IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

GOVERNMENT EMPLOYEES INSURANCE COMPANY, a foreign corporation, as subrogee of SAMUEL BATSON, and SAMUEL BATSON, Individually,	)	
Plaintiffs,	)	C.A. No.: 2005-04-311
v.	)	
HARRIS PATRICK MURPHY	)	
Defendant.	)	

Submitted: November 10, 2005
Decided: December 6, 2005

FINAL ORDER AND OPINION

The plaintiffs, Government Employees Insurance Company ("GEICO"), and Samuel Batson, individually filed this subrogation action against the defendant, Harris Patrick Murphy ("Murphy"), to recover money damages for a car accident that allegedly occurred on September 28, 2004. GEICO's complaint demands judgment in the amount of $1,364.45 in addition to individual plaintiff Samuel Batson's ("Batson") $250.00 deductible, with prejudgment and post-judgment interest plus costs. Trial took place on November 10, 2005. Following the receipt of the evidence and conclusion of testimony, the Court reserved decision. This is the Court's Final Order and Decision

THE FACTS

The Court finds the relevant facts as follows. On or about September 28, 2004, Batson drove to Wawa Market at the intersection of Route 42 and Route 1, at 9:15PM.

Wawa's parking lot runs parallel to Route 1 South.[1] Several parking spaces face the entrance door to Wawa, and there are additional spaces facing in the opposite direction towards Route 1. Running between these parking spaces, and alongside the perimeter of the parking lot, are designated fire lanes. Two entrances to the Wawa exist: one from Route 1 South and another from Route 42 East. Harris Murphy ("Defendant") entered the Wawa parking lot from Rt. 24 East. He observed other vehicles in the parking lot, some parked and others moving. Defendant drove towards an area where he believed he could find parking. Upon realizing that he mistakenly drove into the fire lane, he decided to reverse his vehicle. While reversing, he struck the back of Batson's vehicle.[2]

During Batson's direct examination, he testified that he entered Wawa's parking lot from Route 1 South. This area is also a fire lane, and he claimed that defendant collided with his vehicle while reversing from a parking space that faced the front entrance of Wawa. On cross-examination, he could not recall where defendant's vehicle was located; nor could he recall for certain if defendant's vehicle was parked. However, defendant argues that prior to reversing his vehicle, he believed he checked to ensure that nothing obstructed his path. Batson's car was damaged but neither he nor defendant sustained any physical injuries as a result of the collision.

Following the accident, Batson claimed that defendant provided him with his phone number and agreed to pay for the damage to Batson's vehicle. Both drivers left the scene. Batson claims that he filed a police report on September 30, 2004, two days after the accident, because his attempts to contact defendant were allegedly unsuccessful. An officer at Delaware State Police Department's Troop 3 processed the police report,

[1] Plaintiff's Exhibits Nos.: 1-12 are photographs of the parking lot.
[2] Defendant's Exhibits Nos.: 1 and 2 are photographs of the damage to Batson's vehicle.

and to date, no traffic citations had been issued against defendant. For the damage to Batson's car, GEICO claims auto repair bills totaling $1,384.45, and Batson testified having received a check from GEICO for this amount.

GEICO argues that the defendant was negligent and careless in that he failed to keep a proper lookout in violation of 21 Del. C. § 4176; failed to give full time and attention to the operation of the vehicle he was operating in violation of 21 Del. C. § 4176; failed to maintain appropriate control of the vehicle he was operating; operated a vehicle in a careless and inattentive manner in violation of 21 Del. C. § 4176; and finally allegedly operated the vehicle in a willful and wanton disregard for the safety of persons or property, in violation of 21 Del. C. § 4175.

THE LAW

Plaintiff has the burden of proving its claims by a preponderance of the evidence. A preponderance of the evidence is defined as, "[T]he side on which the greater weight of evidence is found." Bishop v. Trexler, UIAP Appeal Docket No. 430087 (Mar. 31, 2004), at 2, rev'g Decision of Appeals Referee (Feb. 24, 2004), (quoting Taylor v. State, 2000 WL 313501, at *2 (Del.Supr.)). Additionally, to prevail in a negligence action, "…a plaintiff must show, by a preponderance of the evidence, that a defendant's negligent act or omission breached a duty of care owed to plaintiff in a way that proximately caused the plaintiff's injury." *Duphill v. Delaware Electric Cooperative, Inc.,* Del.Supr., 662 A.2d 821, 828 (1995); quoting *Culver v. Bennett,* Del.Supr., 588 A.2d 1094, 1096-97 (1991).

The violation of a Delaware statute enacted for the safety of others is evidence of negligence per se. *Id.* at 828. Further, a finding of negligence by the defendant, standing

alone, will not sustain an action for damages unless it is also shown to be the proximate cause of plaintiff's injury. *Id*. At 828. "In Delaware, proximate cause is one 'which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.'" *Id*. at 829.

DISCUSSION

The Court finds that GEICO has not shown by a preponderance of the evidence that defendant Murphy breached his duty of care owed as a reasonably prudent driver under the circumstances. Nor has GEICO show that defendant's breach of said duty legally and proximately caused the accident with Samuel Batson's automobile. The evidence at trial clearly indicated that defendant checked to ensure that nothing obstructed his path before he began reversing his vehicle. GEICO provided no evidence in the form of direct testimony or otherwise to support a finding by a preponderance of the evidence, that plaintiff has shown to the Court that defendant was, in fact, operating his motor vehicle in a negligent or careless manner.

Batson's factual testimony with regards to defendant's vehicle being parked in a legitimate spot when he entered the parking lot from Route 1 also conflicts and is diametrically opposed to defendant's account that his car was in reverse motion and heading towards the area where parking spaces were located. Furthermore, Batson admitted that he could not recall where defendant's car was allegedly parked; nor was he paying attention to other motor vehicles in the Wawa parking lot. Even if any citations had been issued against defendant, which has not occurred under *Duphill,* defendant is still not liable to plaintiff unless plaintiff can show, by a preponderance of the evidence, that defendant's breach was the legal and proximate cause of the damage to Batson's

vehicle. Del.Supr., 662 A.2d 821, 828 (1995). Even further, Batson's admission that he was paying attention to other cars while stopped in a busy fire lane could qualify as an intervening cause, thus breaking the requisite chain of proximate causation. *See Id.* at 829. Finally, as to issues of credibility, both plaintiff's and defendant's evidence were equally balanced.

This Court further concludes that Batson individually has not met his burden by a preponderance of the evidence. Nor has GEICO met its burden by a preponderance of the evidence in all other Counts in the complaint. Both the deductible of $250.00 by Batson and amount claimed by GEICO are **DENIED** as failing to meet the preponderance of evidence standard.

FINAL ORDER AND OPINION

Therefore, this Court finds in favor of defendant Harris Patrick Murphy. Each party shall bear their own costs.

IT IS SO ORDERED this 6th day of December, 2005.

John K. Welch
Judge

/jb
cc: Rebecca Dutton, Case Processor
CCP, Civil Division