IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

INSURANCE COMPANY @1156317, a)	
foreign corporation, as subrogee of	í	
KRISTI A. TALLEY and)	
KRISTI A. TALLEY, individually,)	
Plaintiffs,)	
v.)	C.A. No.: CPU4-11-006017
NICOLE L. HARRIS and ALBERT DRIVER,)	
Defendants.)	
Michael K. DeSantis, Esq.		Nicole L. Harris
Law Office of Dawn L. Becker		144 Neyland Court
919 Market Street, Suite 550		Exton, PA 19341
Wilmington, DE 19801		
Attorney for Plaintiffs		Self-represented Defendant

MEMORANDUM OPINION AND ORDER AFTER TRIAL

Submitted: February 28, 2013 Decided: March 25, 2013

SURLES, J.

This is a subrogation action that arose out of a motor vehicle accident between Plaintiff Kristi Talley and Defendant Nicole Harris. Plaintiff GEICO brought this action as subrogee of their insured, Ms. Talley. After trial on February 25, 2013, the Court reserved decision. This is the Court's Memorandum Opinion and Order in connection with the relief sought by the Complaint. For the reasons set forth below, the Court is entering judgment in favor of Ms. Harris.

FACTUAL AND PROCEDURAL BACKGROUND

GEICO and Ms. Talley (collectively, "Plaintiffs") filed a Complaint against Nicole Harris and Albert Driver (collectively, "Defendants") on October 25, 2011, alleging negligence against both Defendants. The Complaint averred that on December 8, 2010, Ms. Harris carelessly and negligently operated a motor vehicle and caused a collision with Ms. Talley's vehicle. Plaintiffs further allege that Mr. Driver, the owner of the vehicle, negligently entrusted the vehicle to Ms. Harris and knew that she would operate the vehicle in a careless and negligent manner. Plaintiffs only sought eighty percent of the total damages of \$15,705.03, for a total of \$12,564.02, because they conceded that Ms. Talley was contributorily negligent.

Mr. Driver failed to file an Answer, and a default judgment was entered against him on January 10, 2012. Ms. Harris, however, filed an Answer denying the allegations that she drove in a negligent manner.

On February 25, 2013, a trial was held before the Court and both parties appeared. Plaintiffs called two witnesses to testify in their case-in-chief and entered three exhibits into evidence. First, Ms. Talley testified about the accident. She testified that the accident occurred around 7:00 a.m. on December 8, 2010. Ms. Talley was driving on Myrtle Avenue and intended to turn right onto Philadelphia Pike north, but was stopped at a red light at the intersection. Ms. Talley testified that, prior to the impact, she saw headlights of a car stopped on Darley Road. Darley Road is directly across the street from the intersection of Myrtle Avenue and Philadelphia Pike. However, Ms. Talley did not see that car move.

¹ Plaintiff's Exb. #1 is a packet of information titled "Details from Estimate for Claim." It contains an accounting of the cost of repairs to Ms. Talley's 2010 Hyundai Elantra GLS. The net cost of repairs is listed as \$11,115.46. There are also several photographs of the front end damage sustained to Ms. Talley's vehicle from the accident. Plaintiff's Exb. #2 is an estimate of all the damage sustained to Ms. Talley's vehicle and declares the vehicle a total loss. Plaintiff's Exb. #3 is a Claim Payment that shows that Ms. Talley was reimbursed \$555.03 for a rental car, and Ms. Talley also received \$9,555.65 from GEICO in collision coverage benefits, \$5,094.35 in additional collision benefits, and \$250.00 in uninsured motorist benefits.

Ms. Talley explained that traffic was steady due to rush hour, and that the cars beeped behind her in an effort to speed her up. Ms. Talley looked left to make sure it was safe to turn, and then turned right onto northbound Philadelphia Pike while the light was still red.² Ms. Talley asserted that she was immediately struck by another vehicle. After being hit, Ms. Talley pulled into a gas station on Philadelphia Pike. Ms. Talley never had a conversation with Ms. Harris after the accident, only Mr. Driver. Ms. Talley did not state that she saw Ms. Harris drive the other vehicle that hit her vehicle.

Ms. Talley received a citation for running a red light. Ms. Talley testified that the Court found her guilty of running the red light in the criminal case that derived from this accident. Ms. Talley testified that she was paid collision benefits through GEICO insurance for the total loss of her vehicle.

Plaintiffs' second witness, Mark Anthony, is an automobile damage supervisor and adjustor for GEICO. Mr. Anthony is familiar with GEICO's procedures and pay out of claims. Mr. Anthony reviewed the estimate in this case and determined that it was reasonable to declare Ms. Talley's vehicle a total loss.

