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Case Number 90,2014

IN THE SUPREME COURT FOR THE STATE OF DELAWARE

PAULINE F. DAUB,	§	
	§	No. 90, 2014
Plaintiff Below – Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware in and
	§	for Kent County
SAMUEL G. DANIELS, WILLIAM BAKER AND BESTFIELD HOMES, LLC,	§	C.A. No. K11C-03-037-JTV
	§	
	§	

Defendants Below– Appellees.

APPELLEE, SAMUEL G. DANIELS' ANSWERING BRIEF IN APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

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NATURE OF PROCEEDINGS

This is a claim for personal injuries that arose from a motor vehicle accident which occurred on May 6, 2009 on State Route 1 northbound north of Dover, Delaware. Defendant Daniels was proceeding down Route 1 when he heard a loud noise and saw his tailgate had come off his truck and was on the highway. He immediately pulled over and started back to retrieve the tailgate. He observed several vehicles miss the tailgate, but a vehicle driven by Defendant Baker, an agent for Bestfield Homes, struck the tailgate causing it to fly onto the hood and over the roof of Plaintiff's vehicle. Plaintiff claimed injuries as a result of this incident.

A jury trial began on Monday, May 13, 2013 before President Judge Vaughn and continued for a total of five trial days. The jury returned with a finding of no negligence causally related to the accident for Defendant Daniels.

Defendant Daniels filed a timely Motion for Costs.

Plaintiff filed a Motion for a New Trial which was denied by the Court on September 30, 2013.

The Court ordered costs in the amount of $1,324.50 on January 24, 2014.

SUMMARY OF THE ARGUMENT

I. Denied. This Argument is against the Co-Defendants and Appellee Daniels will defer to Co-Defendants for this Argument.

II. Denied. Although two statutes were raised to the jury, the statutes are ambiguous and, as in this case, a reasonable jury may find that the statutes did not apply to these facts. In addition, even though Mr. Daniels' testimony consisted of statements which, when joined together, the plaintiff classifies as "admissions", a reasonable jury could, and actually did, come to the conclusion that an adequate inspection was performed by Mr. Daniels and find he was not negligent in a manner proximately causing injury to the Plaintiff.

III. Denied. This Argument is against the Co-Defendants and Appellee Daniels will defer to Co-Defendants for this Argument.

IV. Denied. Appellee Daniels will only address the part of this argument arising from Plaintiff's claim against him. Argument IV is merely a restatement of Argument II except instead of arguing that no reasonable jury could find as this jury found, Plaintiff is arguing that the Judge erred in rejecting Plaintiff's proposed jury instruction which were repetitive and based upon cases from Pennsylvania and Maine (over 75 years old) that were inapplicable to this situation.

V. Denied. This Argument is against the Co-Defendants and Appellee Daniels will defer to Co-Defendants for this Argument. However, whether the Court used the verdict sheet actually presented to the jury **or** the verdict sheet that was proposed by Appellee Daniels and approved by Plaintiff , the verdict would have been the same as to Appellee Daniels.

VI. Denied. The only "errors" identified and restated under each argument regarding Appellee Daniels deals with the failure to instruct the jury on the common law regarding negligence based upon laws not adopted or acknowledged by Delaware, which the Trial Judge rightly found did not exist. Therefore, no accumulation of errors exist.

STATEMENT OF FACTS

On May 6, 2009 at approximately 6:30 a.m., Defendant Daniels was proceeding down State Route 1 northbound in the left lane on his way to work (B-12 through B-14) He heard a "boom" and immediately looked behind him and saw that his tailgate had come off of his vehicle (B-14). He immediately pulled his vehicle over to the side of the roadway, alighted from the vehicle and began to walk back on the shoulder to try to retrieve the tailgate. While he was walking back, he observed between 7 – 9 vehicles avoid his tailgate safely (B-14-15 and B-18). However, before he was able to get to the tailgate, it was struck by a vehicle driven by Defendant Baker, an agent of Bestfield Homes, causing the tailgate to go into the air and glance off of a utility truck in the right lane and ultimately onto the hood of Plaintiff's vehicle and over the roof of her car (B-20 through B-22). Defendant Daniels testified that he had no notice that anything was wrong with his tailgate. His inspections of the tailgate was when he actually used it every few days and had not noticed any problems with it (Daniels' Appendix B1-1 through B1-4). Defendant Daniels was issued a citation following the accident in violation of 21 *Del.C. § 4371* which states:

> No vehicle shall be driven or moved on any highway unless it is so constructed or loaded as to prevent its **contents** from dropping, sifting, leaking or otherwise escaping therefrom [emphasis added].

