

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

MELISSA K. ANCTIL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. U408-02-001
	)	
CHARLES F. MCGRATH, and	)	
RUMEET P. MEHTA,	)	
	)	
Defendants.	)	

Submitted: July 16, 2012  
Decided: July 31, 2012

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Manassas, Virginia 20110  
*Self Represented Defendant*

**MEMORANDUM OPINION AND ORDER**

**I. Procedural Posture**

This is an action for negligence arising out of an alleged motor vehicle accident between the parties. On February 1, 2008, Plaintiff Melissa K. Anctil (“Ms. Anctil”) filed a Complaint alleging that on February 12, 2006 Defendants Charles F. McGrath (“Mr. McGrath”) and Rumeet P. Mehta drove their vehicles in a negligent manner, causing personal injuries to Ms. Anctil. Ms. Anctil also requested damages for pain and suffering. Ms. Anctil did not request that damages be awarded in a specific amount. Both Mr. McGrath and Mr. Mehta were served with the Complaint and Summons.

On January 21, 2010, Mr. McGrath filed an Answer admitting that he operated a vehicle that was involved in the alleged motor vehicle accident, but denying each and every element of Ms. Anctil's claim for negligence. Mr. McGrath also asserted several affirmative defenses, and cross-claims against Mr. Mehta for contribution and indemnification based on Mr. Mehta's alleged negligence. To date, Mr. Mehta has not filed an Answer.

On July 16, 2012, the Court held a trial in this matter. Ms. Anctil and Mr. McGrath were present at trial. Mr. Mehta failed to appear. Before trial, the parties informed the Court that Ms. Anctil and Mr. Mehta had reached a settlement agreement on Ms. Anctil's claim against Mr. Mehta. However, no agreement was reached with respect to Mr. McGrath's cross-claim against Mr. Mehta. Mr. McGrath indicated that he was prepared to proceed on the cross-claim.

After the Court heard opening statements and some testimony, the Court addressed the parties on the procedural posture of Mr. McGrath's cross-claim. At this time, Mr. McGrath made an oral Motion for Default Judgment pursuant to CCP Civil Rule 55(b)(2), based on Mr. Mehta's failure to appear and defend against this cross-claim at trial. Ms. Anctil indicated that she did not oppose Mr. McGrath's Motion. The Court granted Mr. McGrath's Motion, and entered an order that to the extent that Mr. McGrath was found liable to Ms. Anctil, if at all, he would be entitled to indemnification/contribution from Mr. Mehta. Therefore, the trial held on July 16, 2012 concerned only the negligence claim filed by Ms. Anctil against Mr. McGrath.

At trial, Ms. Anctil, John Guzelek ("Mr. Guzelek"), Delaware State Police Corporal David May ("Cpl. May"), and Mr. McGrath testified during Ms. Anctil's case in chief. At the conclusion of Ms. Anctil's case in chief, Mr. McGrath made an oral Motion for Directed Verdict pursuant to CCP Civil Rule 50(a), on the basis that Ms. Anctil failed to introduce any evidence that Mr. McGrath breached his duty of care causing this accident. The Court reserved decision

on Mr. McGrath's Motion. Ms. Anctil then testified during Mr. McGrath's case in chief. At the conclusion of trial, the parties presented closing arguments. This is the Court's Memorandum Opinion and Order after consideration of the pleadings, the record, the oral and documentary evidence submitted at trial, the applicable law, and the arguments of the parties. For the following reasons, the Court enters judgment in favor of Mr. McGrath.

## II. The Facts

On February 11, 2006, a heavy snow storm struck Wilmington, Delaware. This storm caused heavy accumulations of snow. Cpl. May estimated that between ten and twelve inches of snow fell. On February 12, 2006, Ms. Anctil and Mr. Guzelek planned on attending a farmer's market that was supposed to be held at the Chase Center in Wilmington, Delaware. However, when they arrived at the Chase Center, they discovered that the farmer's market was cancelled because the Chase Center parking lot had not been plowed. Ms. Anctil and Mr. Guzelek then decided to go out to dinner, as it was approximately 5:00pm or 6:00pm at that time.

