IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

CHRISTOPHER A. CASE,	:	
	:	**C.A. No: K13C-12-020 TBD**
Plaintiff,	:	
	:	
v.	:	
	:	
AARON R. TAYLOR,	:	
	:	
Defendant.	:	

Submitted: January 5, 2015
Decided: January 6, 2015

Upon Consideration of Defendant's
Motion to Dismiss
DENIED

ORDER

Gary W. Aber, Esquire, Wilmington, Delaware for Plaintiff.

Mary E. Sherlock, Esquire, Weber Gallagher Simpson Stapleton Fires & Newby, LLP, Dover, Delaware for Defendant.

Young, J.

DECISION

Defendant Taylor has moved this Court to grant Summary Judgment in favor of Defendant and against Plaintiff Case.

Here, Defendant was traveling southbound on Route 13 in Dover, intending to go into Delaware State University. To do that, Defendant changed lanes towards right turn access lane. Unfortunately, Plaintiff was utilizing a southbound bicycle lane to travel north while riding a "pedal cycle." Because of a large vehicle ahead of him, Defendant did not see Plaintiff in that lane until Defendant left the northbound travel lane, entering the access lane where Plaintiff was traveling in the wrong direction.

Plaintiff's vehicle operation was negligent *per se*.[1,2]

That, alone, does not entitle Defendant to Summary Judgment.[3] Left for jury determination is whether or not either of the parties' actions was a proximate cause of the injuries to Plaintiff; and, in any event, whether Defendant was also negligent.

The parties appear to agree that Plaintiff sustained injuries. Was that because Plaintiff negligently operated his pedal cycle? Was it because Defendant negligently followed a large vehicle too closely to be able to see not to enter the improperly occupied entry lane? Was it a combination of both? Those remain jury

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[1] 21 *Del. Code* § 4196(a).

[2] *Travers v. Hartman*, 28 Del. 302.

[3] *Wright v. Moffitt*, 437 A.2d 554 (Del. 1981).

questions.

Hence, the jury will decide whether or not Defendant was negligent; and, if so, to what degree. The jury will be instructed that Plaintiff was negligent as a matter of law. The remaining matters will be left for argument by counsel and jury determination. Defendant's Motion is, therefore, **DENIED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Counsel
Opinion Distribution
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