JOAN OBERHOLZER and PATRICIA WOLFF, Plaintiffs, v. JOSHUA PARRETT, Defendant, KATHLEEN PARRETT, Additional Defendant, JOAN OBERHOLZER, Additional Defendant, C.P. Franklin County Branch, Civil Action, Docket No. 1999-20485

Summary Judgment – Automobile – Negligence

1. Summary judgment may only be granted where the right is free and clear from doubt and the plaintiff proves there are no genuine issues of material fact.

2. In a motion for summary judgment, the record and inferences therefrom must be resolved in favor of the non-moving party. All doubt must be resolved against the moving party.

3. Drivers do not have a continuing duty to "scan" roadway for oncoming traffic from adjoining side roads. Thus, they cannot be negligent as a matter of law because they have the right-of-way.

Appearances:
Daniel K. Deardorff, Esq.
B. Craig Black, Esq.

OPINION AND ORDER

WALKER, P.J., November 7, 2000

Case History

This action arises out of an automobile accident which occurred on June 5, 1998. Joan Oberholzer, as she drove south on U.S. Route 11, collided with a car driven by Defendant Joshua Parrett after he entered Route 11 from adjoining Mill Road. Oberholzer and her passenger, Patricia Wolff, thereafter instituted this action by complaint on September 25, 1999. Plaintiffs filed an amended complaint and defendants responded by naming Oberholzer as an additional defendant in their answer and new matter filed on March 16, 2000.

Plaintiff and Additional Defendant Joan Oberholzer filed a motion for summary judgment on September 21, 2000, in which she asserted that no material facts exist that subject her to any liability for negligence as an additional defendant against her co-plaintiff, Patricia Wolff. Hence, she maintains that defendant's cross claim against her should be dismissed. Briefs were submitted by counsel for both parties and oral argument was held before this court on November 2, 2000.

Opinion

Under Pa.R.Civ.P. 1035.2, summary judgment may be granted as a matter of law:

> (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
>
> (2) if, after completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Summary judgment may only be granted where the right is free and clear from doubt. *Drapeau v. Joy Technologies, Inc.*, 447 Pa. Super. 560, 563, 670 A.2d 165 (1996). The moving party has the burden of proving that there is no genuine issue of material fact. *Drapeau*, at 563. The record and any inferences therefrom must be viewed in the light most favorable to the non-moving party. *Id.* Any doubt must be resolved against the moving party. *Id.* It is in this light that the above stated issues must be determined.

As Oberholzer drove south on U.S. Route 11, Parrett pulled out in front of her. He has essentially proposed, by naming Oberholzer as an additional defendant, that she is liable to her passenger because she did not avoid the accident. It is not presently disputed that she had the right of way on Route 11, but defendants argue that she nonetheless had the duty to look for traffic that may enter from the "intersection." Upon review of defendants' brief and the case law, the court must disagree. Indeed, the argument is not even applicable instantly because the accident did not occur at a four-way intersection and there is no traffic signal or four-way stop at that location. Parrett entered Route 11 after waiting at a stop sign on Mill Road.

The court would be inclined to agree with defendants' argument if Oberholzer had waited at a red traffic signal and proceeded through the intersection when it turned green without first checking for oncoming traffic. Such are not the facts at bar, and this court cannot surmise that every driver on Route 11 or a similar stretch of open road has an outright and continuing duty to vigilantly scan for all vehicles that may negligently overrun their lane of travel from a side road.

Defendants also rely on two separate statements or "versions" made by Oberholzer that, they maintain, present a question of fact to be resolved by a jury. Immediately after the accident, Oberholzer stated that she wasn't sure how the accident occurred. Later, in a deposition, she testified that she saw him coming, but could not stop in time because he "just came out in front of me." Quite frankly, the court fails to see how the statements are necessarily relevant to Oberholzer's status as an additional defendant. Defendants may presumably present the statements as evidence of Oberholzer's contributory negligence as a **plaintiff** without the need to name her as an additional defendant. Thus, any question of fact instantly concerning Oberholzer's negligence may be more properly considered by the jury in terms of her contributory negligence rather than as an additional defendant. However, the court is unconvinced that she can be liable to Patricia Wolff as a matter of law because she had the right of way and Parrett pulled out in front of her.

ORDER OF COURT

November 7, 2000, this court having heard read the motion for summary judgment, the briefs submitted by both parties and the oral arguments presented by counsel for both parties, it is hereby ordered and adjudged that the motion for summary judgment is granted and Joan Oberholzer is dismissed as a third party defendant in the above captioned matter.

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