When they left the Chase Center, they drove on Maryland Avenue towards I-95 south. Ms. Anctil was driving. Mr. Guzelek was in the front passenger seat. Ms. Anctil testified that she was driving a baby blue 1996 Mitsubishi Mirage. Ms. Anctil testified that this vehicle had a manual transmission. Ms. Anctil testified that it was dark out at this time. Ms. Anctil testified that Maryland Avenue and I-95 had been plowed, but were icy in some spots. Ms. Anctil testified that it was not snowing.

Ms. Anctil testified that the entry ramp from Maryland Avenue onto I-95S becomes its own lane on I-95S. Ms. Anctil testified that this is the left most lane of I-95S. Ms. Anctil testified that when she reached the top of the Maryland Avenue-I-95S entry ramp, she observed a vehicle stopped in the left most lane of I-95S. Ms. Anctil testified that this vehicle was positioned

perpendicular to this lane, and the front end of the vehicle protruded into the middle lane of I-95S. Ms. Anctil testified that there were several individuals outside of this disabled vehicle, looking at the vehicle. Ms. Anctil testified that she stopped her vehicle, put the vehicle in neutral, and turned on her emergency brakes and hazard lights. Ms. Anctil testified that she did not have any difficulty bringing her vehicle to a complete stop without striking the disabled vehicle.

Ms. Anctil testified that shortly after she stopped her vehicle, a second maroon vehicle driving in the middle lane of I-95S struck the disabled vehicle. Ms. Anctil testified that this collision caused the disabled vehicle to spin, striking the pedestrians that had been standing outside the disabled vehicle examining it. Then, a third, dark vehicle struck the second maroon vehicle in the rear. A fourth vehicle stopped on the right shoulder of I-95S, the driver exited this vehicle and attempted to stop traffic.

After Ms. Anctil and Mr. Guzelek observed this series of collisions, they decided that it would be safest to exit their vehicle, jump over the median separating I-95S from I-95N, and get away from I-95S. Ms. Anctil testified that she looked in her rear view mirror before exiting the vehicle and did not observe any headlights or other vehicles behind her. Mr. Guzelek testified that he observed vehicles on the road before Ms. Anctil exited the vehicle. Ms. Anctil opened the door of her vehicle, and stepped out with her left foot first. Nearly as soon as her left foot touched the ground, her vehicle was struck in the front passenger door by the front left side of Mr. McGrath's vehicle. Mr. McGrath was driving a silver Jaguar sedan. This collision moved Ms. Anctil's vehicle closer to the median. Ms. Anctil testified that she had to jump with her left foot to keep it from getting pulled underneath her vehicle. Ms. Anctil testified that the collision caused the driver's side door of her vehicle to swing open and strike her in the head.

After this collision, Ms. Anctil and Mr. Guzelek exited the Mitsubishi. Both Ms. Anctil and Mr. Guzelek testified that they did not observe Mr. McGrath driving the Jaguar before this collision. Ms. Anctil and Mr. Guzelek also testified that the McGrath-Anctil collision was the last collision in this series of car accidents.

Shortly after this series of car accidents, Cpl. May of the Delaware State Police arrived on the scene of the accident to conduct an investigation. Cpl. May testified that it was nighttime and that the road was a slushy and icy "mess." Cpl. May testified that snow was blowing across the roadway and there were many patches of ice on the road. Cpl. May testified that certain areas of the road were "extremely" icy. Cpl. May described the visibility at the scene of the accident as "poor." Cpl. May testified that the accident occurred at approximately 6:00pm.

