

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARLENE OWENS,	§	
	§	No. 302, 2003
Plaintiff Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
KENNETH W. KELLY,	§	C.A. No. 98C-05-205
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: November 25, 2003

Decided: December 10, 2003

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 10th day of December 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The plaintiff below-appellant, Darlene Owens, appeals from (a) a Superior Court judgment based upon a jury verdict in favor of the defendant below-appellee, and (b) from the trial court's denial of the plaintiff's motion for a new trial, in an action to recover damages for personal injuries. We find no merit to the appeal and, accordingly, affirm.

(2) The Superior Court action arose out of an automobile collision on U.S. Route 13 in Kent County, Delaware. The plaintiff (together with three friends) was a passenger in a minivan being operated by another friend, James Green. At the time of the collision, Green was driving in a northerly direction in the right hand lane on U.S. 13. The defendant was attempting to cross Route 13 on a secondary road coming from the west. The defendant first crossed the southbound right-of-way and stopped his car in the

median. According to the defendant's testimony, he then looked both ways before entering the northbound right-of-way and did not see the Green vehicle approaching. The defendant also testified that as he started across the median, his car stalled momentarily (an event that had never occurred before) and then proceeded to cross, only to be struck seconds later by the Green vehicle.

(3) At the trial, Green testified that he did not see the defendant's car until he was only a few feet away from impact, and that before the impact he (Green) had been focusing his eyes directly on what was in front of him, in "tunnel vision." As noted, the jury found in favor of the defendant and the plaintiff moved for a new trial, which the trial court denied.

(4) The plaintiff advances two arguments on appeal. First, she argues that no reasonable jury could have returned a verdict for the defendant. Second, she argues that the trial court abused its discretion in denying the plaintiff's motion for a new trial. Neither argument is supported by the record.

(5) In reviewing the grant or denial of a new trial, this Court reviews for abuse of discretion.¹ Where, as here, the motion for a new trial is based solely on the weight of the evidence, this Court is bound by the jury verdict unless it is "at least against the *great* weight of the evidence."² In this case the evidence was sufficient to support a jury verdict that the plaintiff failed to prove that the accident was caused by the defendant's negligence. Based on the proof, the jury could have found that but for the unforeseeable stalling of the defendant's car (which occurred through no fault of the defendant), the

¹ *James v. Glazer*, 570 A.2d 1150, 1156 (Del. 1990).

² *Id.*, quoting *Storey v. Camper*, 401 A.2d 458, at 465 (Del. 1979).

collision would not have occurred. The jury could also have found that the accident was caused by the plaintiff's driver, Green, because it was dark and because Green was focused solely on the lane on which he was driving and was not observing what was going on around him, including the intersecting right-of-way

(6) Nor is there merit to the plaintiff's claim that the trial court abused its discretion in denying her motion for a new trial. Although the plaintiff asserts that the verdict was "against the great weight of the evidence,"³ she has not demonstrated that proposition. The plaintiff contends that the trial court did not, in fact, weigh the evidence, but instead denied the motion because there was "some evidence" to support the verdict, thereby erroneously applying a "summary judgment" standard. In fact, the plaintiff argues, the weight of the evidence demonstrated negligence on the defendant's part.

(7) This argument, however ignores the trial court's ruling that:

A reasonable jury could have determine that but for the unforeseen event of stalling, the defendant could have had time to safely enter the roadway...[T]he jury could have reasonably found that, but for the stalling episode, the collision would not have occurred. Because there was no evidence to suggest that the defendant knew or should have known his vehicle would stall in this fashion, it is reasonable that the jury concluded that the defendant was not negligent.⁴

³ *Storey v. Camper*, 401 A.2d at 465.

⁴ Opinion of Superior Court dated April 22, 2003, at 2 (Appended to appellant's Op. Br.).

The appellant does not come to grips with this reasoning in her brief, other than to assert (but without demonstrating in a reasoned way) that the trial court's reasoning is flawed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs