IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

PAULINE F. DAUB,)		
)	C.A. No.	11C-03-037 JTV
Plaintiff,)		
)		
v.)		
)		
SAMUEL G. DANIELS, WILLIAM)		
BAKER, and BESTFIELD)		
HOMES, LLC.,)		
)		
Defendants.)		

Submitted: June 10, 2013 Decided: September 30, 2013

I. Barry Guerke, Esq., Parkowski, Guerke & Swayze, Dover, Delaware. Attorney for Plaintiff.

Miranda D. Clifton, Esq., Law Office of Cynthia G. Beam, Newark, Delaware. Attorney for Defendant Daniels.

Mary E. Sherlock, Esq., Weber, Gallagher, Simpson, Stapleton, fires & Newby, LLP, Dover, Delaware. Attorney for Defendants Baker and Bestfield Homes.

Upon Consideration of Plaintiff's Motion for Judgment as a Matter of Law **DENIED**

VAUGHN, President Judge

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ORDER

Upon consideration of the plaintiff's Motion for Judgment as a Matter of Law, the defendants' opposition, and the record of the case, it appears that:

- 1. The plaintiff, Pauline Daub, renews her Motion for Judgment as a Matter of Law pursuant to Superior Court Civil Rule 50(b) against defendants William Baker and Baker's employer, Bestfield Homes, LLC, after a jury found that Mr. Baker was not negligent in this personal injury action involving a motor vehicle accident because the accident was the result of a sudden emergency.
- 2. The basic facts of this case were stated by this Court in its previous order denying Mr. Baker's motion for summary judgement:

On May 6, 2009 at around 6:30 a.m., Samuel Daniels was driving northbound in the left lane of Route 1 when the tailgate of his pickup truck fell off of his vehicle. Daniels testified that after he pulled his vehicle over to retrieve the tailgate from the road, he saw seven to nine vehicles swerve into the right lane to avoid hitting the tailgate. Baker, who was traveling several vehicles behind Daniels, testified that he was traveling one or two car lengths behind the vehicle in front of him. When that vehicle swerved into the right lane, Baker saw the tailgate lying on the road approximately 30 to 50 feet in front of him. Baker testified that he could not avoid hitting the tailgate, because there was traffic in the right hand lane, and he could not swerve onto the shoulder because he would have lost control of his vehicle. As a result, Baker ran over the

¹ I will refer to both defendants collectively as "Mr. Baker" because Bestfield Home's liability was vicarious through its employee, William Baker.

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tailgate, traveling between 60 and 65 miles per hour. The tailgate flew into the air and struck the plaintiff's windshield and then hit a truck operated by Brad Garthwaite, who were also traveling northbound on Route 1. Daniels and Garthwaite testified that traffic was "light" that morning, and Garthwaite testified that he did not see any other vehicles on the road at the time of the incident other than the four vehicles involved in the accident.²

3. At the close of trial, Mr. Baker requested that the Court give a sudden emergency jury instruction due to Mr. Baker's sudden encounter of Mr. Daniels' fallen tailgate while driving on Route 1. That pattern jury instruction, which was derived from the Delaware Supreme Court's decisions in *Dadds v. Pennsylvania R. Co.*³ and *Panaro v. Cullen*, ⁴ stated:

When a person is involved in an emergency situation not of his own making and not created by his own negligence, that person is entitled to act as a reasonably prudent person would under similar circumstances.

Therefore, if you find that Defendant Baker was operating his vehicle in a reasonably prudent manner and was faced with a sudden emergency situation, then I instruct you that Defendant Baker was not required to act as a reasonable person who had sufficient time and opportunity to consider

² Daub v. Daniels, 2012 WL 6846320, at *1 (Del. Super. Dec. 26, 2012) (footnote omitted).

³ 251 A.2d 559 (Del. 1969).

⁴ 185 A.2d 889 (Del. 1962).

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what the best course of action would be, but instead that he was required only to react as a reasonable person would under the circumstances.

The burden of proof as to this defense is upon the defendant.

- 4. Ultimately, the jury determined that Mr. Baker was not negligent because the accident was in fact the result of a sudden emergency caused by Daniels' fallen tailgate.⁵
- 5. The plaintiff now renews her Motion for Judgment as a Matter of Law against Mr. Baker, contending that Mr. Baker was not entitled to the sudden emergency jury instruction because he created the emergency and was negligent as a matter of law in following the vehicle in front of him too closely in violation of 21 *Del. C.* § 4123(a) and for "failing to maintain proper control of his vehicle."
- 6. To support her claim, the plaintiff points to Mr. Baker's testimony that he was driving between 60 and 65 miles per hour on Route 1; he was traveling approximately one or two car lengths behind the vehicle in front of him; and he saw Mr. Daniel's tailgate for the first time lying on the road approximately 30 to 50 feet ahead of him when the vehicle in front of him swerved into the right lane to avoid hitting the tailgate. In addition, the plaintiff contends that "Baker acknowledged the 'rule of thumb' that a driver should leave one car length for each 10 mph of speed when following another vehicle, a rule he admitted he was not in compliance with at

⁵ See Jury Verdict Sheet.

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the time." Because Mr. Baker created the emergency and negligently operated his vehicle as a matter of law before he saw Mr. Daniels' fallen tailgate, the plaintiff contends, Mr. Baker could not avail himself of the sudden emergency jury instruction.

- 7. In response, Mr. Baker contends that the question of whether he was following the vehicle in front of him too closely in violation of 21 *Del. C.* § 4123(a) was a question of fact for the jury to decide. Because a reasonable jury could find that Mr. Baker was traveling at a "reasonable and prudent distance" behind the vehicle in front of him, Mr. Baker contends, the jury verdict should not be set aside.
- 8. Superior Court Civil Rule 50(b) provides a mechanism that allows the non-prevailing party to have the jury verdict set aside and to secure a judgment in the plaintiff's favor. When deciding a motion for judgment as a matter of law, the Court does not weigh the evidence or pass on the credibility of the witnesses; but rather, it views the evidence in the light most favorable to the non-moving party and, drawing all reasonable inferences therefrom, determines if a verdict may be found for the party having the burden. In order to find for the plaintiff in this case, the Court must find that there is no legally sufficient evidentiary basis for a reasonable jury to find for the non-movant. Thus, "the factual findings of a jury will not be disturbed if there is any

⁶ Burgos v. Hickok, 695 A.2d 1141, 1144 (Del. 1997).

⁷ *Mumford v. Paris*, 2003 WL 231611, at *2 (Del. Super. Jan. 31, 2003).

⁸ Brown v. Liberty Mut. Ins. Co., 774 A.2d 232, 245 (Del. 2001).

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competent evidence upon which the verdict could reasonably be based."9

9. Viewing the facts in the light most favorable to the non-moving party, the Court cannot find that Mr. Baker caused the emergency or was negligent as a matter of law. As mentioned, the evidence presented at trial shows that Mr. Baker was driving between 60 and 65 miles per hour and he was traveling approximately one or two car lengths behind the vehicle in front of him. When he saw that vehicle swerve into the right lane, Mr. Baker saw the tailgate lying on the road approximately 30 to 50 feet ahead of him before he ran over the tailgate.

driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."¹⁰ In this Court's previous order denying Mr. Baker's motion for summary judgment, I stated that "[g]iven the fact that the Following Too Closely statute calls for a factual determination of what constitutes a 'reasonable and prudent' distance, considering the speed of other vehicles, traffic conditions, and the condition of the highway, granting summary judgment would be inappropriate under these facts." For that same reason, I cannot say as a matter of law that Mr. Baker was following the vehicle in front of him too closely. Moreover, the fact that Mr. Baker agreed that he did not follow the "rule of thumb" that a driver should leave one car

Delaware Elec. Co-op., Inc. v. Pitts, 633 A.2d 369, 1993 WL 445474, at *1 (Del. Oct. 22, 1993).

¹⁰ 21 *Del. C.* § 4123(a).

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length behind the vehicle in front of him for each 10 miles per hour that he is traveling is not determinative, because that concept is not a *legal* obligation, but rather, it is "a general principle regarded as roughly correct but not intended to be scientifically [or legally] accurate."¹¹

11. The plaintiff also contends that Mr. Baker "fail[ed] to maintain proper control of his vehicle," and alleges that Mr. Baker was negligent as a matter of law in not guiding his vehicle around the tailgate. The plaintiff relies on a 1939 case, State v. Elliott, 12 which involved a jury instruction in an involuntary manslaughter case to suggest that there is a stand alone common law duty to maintain proper control of one's vehicle. I find that there is no such stand alone duty; rather, the defendant could only have been found liable under a simple common law negligence theory for failing to act as a reasonably prudent person would under the circumstances or under a negligence per se theory for violating certain traffic violations under Title 21 of the Delaware Code. That said, I find that there was sufficient evidence produced at trial to find that Mr. Baker was not negligent as a matter of law for failing to avoid the tailgate. Mr. Baker testified at trial that he could not have avoided the tailgate by moving into the right hand lane because there were cars in that lane. He also testified that he could not have safely swerved into the median because it was not improved and he would have lost control of his vehicle. Accordingly, I find that Mr.

Merriam-Webster Online Dictionary, defining "rule of thumb," http://www.merriam-webster.com/dictionary/rule%20of%20thumb.

¹² 8 A.2d 873 (Del. O. & T. 1939).

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Baker was entitled to the sudden emergency jury instruction and that there was a sufficient evidentiary basis for a reasonable jury to find that he was not negligent under the circumstances.

12. Therefore, the plaintiff's Motion for Judgement as a Matter of Law is *denied*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary

cc: Order Distribution

File