Cpl. May testified that when he arrived at the accident scene there were many vehicles that had been involved in the accident spread across the road. Cpl. May testified that while he believes that no driver(s) involved in the accident fled the scene, he is not absolutely certain that no driver(s) fled the scene. Further, Cpl. May testified that there is a bend in the roadway before the accident scene. Cpl. May testified that because of this bend, any driver traveling south on I-95 would not have been able to observe the accident scene until they were approximately 100 feet ahead of the scene.

Cpl. May testified that he interviewed Mr. McGrath at the scene of the accident. Cpl. May testified that Mr. McGrath informed him that immediately before the accident he was traveling south on I-95, when observed three vehicles involved in an accident ahead of him. Mr. McGrath informed Cpl. May that he applied his brakes, but began to slide. Mr. McGrath then said that he was hit by another vehicle, which caused him to spin out and strike Ms. Anctil's vehicle.

Cpl. May also examined the vehicles involved in the accident during his investigation at the accident scene. In addition to the front driver's side bumper of Mr. McGrath's vehicle striking Ms. Anctil's vehicle in its right front door,<sup>1</sup> Cpl. May testified that Mr. McGrath's vehicle was struck on the passenger side front door by a red or maroon vehicle.<sup>2</sup> Also, Mr. McGrath's vehicle was struck on the driver's side rear quarter panel and on the driver's side of the rear bumper.<sup>3</sup>

Mr. McGrath testified that it was cold and icy at the time of the accident, but that it was not snowing. Mr. McGrath testified that traffic was moving very slowly on I-95 because of the road conditions. Mr. McGrath estimated that he was driving approximately twenty-five miles per hour at the time of the accident. Mr. McGrath testified that as he was driving on I-95S, he was struck in the back, closer to the driver's side, by another driver, causing his vehicle to spin out and strike Ms. Anctil's vehicle in the front passenger door area. Mr. McGrath testified that after he hit Ms. Anctil's vehicle, he was hit several other times. However, Mr. McGrath characterized these collisions as minor. Mr. McGrath testified that he was unable to testify as to the exact sequence of events, re: the identity of each vehicle that struck his vehicle and at what time in the sequence of events each vehicle struck him, because everything happened very quickly, and the accident occurred over six years before trial.

On cross examination, Mr. McGrath admitted that he provided a statement to Cpl. May at the accident scene. Mr. McGrath acknowledged that he told Cpl. May that when he saw the accident, he pumped his brakes, began to slide, and that another vehicle "probably" struck his

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<sup>1</sup> Joint Exhibit A, page 1.

<sup>2</sup> Joint Exhibit A, page 2.

<sup>3</sup> Joint Exhibit A, pages 7, 8.

vehicle in the “rear.” Mr. McGrath testified that when he told Cpl. May that another vehicle struck him in the “rear,” he was likely referring to the collision that caused the rear quarter panel and back driver’s side bumper damage depicted in pages 7 and 8 of Joint Exhibit A.

Ms. Anctil testified that immediately after the accident she had a severe headache. Ms. Anctil initially refused to go to the hospital, but her mother came to the scene of the accident and convinced her to go to the emergency room. Ms. Anctil checked into Christiana Hospital, and was kept overnight for observation.<sup>4</sup> Ms. Anctil was diagnosed with a brain contusion and concussion, and was given Morphine for pain.<sup>5</sup> When she was discharged, Ms. Anctil was prescribed Motrin, Flexacil, and Percoset.<sup>6</sup> Ms. Anctil testified in the days after the collision she experienced daily pain in her head, hips, knees, and left arm. Ms. Anctil testified that she had difficulty sleeping for “weeks” after the accident. Ms. Anctil testified that she tried to return to work after the accident. Ms. Anctil testified that her return to work did not even last one complete workday because she became dizzy, confused, had head pain, and suffered from memory loss. Ms. Anctil testified that after she left work, she was bedridden for two weeks.

