



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT SCOTT MCKINLEY and	:	
DEBORAH MCKINLEY,	:	
	:	No. 465, 2012
Plaintiffs Below,	:	
Appellants,	:	
	:	APPEAL FROM DECISION
	:	OF THE SUPERIOR COURT
v.	:	OF THE STATE OF DELAWARE
	:	IN AND FOR NEW CASTLE
MICHELE CASSON,	:	COUNTY,
	:	C.A. NO. N10C-09-192
Defendant Below,	:	
Appellee.	:	

DEFENDANT BELOW-APPELLEE
AND CROSS-APPELLANT'S REPLY BRIEF ON CROSS-APPEAL

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A. Question Presented

See Question Presented in Appellee's Answering Brief on Appeal and Cross-appellant's Opening Brief on Cross-appeal.

B. Standard and Scope of Review.

See Question Presented in Appellee's Answering Brief on Appeal and Cross-appellant's Opening Brief on Cross-appeal.

C. Merits of the Argument

The primary issue in this case was why Plaintiff drove into the rear of Defendant's vehicle when Defendant stopped or was stopping. The Motion for Summary Judgment asked the Court to assume Plaintiff's contention that defendant stopped abruptly to be true for the purposes of considering the Motion.

Upon acceptance of that tenet for the purpose of considering the summary judgment motion only, none of the facts about why the Defendant stopped were relevant. Plaintiff's Answering Brief on this subject reargues his earlier arguments about medication use of the Defendant which is not at issue once it is assumed the Defendant stopped suddenly. Plaintiff also argues that Defendant gave differing versions of what she told the officer, which raised a question of fact. None of these things mattered once the Court assumed, as invited, that Defendant stopped suddenly. What Defendant said to the officer was therefore not significant to this Motion.

The only focus for the Court on the Motion for Summary Judgment was then whether there were any factual disputes as to comparative negligence by the Plaintiff and whether, as a matter of law, the Plaintiff's negligence was greater than that of Defendant. Plaintiff's Answering Brief does not address this portion of Defendant's argument.

Defendant noted the various duties which Plaintiff was required to meet in her Opening Brief on this subject. They dealt with proper following distance, proper speed and driving duties in a construction zone. No evidence was provided in discovery which demonstrated that Plaintiff had no choice but to run into the rear of Defendant's vehicle.

Plaintiff fails to address the contention that as the vehicle following Defendant, Plaintiff had more duties to uphold to avoid a collision. He had the opportunity and responsibility to maintain a following distance sufficient to allow him to stop on short notice, see Defendant's brake lights illuminate and slow his motorcycle and bring it to a stop. He did not accomplish that and failed in more than one duty.

The facts, as applied to the law here, demonstrated as a matter of law that Plaintiff was by law more than 50% at fault for causing this accident and could not recover against the Defendant. The record showed that Plaintiff was guilty of negligence *per se* for these violations of law and that was the proximate cause of the accident.

There were no material facts at issue as to the Motion for Summary Judgment. The evidence before the Court, which was eventually presented to the jury, was that Plaintiff's own negligence ultimately proximately caused the accident. His negligence was greater than any negligence on the part of the Defendant such that the jury's deliberations were not required to bring this case to a conclusion. Thus, the Motion for Summary Judgment should have been granted below.

CONCLUSION

For the foregoing reasons along with those submitted in Appellee's Opening Brief on this issue, Appellee requests that this Court overturn the denial of the Motion for Summary Judgment and rule that summary judgment should have been granted below.

Respectfully submitted,
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RANSOM & DOSS, P.A.

A handwritten signature in dark ink, appearing to read 'Beth H. Christman', is written over a horizontal line.

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