

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

April 18, 2005

Cynthia J. Beam, Esquire
Reger & Rizzo
1001 Jefferson Plaza, Suite 202
Wilmington, DE 19899

Ransford B. Palmer, Jr., Esquire
Bouchelle & Palmer
131 Continental Drive, Suite 407
Newark, DE 19713

Theresa M. Hayes
Law Office of Edward Gill
15 N. Bedford Street
P.O. Box 824
Georgetown, DE 19947

Robert J. Leoni
Michael J. Logullo
131 Continental Drive, Suite 206
Newark, DE 19713

RE: Ruff v. Roman
C.A. No. 04C-05-013 (THG)

Date Submitted: March 18, 2005

Dear Counsel:

This is the Court's decision as to Defendant Endre Roman's Motion for Summary Judgment. For the following reasons, the motion is DENIED.

On June 13, 2002, Defendant Endre Roman (hereinafter "Roman") was traveling southbound on US 13A, a Delaware roadway. Near the intersection with C.R. 454A, Roman began a driving pattern of decreasing speed, then accelerating again. Plaintiff Jennifer Ruff (hereinafter "Ruff"), the driver of the car immediately behind Roman, believed that Roman was

attempting to make a left hand turn somewhere in the vicinity of C.R. 454A. Ruff contends that Roman did not have his left turn indicator activated.

Wayne Messick was operating a vehicle heading southbound on U.S. 13A behind Plaintiff Ruff's vehicle. Upon seeing the Ruff vehicle slowing down repeatedly, Defendant Messick moved onto the improved shoulder of the road and operated his vehicle at the speed limit with the intention of passing to the right of Ruff's vehicle.

Then, Plaintiff Ruff attempted to pull around Roman's vehicle on the right, but when she entered the improved shoulder area of the roadway, her car came into contact with the Messick vehicle coming from behind. The impact caused Ruff's vehicle to be pushed ahead into Roman's vehicle. Ruff filed a civil suit against Defendants Roman and Messick for personal injury damages arising from the accident.

When considering a motion for summary judgment under Superior Court Civil Rule 56, the Court may grant the motion when no material issues of fact exist.¹ The burden is on the moving party to establish that there are no material issues of fact to consider.² Once the moving party meets its burden, the nonmoving party must proffer any outstanding issues of fact to withstand the summary judgment.³ When reviewing the motion, the Court will review the evidence in a light most favorable to the nonmoving party.⁴ However, the review of the evidence

¹*Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

²*Id.*

³*Id.* at 681.

⁴*Id.* at 680.

must be confined to the record presented, and may not be based on prospective evidence.⁵ If, after drawing all reasonable inferences in favor of the nonmoving party, the Court determines that no genuine issues of material fact survive, summary judgment will be ordered.⁶

Generally, issues of negligence are not subject to summary judgment.⁷ “It is only when the moving party establishes the absence of a genuine issue of any material fact respecting negligence that summary judgment may be entered.”⁸ Also, questions involving proximate cause are typically submitted to the jury for decision.⁹

Defendant Roman contends that certain testimony given by Ruff during the arbitration hearing precludes any finding that Roman’s actions were a proximate cause of the accident. Specifically, Roman contends that

Ruff has further testified at both her arbitration and at her deposition that the fact that Mr. Roman was driving in a fashion in which he was slowing down and then speeding up and slowing down again was irrelevant to her striking the back of Mr. Roman’s vehicle because she was maintaining a more than adequate distance from the back end of his vehicle at all times and that she at all times had her vehicle under control.

The Court’s reading of the transcript does not indicate that by insisting on maintaining control of her own car at a safe distance from Roman, Ruff somehow relieved Roman of liability. Roman’s involvement in this accident, and whether it constitutes negligence, still remains an

⁵*Rochester v. Katalan*, 320 A.2d 704, 705 (Del. 1974)

⁶*Sweetman v. Strescon Indus.*, 389 A.2d 1319, 1324 (Del. Super. 1978).

⁷*Jackson v. Thompson*, 2000 Del. Super. LEXIS 413 (Del. Super. 2000).

⁸*Id. quoting Ebersole v. Lowengrub*, 180 A.2d 467, 468 (Del. 1962).

⁹*Id.* at *3.

issue of material fact. Also, whether Ruff's testimony is credible, and its effect on Roman and Messick's liability still remains at issue. I find that reasonable minds could differ as to whether Roman's actions and his involvement in the accident were negligent or a proximate cause of this accident.

When a personal injury complaint is based in negligence, the allegations of negligence and their relationship to the alleged injury are properly left to the jury to decide as issues of fact. Whether Roman's alleged hesitant turning action, failure to engage a turning signal or reentry into the roadway constituted negligence on his part or were a proximate cause of this accident should be left to the jury. Therefore, Defendant Roman's motion for summary judgment is DENIED.

Very truly yours,

T. Henley Graves

THG/jfg
oc: Prothonotary