

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Cynthia Sue Heider, Admr.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-115
Ohio Department of Transportation,	:	(Ct. of Cl. No. 2008-06521)
Defendant-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on August 21, 2012

Barkan & Robon Ltd., Marvin A. Robon, R. Ethan Davis, and Larry E. Yunker, II, for appellant.

Michael DeWine, Attorney General, Eric A. Walker and Emily M. Simmons, for appellee.

APPEAL from the Court of Claims of Ohio

TYACK, J.

{¶ 1} Cynthia Sue Heider, as the Administrator of the Estate of Dr. Matthew J. Heider, is appealing from the Court of Claims of Ohio granting summary judgment in favor of the Ohio Department of Transportation ("ODOT"). She assigns three errors for our consideration:

1. The Ohio Court of Claims erred in applying collateral estoppel where the issue decided by the Third District Court of Appeals differed from the issue presented to the Ohio Court of Claims.
2. The Ohio Court of Claims erred in relying upon dicta when disposing of this matter upon dispositive motion.

3. The Ohio Court of Claims erred when it applied issue preclusion without mutuality of parties.

{¶ 2} Dr. Heider died in a motor vehicle collision that occurred on November 14, 2006 at an intersection with a traffic light. Counsel for his estate has alleged that the traffic light was malfunctioning, which was a contributory factor to the collision.

{¶ 3} Counsel filed lawsuits in both the Allen County Court of Common Pleas and in the Court of Claims. The Court of Claims stayed its case while the Allen County case proceeded first to judgment and then to direct appeal.

{¶ 4} The Allen County litigation did not turn out favorably for Dr. Heider's estate. The trial court found that the collision was the result of Dr. Heider running a red light. The trial court did not find any evidence that the traffic light was malfunctioning or that any other factor was a proximate cause of the collision and Dr. Heider's resulting death.

{¶ 5} The Third District Court of Appeals affirmed the judgment of the Allen County Court of Common Pleas. *Heider v. Siemens*, 3rd Dist. No. 1-10-66, 2011-Ohio-901. The Court of Claims then relied at least in part on that judgment in granting summary judgment for ODOT. The Court of Claims reasoned that the issue of the malfunctioning or proper functioning of the traffic light had been fully litigated, and ODOT could not be held responsible for the collision.

{¶ 6} Counsel for the estate contests the judgment of the Court of Claims based upon its use of the judgment of the Third District Court of Appeals. All of counsel's issues presented in the assignments of error heavily overlap and therefore will be addressed together.

{¶ 7} Civ.R. 56(C) states that summary judgment shall be rendered forthwith if:

[T]he pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

{¶ 8} Accordingly, summary judgment is appropriate only where: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Tokles & Son, Inc. v. Midwestern Indemn. Co.*, 65 Ohio St.3d 621, 629 (1992), citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 65-66 (1978). In the summary judgment context, a "material" fact is one that might affect the outcome of the suit under the applicable substantive law. *Turner v. Turner*, 67 Ohio St.3d 337, 340, (1993). When determining what is a "genuine issue," the court decides if the evidence presents a sufficient disagreement between the parties' positions. *Id.* "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record * * * which demonstrate the absence of a genuine issue of fact on a material element of the non-moving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). Once the moving party meets its initial burden, the non-moving party must then produce competent evidence showing that there is a genuine issue for trial. *Id.* Summary judgment is a procedural device to terminate litigation, so it must be awarded cautiously with any doubts resolved in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59 (1992).

{¶ 9} De novo review is well established as the standard of review for summary judgment. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). We stand in the shoes of the trial court and conduct an independent review of the record applying the same summary judgment standard. As such, we must affirm the trial court's judgment if any of the grounds raised by the moving party are found to support it, even if the trial court failed to consider those grounds. See *Dresher; Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 41-42 (9th Dist.1995).

{¶ 10} Counsel for the estate acknowledges ODOT's assertion that the judgment of the Third District Court of Appeals precludes relitigation of the issue of whether or not the traffic signal malfunctioned. "A valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379 (1995), syllabus.

{¶ 11} However, counsel for the estate asserts that the issues in Allen County and the issues in the Court of Claims are not precisely the same and therefore the issues in the Allen County litigation do not preclude the possibility for liability as to ODOT. Specifically, counsel asserts:

There is a subtle but extremely important distinction between the issue that was decided by the Third District Court of Appeals and the Issue presented to this Court. The Third District Court of Appeals decided that Appellant had not produced enough evidence to raise an issue as to whether the traffic signal had malfunctioned at the time of the crash. Whereas, the issue presented to this Court and to the Ohio Court of Claims is whether the traffic signal and its timing was improperly **engineered** and/or whether the traffic signal and its timing were improperly **maintained**. The gist of this distinction is that a traffic signal may be functioning properly insofar as it was programmed but it may at the same instance be **programmed improperly such that it violates the expectations of drivers and thus is proximate cause of an accident**.

(Emphasis sic.)

{¶ 12} The estate's theory of improper programming is relevant if it can set forth some evidence that the Suburban and the tanker entered the intersection on simultaneous green lights. Alternatively, it posits that Dr. Heider's green light was of such a short duration that it confounded Dr. Heider's expectations thus contributing to the proximate cause of the accident.

{¶ 13} A key portion of the Allen County litigation was the testimony of Bryan McClure, an independent witness, that Dr. Heider entered the intersection after the light turned red. McClure testified that the light had turned red three seconds before Dr. Heider entered the intersection and that he had plenty of time to stop. McClure also testified that the light turned yellow when Dr. Heider was about one-half to one-third of a mile from the intersection.