Ms. Anctil also required several doctors visits after the accident. Ms. Anctil saw Arnold B. Glassman, D.O. of Delaware Back Pain & Sports Rehabilitation Center on March 8, 2006 and March 15, 2006.<sup>7</sup> Ms. Anctil was employed as a Medical Biller at De Groot Chiropractic Health Center at this time. Ms. Anctil also saw Kenneth de Groot, MS, DC, DABDA of De Groot

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<sup>4</sup> Joint Exhibit C.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Joint Exhibit D.

Chiropractic for treatment related to the injuries suffered in the accident on March 13, March 20, April 8, and May 4, 2006.<sup>8</sup>

Finally, Ms. Anctil testified that for several years after the accident she experienced severe driving related anxiety. Ms. Anctil admitted that she has not sought treatment for this anxiety. Ms. Anctil testified that she has made complete recovery from all of her injuries, including her anxiety.

### III. Discussion

In civil claims, the plaintiff, here Ms. Anctil, bears the burden to prove each and every element of its claim(s) by a preponderance of the evidence.<sup>9</sup> The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists.<sup>10</sup>

In order to prevail on a claim for negligence, the proponent of the claim must establish by a preponderance of the evidence that the defendant owed the plaintiff a duty of care, that defendant breached that duty of care, and that defendant's breach of the duty of care was the proximate cause of the defendant's injury.<sup>11</sup> The duty of care typically owed is "one's duty to act reasonably and protect against reasonably foreseeable events."<sup>12</sup> "Delaware recognizes the traditional 'but for' definition of proximate causation."<sup>13</sup> This definition provides that the

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<sup>8</sup> Joint Exhibit E.

<sup>9</sup> *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967)

<sup>10</sup> *Id.*

<sup>11</sup> *New Haverford P'Ship v. Stroot*, 772 A.2d 792, 798 (Del. 2001).

<sup>12</sup> *Shepard v. Reinoehl*, 830 A.2d 1235, 1238 (Del. Super. 2002).

<sup>13</sup> *Duphily v. Delaware Elec. Co-op., Inc.*, 662 A.2d 821, 828-29 (Del. 1995) (citations omitted).



proximate cause “is that direct cause without which [an] accident would not have occurred.”<sup>14</sup> A superseding cause of the injury may break the causal chain when “the intervening act or event itself [was] neither anticipated nor reasonably foreseeable by the original tortfeasor.”<sup>15</sup>

It is not necessary for the Court to rule on Mr. McGrath’s Motion for Directed Verdict, because the Court finds that Ms. Anctil has failed to carry her burden to establish each and every element of her claim of negligence by a preponderance of the evidence. Specifically, Ms. Anctil has failed to meet her burden to prove that Mr. McGrath breached his duty of care. Therefore, the Court must enter judgment in favor of Mr. McGrath.

Ms. Anctil failed to meet her burden to prove that Mr. McGrath breached his duty to act reasonably to protect against reasonably foreseeable events. In opening and closing statements, Ms. Anctil argued that Mr. McGrath violated the provisions of 21 *Del. C.* § 4168(a) which provides that: “[n]o person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and without having regard to the actual and potential hazards then existing.” Presumably, this argument sets forth two potential bases to establish Ms. Anctil’s contention that Mr. McGrath breached his duty of care: (1) Mr. McGrath breached his duty of care because the evidence establishes that he breached his duty to act reasonably to protect against foreseeable events by driving at a speed greater than was reasonable and prudent given the snowy and icy road conditions; and (2) breach of the duty of care is established pursuant to the doctrine of negligence *per se* founded on Mr. McGrath’s alleged violation of 21 *Del. C.* § 4168(a).

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<sup>14</sup> *Duphily*, 662 A.2d at 829 (citations omitted).

<sup>15</sup> *Id.* (citations omitted).

