

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

WILMINGTON, DELAWARE 19801

John K. Welch
Judge

November 24, 2009

Heather A. Long, Esquire
919 Market Street, Suite 460
Wilmington, DE 19801
Attorney for Plaintiff

Ms. Monique Antoinette Miller
2812 Stone Place
Newark, DE 19702
Pro-Se Defendant

**Re: *Government Employees Insurance Company, as Subrogee of
Akinsola Ogundele, and Akinsola Ogundele, Individually v.
Monique Miller Antoinette***
Case No.: U408-03-597

Date Submitted: November 5, 2009

Date Decided: November 24, 2009

LETTER OPINION

Dear Ms. Long and Ms. Miller:

Trial in the above captioned matter took place on November 5, 2009 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of documentary evidence¹ and sworn testimony, the Court reserved decision.

This is the Courts Final Decision and Order.

¹ The Court received into evidence the following items: Plaintiff's Exhibit 1 – Copy of Plaintiff's Summons and Amended Complaint filed with the Court on March 25, 2008; Plaintiff's Exhibit 2 – Letter from Todd Hayden, Claims Department, Nationwide Mutual Insurance Company As such, Nationwide has denying coverage on the vehicle being driven by Miller and informing GEICO that the vehicle in question was removed from policy effective 6/18/2007 as per policyholder request; Plaintiff's Exhibit 3 – Invoice from S & G Auto Works for the sale of the Defendant's vehicle; Plaintiff's Exhibit 4 – Letter from Jennifer L. Cohan, the Director of the Division of Motor Vehicles indicating the sale/transfer of the Defendant's vehicle on June 27, 2007; Plaintiff's Exhibit 5 – Auto

I. The Facts.

This is a subrogation case filed by Government Employees Insurance Company (“GEICO”), and Akinsola Ogundele (“Ogundele”), individually against the defendant, Monique Antoinette Miller (“Miller”), to recover money damages for a car accident that occurred on July 11, 2007. GEICO’s complaint demands judgment in the amount of \$4,125.01 in addition to plaintiff Ogundele’s \$100.00 deductible, with prejudgment and post-judgment interest plus costs.

The Court finds the relevant facts as follows. On or about July 11, 2007, Miller failed to yield at a stop sign and drove towards Wawa Market/gas station coming across US 13 South at the intersection of US 13 and McMullen Avenue. Wawa's parking lot runs parallel to US 13 South. Ogundele, was traveling south on US 13 in the right turn lane turning right onto McMullen Avenue when his vehicle collided with the defendant who had come across his lane.

Miller testified that she was traveling north on US 13 in the left turn lane for McMullen Avenue. Miller testified that she stopped at the stop sign and waited for

Accident Report generated by GEICO containing a copy of the Delaware State Police Troop 2 Police Report; Plaintiff’s Exhibit 6 – Collection of Documents including GEICO Vehicle Rental Invoice, Total Loss Settlement Explanation for Plaintiff’s vehicle, Road Service Invoice, and GEICO Market Report; Plaintiff’s Exhibit 7 - Photos of plaintiff vehicle for claim no 0258944300101019-01, Estimator Steve Teofilak; Plaintiff’s Exhibit 8 - Copy of Plaintiff’s Request for Admissions; Plaintiff’s Exhibit 9 – Copy of Payment Receipt indicating a payment of 30.00 dollars by Defendant to this Court; Plaintiff’s Exhibit 10 – Defendant’s Answer to Plaintiff’s Request for Admissions. Defendant’s Exhibit 1 – Copy of Defendant’s Answer to Plaintiff’s Interrogatories; Defendant’s Exhibit 2 - Copy of Defendant’s Policy Number and Period for GEICO Casualty Company, # 4073-43-29-75; Defendant’s Exhibit 3 – Copy of Defendant’s Answer to Plaintiff’s Amended Complaint; Defendant’s Exhibit 4 – Diagram depiction of the accident scene; Defendant’s Exhibit 5 – Letter from Latoria Martin, Claims Department, GEICO, regarding July 11, 2007 accident.

traffic to stop prior to pulling across US 13 South. Miller stated that the commuters traveling south bound in the different lanes of traffic had each stopped and waved her across. Miller stated that she looked across each lane of traffic and waited for a clear path prior to crossing each lane. Miller stated that she was inching into the turn lane in which Ogundele was traveling when her vehicle was struck by Ogundele's car. Miller stated that she never saw Ogundele's vehicle prior to the collision.

