SUPERIOR COURT
OF THE
STATE OF DELAWARE

CHARLES E. BUTLER
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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January 28, 2015

To: Counsel of Record

Re: ***Naylor v. Martin, et al.***
C.A. No. N13C-01-224-CEB
Upon Consideration of Defendant's Motion for Summary Judgment.
DENIED.

Dear Counsel:

The facts as we understand them are that Plaintiff Debora Naylor ("Plaintiff") was the passenger in a car driven by her husband. They were northbound on Route 41 north of Hockessin when a tractor-trailer passed them and entered their lane, bumping the Naylor vehicle in the left front corner of the car. The Naylor car was forced on to the shoulder of the road, where Defendant Dustin Martin, in connection with his job with KVA, Inc., was parked and undertaking some sort of electric meter reading. The Naylor car collided with the KVA car, causing injury to Plaintiff, the passenger in the Naylor car. The tractor-trailer, by the way, was last seen headed north into Pennsylvania and is not otherwise identified in this litigation; thus the uninsured motorist claim against GEICO.

Defendants Scope Services, KVA, Inc. and Dustin Martin all move for summary judgment, arguing that their vehicle was simply parked on the side of the road, reading meters, and did nothing to cause the accident in question. According to them, even if the vehicle was parked illegally, there can be no liability because there can be no causation because they caused nothing because they were simply parked on the shoulder.

There is a superficiality to Defendants' arguments that is at once appealing and unconvincing at the same time. After all, their vehicle was not moving, not driving erratically or irresponsibly. Why should they have to pay because some trucker changed lanes before he should have and cut off Plaintiff's vehicle to the point of running it off the road? His fault is not their fault. According to these Defendants, "but for" the trucker's negligence they wouldn't even be here.

Alas, as Defendants candidly admit, there is a dispute of fact whether the Defendant vehicle was parked in a "no parking" zone. This dispute of fact gives rise to the question whether "but for" Defendants' vehicle being parked in this place it was not supposed to be, Plaintiff's vehicle might have slowed or stopped harmlessly in the shoulder of the road which, after all, is one of the reasons they build these shoulders in the first place. We know that violation of a statute, ordinance or regulation gives rise to the doctrine of "negligence *per se*,"[1] a

[1]*Sammons v. Ridgeway*, 293 A.2d 547, 550 (Del. 1972).

doctrine Defendants seek to avoid by arguing that even if the stopped vehicle is guilty of negligence *per se*, it was not the proximate cause of the accident.

But both sides fairly point to a plethora of cases standing for the proposition that questions of proximate cause are best left to juries, and this case presents no occasion to deviate from that well established rule.[2]

We understand the parties are headed off to a mediation and need the Court's ruling on this motion to inform their positions vis a vis the mediation. Had we more time, perhaps we would give the whole matter a more thorough airing, but we are nonetheless confident in our conclusion that Defendants' motion must be, and therefore is, **DENIED**.

IT IS SO ORDERED.

/s/ Charles E. Butler
Charles E. Butler

[2] *Jones v. Crawford*, 1 A.3d 299, 303 (Del. 2010) ("[T]he jury . . . must determine whether the intervening cause should supersede the defendant's liability. The jury decides the mixed question of law and fact at issue-whether, in the specific factual context, the intervening cause constitutes abnormal, unforeseeable or extraordinary negligence that would as a matter of law supersede a defendant's negligence thereby relieving that defendant of liability to the plaintiff."); *Ebersole v. Lowengrub*, 180 A.2d 467, 469 (Del. 1962) ("[Q]uestions of proximate cause except in rare cases are questions of fact ordinarily to be submitted to the jury for decision."); *Hickman v. Parag*, 167 A.2d 225, 227 (Del. 1961) ("The question of proximate cause is usually one for the jury."); *Burge v. Reiss*, 2010 WL 8250821, at *1 (Del. Super. Ct. Oct. 29, 2010) ("The foreseeability of an intervening act of negligence is usually reserved for the trier of fact.").