

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: May 24, 2018]

LESLIE DOMINGUEZ and  
MARIE B. DOMINGUEZ

VS.

WILFREDO ROSA OTERO

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C.A. No. PC-2015-1900

**DECISION**

**(Regarding Motion for New Trial)**

**LANPHEAR, J.** This matter came on for hearing before the Court on Plaintiffs’ Motion for New Trial. This case was tried for two days before a jury. The jury returned a verdict for Defendant finding the absence of any negligence.

On December 8, 2014, a motor vehicle collision occurred at the intersection of Douglas Avenue and Eaton Street in Providence. The intersection is oddly configured in that it has a red-light, but some four different roads travel through or end at the intersection, or within a few feet of it. Leslie Dominguez<sup>1</sup> and Wilfredo Otero were driving on Eaton and Donelson Streets, respectively. The streets do not squarely face one another, but receive the same traffic-light signal.

In *Quillen v. Macera*, 160 A.3d 1006, 1011 (R.I. 2017), the high court recited the time-honored standard for considering a motion for a new trial. See *R.I. Managed Eye Care, Inc. v. Blue Cross & Blue Shield of Rhode Island*, 996 A.2d 684, 695 (R.I. 2010). In this role, “the trial

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<sup>1</sup> Marie B. Dominguez was the owner of Leslie’s motor vehicle.

justice should review the evidence and exercise his or her independent judgment ‘in passing upon the weight of the evidence and the credibility of the witnesses.’” 996 A.2d at 695.

### **The Evidence**

The Court will review the evidence presented but limit its discussion on damages, as the jury failed to find the Defendant negligent.<sup>2</sup> Hence, the jury never reached the issue of damages.

The first witness to testify was Leslie Dominguez, the Plaintiff-driver. A housecleaner, she described how the car was used for different family members to get to work. When she approached the intersection from Eaton Street to turn left onto Douglas Avenue, she noticed Defendant’s vehicle stopped at the intersection. She testified that as she travelled through the intersection at about 10 mph, Mr. Otero’s car suddenly accelerated around her, striking her car. Her air bags deployed and she received injuries to her chest, hand, thumb and lower back. Her car was towed after police arrived. On cross-examination, she acknowledged that she stopped and saw Mr. Otero’s vehicle but she moved when he stayed at a stop, even after her light signal turned green.

Mr. Carrillo testified next. He was a passenger in Plaintiff’s vehicle and previously dated Leslie. He testified that the Dominguez vehicle stopped at the intersection and when the light turned green, Mr. Otero’s car did not move. He thought that Mr. Otero did not have a green light, and stated that the Dominguez car moved first. He testified that Mr. Otero’s vehicle accelerated to the right and struck their car. The two drivers got out of the car and a quarrel escalated. He pushed the Dominguez car out of the intersection as it was inoperable. On cross he stated that, “we saw the Otero car coming after we already started moving.”

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<sup>2</sup> The car was financed upon purchase, though it may not have been insured for this loss. As a result, Plaintiffs incurred significant expenses for medical expenses and continuing to pay ongoing loan costs for an inoperable vehicle since 2014.

The Court found each of these witnesses to be consistent throughout and consistent with one another. But for the description of which car hit the other, their testimony appeared credible.

Mr. Otero testified next. Called by the Defendant, he testified out of turn. He testified that his car was travelling west on Donelson Street, intending to continue onto Eaton Street, across the odd intersection. There were five people in his vehicle. He testified that he noticed no other cars and did not see the Dominguez vehicle until “she was right on top of me.”

The photographic evidence shows that the front left of the Dominguez vehicle contacted the front left corner of the Otero car. Oddly, Mr. Otero also testified that he would have stopped if another car was moving at the intersection. On cross, he testified that although they had just left a family visit, there was no talking in his vehicle. After he acknowledged that his wife was talking, he stopped answering cross-examination questions directly, so the Court questioned his credibility. He acknowledged that his wife told him to slow down and watch out.

Maria Dominguez, the owner of the vehicle and Leslie’s mother, testified extensively about damages as did other witnesses. She was not at the scene of the collision.

Albana Rosa was a witness for the Defendant. She was a passenger in the Otero vehicle and sat behind the driver. She testified that Mr. Otero’s vehicle had stopped, began moving after the light turned, and the other car failed to slow at all. Ms. Rosa and Mr. Otero were consistent, but their credibility is lessened by the testimony that they could not see the other car before entering the intersection, there was no talking, and they never denied staying stopped at the light even after it turned green.

### **Analysis**

While the Court found the version of the Plaintiff more credible and consistent, that is not the sole standard to apply on a motion for new trial. While the Court may have found that there

was *some* comparative negligence for the Otero vehicle to enter the intersection after the Dominguez vehicle had already done so<sup>3</sup>, the jury may have been appropriate in doing so. The Dominguez vehicle struck the side of the Otero vehicle inferring that Mr. Otero had entered the intersection at approximately the same time, and no witness was devoid of credibility. Rather, the Court believes that each of the witnesses was trying to recollect what they remembered to be true from different vantage points. The motion for a new trial is, frankly, a close call.

For guidance, the Court turns to a recent but strikingly similar case decided just a few months ago. In *Zarembka v. Whelan*, 176 A.3d 485 (R.I. 2018), plaintiff attempted to turn left at an intersection where defendant continued straight. The jury returned with a decision for the defendant, although the trial judge instructed on burden of proof, duty of care and comparative negligence. The trial judge concluded, as this Court now does, that reasonable minds could differ on the outcome of the case. There, as here, the Court cannot find that either party had significant credibility issues, but their respective accounts of the collision were incompatible.

This Court is particularly concerned that Mr. Otero, in entering the intersection before it was clear, even after his wife urged him to “watch out,” should bear some liability under our state’s law on comparative negligence. See G.L. 1956 § 9-20-4.

### **Conclusion**

For the reasons stated, Plaintiffs’ Motion for New Trial is denied.

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<sup>3</sup> G.L. 1956 § 31-17-3.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Leslie Dominguez and Marie B. Dominguez v. Wilfredo Rosa Otero

**CASE NO:** PC-2015-1900

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** May 24, 2018

**JUSTICE/MAGISTRATE:** Lanphear, J.

**ATTORNEYS:**

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For Defendant: Erin Illuzzi, Esq.; Shaun Thomas Hogan, Esq.