Following the accident, both vehicles were later moved to the right shoulder of US 13 South and south of McMullen Avenue. An officer at Delaware State Police Department's Troop 2, Frey Lowman processed the police report, and issued Miller traffic citations for the failure to remain stopped at a stop sign and driving without proof of insurance. Miller testified pleading guilty to the charge of failure to remain stopped at a stop sign and asserted that the charge of driving without proof of insurance had been dropped. Gail Brown, a claims adjuster for GEICO testified that Miller's vehicle was previously owned by one Esther Gachie and that DMV records indicated that record ownership was transferred to Miller on June 27, 2007. Furthermore, she testified that Gachie had terminated her Nationwide insurance policy on the vehicle on June 18, 2007, prior to the sale.

GEICO argues that the defendant was negligent and careless in that he failed to keep a proper lookout in violation of 21 *Del. C.* § 4176; failed to give full time and attention to the operation of the vehicle he was operating in violation of 21 *Del. C.* § 4176; failed to maintain appropriate control of the vehicle he was operating; operated

a vehicle in a careless and inattentive manner in violation of 21 *Del. C.* § 4176; and finally allegedly operated the vehicle in a willful and wanton disregard for the safety of persons or property, in violation of 21 *Del. C.* § 4175. For the damage to Ogundele's car, GEICO claims towing bill of \$310, vehicle rental bills of \$680.01 and \$3235.00 for property damage including Ogundele's \$100 deductible.

II. The Law.

Plaintiff has the burden of proving its claims by a preponderance of the evidence. A preponderance of the evidence is defined as, “[T]he side on which the greater weight of evidence is found.” *Bishop v. Trexler*, UIAP Appeal Docket No. 430087 (Mar. 31, 2004), at 2, rev'g Decision of Appeals Referee (Feb. 24, 2004), (quoting *Taylor v. State*, 2000 WL 313501, at *2 (Del.Supr.)).

Additionally, to prevail in a negligence action, “... a plaintiff must show, by a preponderance of the evidence, that a defendant's negligent act or omission breached a duty of care owed to plaintiff in a way that proximately caused the plaintiff's injury.” *Duphill v. Delaware Electric Cooperative, Inc.*, Del.Supr., 662 A.2d 821, 828 (1995); quoting *Culver v. Bennett*, Del.Supr., 588 A.2d 1094, 1096-97 (1991).

The violation of a Delaware statute enacted for the safety of others is evidence of negligence per se. *Id.* at 828. Further, a finding of negligence by the defendant, standing alone, will not sustain an action for damages unless it is also shown to be the proximate cause of plaintiff's injury. *Id.* At 828. “In Delaware, proximate cause is one ‘which in natural and continuous sequence, unbroken by any efficient intervening

cause, produces the injury and without which the result would not have occurred.” ’
Id. at 829.

III. Discussion.

The Court finds by the preponderance of the evidence that defendant Miller breached her duty of care owed as a reasonable driver under the circumstances and that her breach of said duty legally and proximately caused the accident with Ogundele's automobile. In coming to this conclusion the Court puts aside the fact that Miller testified to pleading guilty beyond a reasonable doubt of failure to remain stopped at a stop sign although it is criminally dispositive.

The evidence at trial clearly indicated that the defendant failed to ensure that nothing obstructed her path before she began driving across Route 13. The evidence indicates that Miller failed to remain stopped at a stop sign and proceeding directly across Route 13 and onto oncoming traffic. The evidence shows that the plaintiff Ogundele's vehicle was traveling South on Route 13 and was in the right turn lane turning right onto McMullen Avenue when Miller's vehicle cut across his lane causing the vehicles to collide. Miller was issued and pled guilty to a citation for failure to stop at a stop sign. Conversely, Ogundele was not issued any citations for the accident.

GEICO has provided adequate evidence to support a finding by a preponderance of the evidence that Miller was, in fact, operating her motor vehicle in a negligent or careless manner. GEICO also provided adequate evidence in the form

of direct testimony and documentation to support a finding by a preponderance of the evidence, that plaintiff was in fact the record owner of the vehicle she was driving on the day of the incident. The evidence indicates that Miller had a duty to avoid the collision with Ogundele, and failed to uphold that duty. As a result Miller is liable for the property damage and loss of use of the motor vehicle suffered by Ogundele.

IV. Final Order And Opinion.

Therefore, this Court finds in favor of plaintiff Government Employees Insurance Company and Akinsola Ogundele in the amount of \$4,125.01 in addition to plaintiff Ogundele's \$100.00 deductible, with prejudgment and post-judgment interest at the legal rate. 6 *Del.C.* §2301 *et seq.* Each party shall bear their own costs.

IT IS SO ORDERED this 24th day of November, 2009.

John K. Welch
Judge

/jb

cc: LuAnn Smith, Case Manager
CCP, Civil Division