Ms. Harris was the sole witness in her defense case-in-chief and submitted five exhibits into evidence.³ Ms. Harris gave her version of events of the accident. She denied turning left onto Philadelphia Pike from Darley Road, but rather, she testified that she was traveling northbound on Philadelphia Pike, coming from her daily visit to the methadone clinic, which is located south of the intersection of Myrtle Avenue and Philadelphia Pike. Ms. Harris explained

² It is legal to make a right hand turn on red after a complete stop at the intersection of Myrtle Avenue and Philadelphia Pike.

³ Defendant's Exbs. #1-4 are high resolution photographs of the intersection of Philadelphia Pike, Myrtle Avenue, and Darley Road. Defendant's Exb. #5 is a hand-drawn picture of the intersection that depicted where the accident occurred.

that the light was green as she approached the intersection of Myrtle Avenue and Philadelphia Pike, and that Ms. Talley pulled out and struck the vehicle that Ms. Harris was driving.

After the accident, Ms. Harris was unable to stop to pull over into the gas station where Ms. Talley went, but proceeded to pull over further down the road until the police arrived. Ms. Harris stated that there was confusion between herself and the police officer as to where the accident had occurred, and that the officer mistakenly believed that she was coming from Darley Road just prior to the accident. Ms. Harris stated that she was subsequently found not guilty of the citation that she received for running a red light.

PARTIES' CONTENTIONS

Plaintiffs contend that Ms. Harris negligently caused the accident by running the red light signal facing Darley Road and striking Ms. Talley's vehicle. In the alternative, even if Ms. Harris was traveling north on Philadelphia Pike, Plaintiffs argue that Ms. Harris was still negligent because she had the last chance to avoid the accident. GEICO further contends that they are entitled to damages in the amount they paid out in insurance benefits to Ms. Talley for the property damage caused by the accident.

Ms. Harris contends that she was not negligent because she was traveling north on Philadelphia Pike and had a green light to enter the intersection at Myrtle Avenue. Ms. Harris asserts that Ms. Talley negligently pulled out in front of her and hit her. Ms. Harris further contends that she was found not guilty of the traffic citation, which is the only moving violation that she was charged with relating to the cause of the accident.⁴

4

⁴ Ms. Harris was also charged with other non-moving violations in connection with the incident, but she took responsibility for those violations.

DISCUSSION

In order to establish a *prima facie* case for negligence, a plaintiff must prove by a preponderance of the evidence that "defendant owed plaintiff a duty of care; defendant breached that duty; and defendant's breach was the proximate cause of plaintiff's injury."⁵

In this case, Plaintiffs failed to prove by a preponderance of the evidence that Ms. Harris breached the duty of care to be on the proper lookout while driving. The only proof offered by Plaintiffs of Ms. Harris' breach of the duty of care she owed to Ms. Talley came through Ms. Talley's testimony. Ms. Talley's testimony does not carry the Plaintiff's burden to show that it was more likely than not that Ms. Harris breached her duty to drive in a responsible manner. Ms. Talley admitted that cars beeped their horns behind her, and that she turned right during the red light. Even though Ms. Talley saw headlights on Darley Road, Ms. Talley never indicated that those headlights were those of the vehicle driven by Ms. Harris. Furthermore, Ms. Talley admitted that she was found guilty of running the red light. Ms. Talley's testimony was conflicting and the Court finds that Ms. Talley was uncertain how the accident occurred.

The Court finds Ms. Harris' testimony highly credible. Ms. Harris' testimony that she was traveling north on Philadelphia Pike could not be refuted by Plaintiff's proof. Ms. Harris testified that she was found not guilty of running the red light on Darley Road. Ms. Harris was adamant that she was never on Darley Road and explained that is the reason she decided to fight the red light citation in criminal court – and won.

Furthermore, the Court finds that Plaintiffs failed to prove by a preponderance of the evidence that Ms. Harris was negligent in failing to avoid the accident. Ms. Talley testified that her car was struck by Ms. Harris immediately upon turning right onto Philadelphia Pike. Ms.

⁵ New Haverford P'ship v. Stroot, 772 A.2d 792, 798 (Del. 2001).

Harris, however, testified that she did not have a chance to avoid the accident, because if she was able to avoid Ms. Talley's vehicle, she would have done so. Ms. Harris stated that she was unable to avoid Ms. Talley's vehicle because Ms. Talley quickly pulled out into Ms. Harris' vehicle.

The Court finds that Plaintiffs failed to prove by a preponderance of the evidence that Ms. Harris' negligence caused the accident between the parties. Therefore, the Court finds in favor of Defendant, Ms. Harris.

CONCLUSION

For the reasons stated above, after trial, the Court finds for Defendant and enters judgment in favor of Ms. Harris.

IT IS SO ORDERED this 25th day of March, 2013.

Robert H. Surles,

Judge.