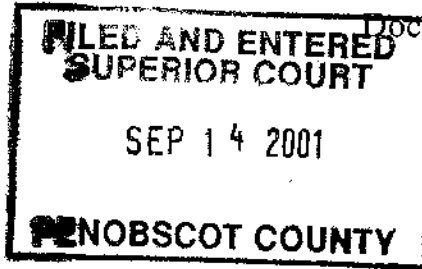


STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT

Docket No. CV-00-154



Patrick McKenney et al.,)
 Plaintiffs)
)
)
 v.)
)
)
)
)
)
 Georgeanne L. Jackson et al.,)
 Defendants)

ORDER ON MOTION
FOR SUMMARY JUDGMENT

Pending before the court is defendant Georgeanne L. Jackson's motion for summary judgment on the claims made against her by both plaintiffs. The court has considered the parties' submissions associated with the motion.

In support of their positions, both Jackson and the plaintiffs have filed statements of material fact. The plaintiffs' statement of material fact, however, fails to satisfy the requirements of rule 56(h) because it does not specifically "deny" or "qualify" those matter that they appear to controvert and because their statement fails to make reference to the numbered paragraphs of Jackson's statement that they appear to controvert. Because the plaintiff's rule 56(h) statement is defective, Jackson's statement of material fact is deemed admitted. *See Prescott v. State Tax Assessor*, 1998 ME 250, ¶ 6, 721 A.2d 169, 172.

Summary judgment is proper only if the record on summary judgment shows that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. *See* M.R.Civ.P. 56. To survive a motion for a summary judgment, the opposing party must produce evidence that, if produced at trial, would be sufficient to resist a motion for a judgment as a matter of law; "[t]he plaintiff must establish a *prima facie* case for each element of the cause of action." *Rodrigue v.*

Rodrigue, 1997 ME 99, ¶8, 694 A.2d 924, 926.

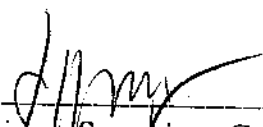
Here, the record on summary judgment establishes that Jackson, who was behind the vehicle occupied by the plaintiffs, was stationary as she and plaintiff Stevens (the operator of the vehicle in which plaintiff McKenney was a passenger) waited for a traffic light to change. The front of the Jackson vehicle was twelve feet behind the rear of the Stevens vehicle. Jackson had been stopped for at least several seconds when the rear of her vehicle was struck by the vehicle operated by defendant Merry.

This record does not generate a factual or legal claim that Jackson operated her vehicle negligently. Contrary to the plaintiffs' argument, there does not exist a genuine issue of factual dispute either that Jackson was speeding or travelling too fast for existing conditions (indeed, she was not moving at all when Merry struck her vehicle) or that she stopped too close to the Stevens vehicle.

The entry shall be:

Summary judgment is entered for defendant Georgeanne L. Jackson on all claims made against her. She is awarded her costs of court.

Dated: September 14, 2001



Justice, Superior Court
Jeffrey L. Hjelm

Date Filed 8/7/2000 PENOBSCOT County Docket No. closed CV-2000-154

Action PERSONAL INJURY
ASSIGNED TO JUSTICE JEFFREY L. HJELM

PATRICK MCKENNEY and
KELLIE RAE STEVENS

GEORGEANNE L. JACKSON and
vs. JEFFREY E. MERRY

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FOR: Jeffrey Merry

Date of
Entry

8/7/00

Complaint filed.