Although Mr. Daniels pled guilty by mailing in this citation, this citation deals with mismanaging contents of a vehicle rather than defective equipment and is not applicable to this matter.

Plaintiff brought suit against Mr. Daniels alleging that by driving his vehicle on the highway when it was in such an unsafe condition as to endanger any person was negligent and the proximate causation of her injury. Plaintiff also brought suit against Defendant Baker and Bestfield Homes. Defendant Daniels denied negligence and Defendants Baker and Bestfield Homes relied upon the affirmative defense of sudden emergency.

A five-day jury trial ensued and the jury returned a defense verdict for both defendants finding Defendant Daniels not negligent in a way that proximately caused Plaintiff injury and finding that the sudden emergency doctrine applied to Defendants Baker and Bestfield Homes.

ARGUMENT I

(1) QUESTION PRESENTED

Did the lower court commit reversible error in denying Plaintiff's motion for judgment as a matter of law with regard to the affirmative defense of sudden emergency because by Defendant Baker's own uncontradicted admissions he created the emergency under which he claimed refuge?

(2) SCOPE OF REVIEW

Appellee Daniels defers the scope of review argument to Co-Defendants, William Baker and Bestfield Homes, LLC since this argument deals exclusively with allegations related only to them.

(3) MERITS OF THE ARGUMENT

Appellee Daniels will defer any argument for Argument 1 to Co-Defendants, William Baker and Bestfield Homes, LLC since this argument deals exclusively with allegations related to them.

ARGUMENT II

(1) QUESTION PRESENTED

Did the evidence preponderate so heavily against the Defendants on the jury verdict of no liability that no reasonable jury could have reached that result, warranting a new trial?

(2) SCOPE OF REVIEW

The scope of review for this issue would be abuse of discretion pursuant to Bell Atlantic-Delaware, Inc. v. Saporito, 875 A.2d 620, 625 (Del. 2005) (citing Roadway Express v. Folk, 817 A.2d 772, 776 (Del. 2003).

(3) MERITS OF THE ARGUMENT

A. Appellant has failed to prove that the jury verdict was so against the great weight of the evidence that no jury could reasonably render that verdict which is the standard for a jury verdict to be set aside.

Recently, this Court opined in Cooke v. Murphy v. State Farm, 2014 Del.Lexis 349 (Del.Super) notes that:

"A jury's verdict is given "enormous deference," and, absent "exceptional circumstances," the amount of damages awarded by a jury is presumed to be correct. On a motion for a new trial, "[t]he Court will only set aside a verdict as insufficient if it is clear that the verdict was the result of passion, prejudice, partiality, corruption, or if it is clear that the jury disregarded the evidence or law."

In this case, the Appellants do not assert that the jury's verdict was based upon passion, prejudice, partiality or corruption. The basis of his argument is that a finding of no negligence of Defendant Daniels in a manner proximately causing injury to plaintiff was so against the great weight of the evidence that no reasonable jury could render that verdict and, if allowed to stand, it would amount to a miscarriage, if not travesty, of justice.

Appellant's argument is based solely upon two cited citations that individuals should not drive a vehicle on any highway which is in such an unsafe condition as to endanger any person. Both of these statutes were read to the jury twice during the trial judge's charge to the jury. First in Plaintiff's Contentions (A-173) and then again in Plaintiff's Charges of Negligence Directed to Defendant Daniels (A-176).

B. The language in the Statutes Used was Too Vague to Be Directly Applicable to this Situation.

Historically, there were no statutes on point for the Plaintiff with regarding to this broad assertion. However, the Court allowed the Plaintiff to use these two statutes containing many ellipses (…) indicating the portions of the statute that were not relevant to this matter and may confuse the jury. The effect of such a generalized statute is that it is open to

interpretation by the finders of fact, in this case the jury. Any lay person is aware that it is impossible to be aware of any and all obscure and potential dangers in a vehicle that could potentially cause harm to someone. They had to review the statute as it was presented to them and apply it to the facts in this case, where the Defendant Samuels had testified that he had no notice of any problems with the tailgate (Appellee Daniels' Appendix B1-1 through B1-4). It is reasonable and foreseeable that a jury, as was the case here, reviewed the very general excerpts of the statute and correctly found that it didn't apply to this situation.

The Trial Judge in his Order Denying Plaintiff's Motion for a New Trial noted:

> While the plaintiff argued a theory that the tail gate had been tied on with bailor twine or some such similar twine or rope, there was evidence to rebut that argument; and apart from the plaintiff's argument, there was little or no evidence to explain how it came to be that the tailgate fell off. Under these circumstances, in the absence of any further evidence explaining the condition of the truck before the tailgate fell off, I am not persuaded that I should disturb the jury's finding that Mr. Daniels conduct did not amount to a violation of the statutes or that such negligence was not a proximate cause of her injuries.