Assuming this is a claim rooted in negligence *per se*, Ms. Anctil must make the following four part showing in order to establish that Mr. McGrath breached his duty of care:

First, the plaintiff must show that the statute in question was enacted for the safety of others. Plaintiff must also show a causal connection between *the statutory violation* and the injury, and, that he was a member of the class of persons the statute set out to protect. In addition, the plaintiff must show that the statute set forth a standard of conduct which was designed to avoid the harm plaintiff suffered. Finally, the *plaintiff must show that the defendant violated the statute by failing to comply with that standard of conduct.*<sup>16</sup>

The problem with Ms. Anctil's claim with respect to either legal theory purportedly establishing that Mr. McGrath breached his duty of care is that there is insufficient record evidence to meet Ms. Anctil's burden to show that Mr. McGrath either violated 21 *Del. C.* § 4168(a), or otherwise drove in an improvident manner given the road conditions. Immediately before the accident it was dark, icy, and snow was blowing on the road. Mr. McGrath testified that as a result of these conditions, traffic was moving very slowly on I-95S. Mr. McGrath testified that he was traveling at a speed of twenty five miles per hour at this time. When Mr. McGrath saw the accident scene, he applied his brakes. Mr. McGrath told Cpl. May that when he applied his brakes he began to slide, and then another vehicle struck the rear of his vehicle, causing him to spin out and hit Ms. Anctil's vehicle. This statement is consistent with Mr. McGrath's testimony at trial that he was struck by another vehicle in the back passenger side of his vehicle, causing him to spin out and strike Ms. Anctil's vehicle.

This testimony is also consistent with the photographs in pages 7 and 8 of Joint Exhibit A. These photographs show damage to the back bumper of Mr. McGrath's vehicle, and the back driver's side quarter panel. In short, the record evidence establishes that Mr. McGrath was driving extremely slowly in an effort to travel safely through poor road conditions when he was

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<sup>16</sup> *NVF Co. v. Garrett Snuff Mills, Inc.*, 2002 WL 130536, at \*2 (Del. Super. Jan. 30, 2002) (emphasis added).

struck by another vehicle, causing him to spin out and hit Ms. Anctil. Based on this testimony and evidence, the Court cannot conclude that Mr. McGrath failed reasonably to protect against foreseeable events by driving at a speed greater than was reasonable and prudent given the snowy and icy road conditions.

Moreover, the remainder of the testimony and evidence introduced at trial do not rebut this factual and legal analysis. Both Ms. Anctil and Mr. Guzelek testified that they did not observe Mr. McGrath operating his vehicle before the accident. Cpl. May did not testify that he believed that Mr. McGrath was driving at an unreasonable speed. The only record evidence relating to whether Mr. McGrath operated his vehicle as a reasonable person is his own version of the events, and the photographs of the damage to his vehicle. As previously stated, these photographs corroborate Mr. McGrath's testimony that he was struck in the back of his vehicle, and was struck other times immediately after striking Ms. Anctil's vehicle, as Mr. McGrath's vehicle was struck on its front passenger side door, in addition to the aforementioned rear collision.<sup>17</sup> Thus, the Court has no reason to question the credibility of Mr. McGrath's testimony, and even assuming it did, then there would be no record evidence regarding whether Mr. McGrath breached his duty of care in any form. In other words, the fact that an accident occurred does not, without testimony establishing that Mr. McGrath did anything wrong, satisfy Ms. Anctil's burden to prove that Mr. McGrath breached his duty of care.

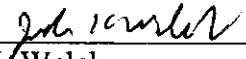
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<sup>17</sup> Joint Exhibit A, page 2.

IV. Conclusion

For the reasons set forth in this Memorandum Opinion and Order, judgment is hereby entered in favor of Mr. McGrath and against Ms. Anctil. Each party shall bear their own costs.

**IT IS SO ORDERED this 31<sup>st</sup> day of July, 2012.**

  
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John K. Welch,  
Judge.

Cc: Ms. Tamu White,  
Civil Case Manager.