{¶ 14} Ronald Funk, the driver of the tanker truck, testified that he had a green light for approximately 40 seconds before the collision. He testified that he entered the intersection on a green light, and he could see the reflection of the red light facing Dr. Heider. Funk saw Dr. Heider's oncoming Suburban and realized it was not going to stop.

{¶ 15} Given this evidence, difficulties with the functioning of the traffic control device on other occasions could be considered irrelevant. If Dr. Heider ran a red light and pulled in front of a tanker truck which had a green light and had had a green light for a significant period of time, Dr. Heider's disregarding the traffic signal could be considered the sole proximate cause of the collision and his resulting death for purposes of the Allen County litigation. As a result, the programming of the traffic control device did not matter. Still, the issue was specifically addressed by the Third District Court of Appeals, which found sufficient evidence to rule out a malfunctioning of the traffic light.

{¶ 16} The Third District Court of Appeals found that the testimony of alleged prior light malfunctions was irrelevant for purposes of showing the traffic light malfunctioned on the night of the accident. *Heider* at ¶ 38. The court further noted that all the direct evidence demonstrated that the traffic light was functioning correctly on the night of the accident, and the light had passed all 348 systems tests both prior to the accident and two days after the accident. *Id.* This led the court to conclude there was no genuine issue of material fact with regard to whether or not the traffic signal malfunctioned or whether or not Dr. Heider ran the red light on the night of the accident. *Id.* at ¶ 39. Counsel for the estate disagrees and reasons as follows. Funk testified that he had a green light for one-half a mile and that he was traveling westbound at 40 to 45 miles per hour just before the accident. Assuming a speed of 45 miles per hour, Funk had a continuous green light for at least 40 seconds. Witness Bryan McClure testified that Dr. Heider had a green light when he was one-third of a mile from the intersection and was traveling southbound at 45 miles per hour. At a constant speed of 45 miles per hour, it would take a vehicle 24 seconds to travel one-third of a mile. Therefore, according to counsel for the estate, the traffic signal must have displayed green for southbound traffic just 24 seconds prior to the accident. Given that Funk testified that he had an uninterrupted green signal for 40 seconds prior to the accident, a simultaneous green light must have presented some portion of the time in the minute leading up to the accident.

{¶ 17} We disagree. There was no evidence the traffic light was programmed to show simultaneous green lights. The issue of simultaneous green lights presumes a malfunction of the traffic light's conflict monitor. The conflict monitor causes the traffic

lights to flash red or opposite directions of traffic if the traffic signals mistakenly display green lights for opposite directions of traffic. There was no evidence the conflict monitor was working improperly as the system tests referenced previously included tests on the conflict monitor.

{¶ 18} Counsel for Dr. Heider's estate engaged an expert witness who concluded that ODOT was responsible or contributed to the accident in the following ways. First, the expert stated that the signal box was not properly grounded which caused problems in functionality. This issue was specifically addressed by the Third District Court of Appeals which found no evidence of improper grounding. Second, the expert concluded that the programming of a minimum four seconds on a green light was too short of a time to allow safe passage through this intersection. Even if true, there was no evidence that Dr. Heider had a green light for only four seconds. This hypothesis was repudiated by independent witness Bryan McClure who testified that the light had turned red three seconds before Dr. Heider entered the intersection and that he had plenty of time to stop. Third, the expert concluded that the ODOT technicians did not comprehend the complexity of the systems or the potential for system signal failures. Even if true, this conclusion is not material given that the evidence showed the traffic signal was operating properly at the time of the accident. Fourth, the expert contended that ODOT did not follow appropriate governmental standards in recording what was changed in the controller when there were six unscheduled stops at the intersection. Again, this is irrelevant given the evidence of no malfunction at the time of the accident. Fifth, the expert opined that the combination of passage time (the duration of the green light) deficiency and the short green interval was a major contributing factor to the crash. This conclusion requires the assumption that Dr. Heider only had a four-second green light, and furthermore the assumption flies in the face of independent witness testimony that the light turned red three seconds before Dr. Heider entered the intersection giving him ample time to stop. Finally, the expert states that the actions of ODOT made the intersection of Allentown Road and Eastown Road more dangerous. Even if true, there is no evidence any such actions contributed to or were the proximate cause of the collision.

{¶ 19} Based upon the litigation conducted in Allen County and the ruling of the Third District Court of Appeals, the Court of Claims was correct to grant summary

judgment. The past malfunction of the traffic control devices is not proof that the devices malfunctioned at or near the time of the collision. The programming of the traffic control devices may have been open to questions based upon previous occurrences where drivers felt that they did not have adequate time to clear the intersection, but those problems do not establish liability for ODOT where a driver runs a red light and pulls out in front of a tanker truck that is proceeding lawfully.

{¶ 20} The issues really were the same. The comments of the Third District Court of Appeals concerning no malfunction could be considered dicta, but only because the argument that the traffic control device was not functioning properly was irrelevant to the liability issue, given the eyewitness testimony before the trial court. The decision of the Third District Court of Appeals that the light was functioning properly at the time of the accident ruled out the possibility of contributory or comparative negligence. The interests of the estate in both sets of litigation were the same, even if the parties were not precisely the same. Ohio law does not insist on mutuality in defensive collateral estoppel cases, but does insist on a fair opportunity to fully litigate the issue. *McAdoo v. Dallas Corp.*, 932 F.2d 522, 525 (6th Cir.1991). All the courts that considered the claims of the estate had the entire record to review.

{¶ 21} The three assignments of error are overruled. The judgment of the Court of Claims of Ohio is affirmed.

Judgment affirmed.

BROWN, P.J., and FRENCH, J., concur.
