens. At trial, Hitchens stated that she was traveling 35 - 40 miles per hour at the time of the accident, but her doctor's report says that she was going 50 miles per hour. On cross-examination, Hitchens agreed that her doctor's report indicated that she was going 50 miles per hour. Since Thorpe was able to impeach Hitchens without introducing her medical records, we find no abuse of discretion in the trial court's decision to exclude the extrinsic evidence.³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is REVERSED, and the matter is REMANDED for a new trial. Jurisdiction is not retained.

² *Ibid.*

³ See: D.R.E. 613(b).

BY THE COURT:

/s/ Carolyn Berger
Justice