C. The Trial Judge was Correct in his Determination that No Common Law Duty Exists in Delaware for an owner or operator of a vehicle to conduct an inspection of his or her vehicle before taking it out on the roadway that requires an instruction on the point.

In support of this issue, the Trial Court opined in his Order Denying Plaintiff's Motion for a New Trial that:

> Because there is no applicable motor vehicle statute, I continue to hold the view that the plaintiff was not entitled to a specific instruction on duty to inspect and that the issue was appropriately covered by the general negligence instruction (attached to Appellant's Opening Brief).

The only support for Plaintiff's position offered was a Maine case from 1939 and a Pennsylvania case from 1936 to support her proposition that such a common law duty exists. The Judge agreed with Defendant Daniels' argument at that point that that 21 *Del. C.* § 4355(a) and 21 *Del. C.* § 2115, which were twice read to the jury, "theoretically encompassed, if not exceeded, the purpose that an additional instruction of the duty to inspect would have accomplished." Therefore, the Court was correct in accepting a jury instructing imposing a common law duty that has not yet been adopted statutorily in Delaware.

ARGUMENT III

(1) QUESTION PRESENTED

Did the lower court abuse its discretion by allowing Defendant Baker to elicit testimony that other drivers in the vicinity of the incident were also following too closely, notwithstanding Plaintiff's reliance upon the standard of negligence *per* se established in 21 Del.C. §4123(a)?

(2) SCOPE OF REVIEW

Appellee Daniels will deter scope of review analysis to Co-Defendants, William Baker and Bestfield Homes, LLC since this argument deals exclusively with allegations related to them and not Appellee Daniels.

(3) MERITS OF THE ARGUMENT

Appellee Daniels will defer any argument for Argument III to Co-Defendants, William Baker and Bestfield Homes, LLC since this Argument deals exclusively with allegations related to them.

ARGUMENT IV

(1) QUESTION PRESENTED

Was it not error for the trial court to refuse to instruct the jury on Plaintiff's alternative theories of liability against both Defendants and on the effect of their admissions and inferences to be drawn?

(2) SCOPE OF REVIEW

The scope of review for this issue would be *de novo* in that Appellant is claiming that the trial court refused to instruct the jury on an instruction that was challenged by the parties. Chrysler Corporation v. Chaplake Holdings, Ltd., 822 A.2d 1024, 1034 (Del.2003); North v. Owens-Corning Fiberglas Corp., 704 A.2d 835, 837, 838 (Del.1997).

(3) MERITS OF THE ARGUMENT

Appellee Daniels will defer any argument for Argument V relating to the Co-defendants to the Co-Defendants, William Baker and Bestfield Homes, LLC. However, Appellee Daniels will only address the arguments made against him.

A. The Merits of The Court's Decision Not To Allow Instructions on the Common Law Duty to Inspect Vehicle has already been addressed under Argument II above.

B. The Court was Correct in Not Allowing Additions to the Jury Pattern Instructions

During the Prayer Conference, Plaintiff had submitted many instructions that were different from the Pattern Jury Instructions, some instructions including a few sentences tailored to protect his client's interest. Many of the additions were either repetitive of instructions already contained in the agreed upon jury instructions or essentially unnecessary. Plaintiff highlights two of the instructions that were rejected with regard to Defendant Daniels.

The first instruction "Evidence: Direct, Indirect or Circumstantial" was actually used with the exception of additional language added by the Plaintiff which deviated from the Superior Court Pattern Jury Instructions. The additional sentence dealt with drawing inferences and was objected by both Defendants. The effect of the sentence on inference was superfluous and repetitive and would do nothing more than confuse the jury.

The second instruction proffered by Plaintiff was entitled Statements Against Interest, Admissions by the Parties. This instruction not a Pattern Jury Instructions and was objected by both Defendants citing that the instruction was confusing. The Court agreed, finding that the instruction as

a whole may tend to confuse or mislead the jury. Although Appellant argues the fact, neither of the above jury instructions is applicable to the facts and law of the case in violation of Alber v. Wise, 166 A.2d 141,143 (Del. 1960).

This case is a relatively simple motor vehicle accident case with simple issues. As such, this trial did not lend itself to unique and intricate areas of the law in which new and tailored jury instructions needed to be appended to the existing Pattern Jury Instructions. The two above instructions were not vital to the claims and causes of actions brought by the Plaintiff against Defendant Daniels. Therefore, the Court was justified in its findings to exclude the above jury instructions.

ARGUMENT V

(1) QUESTION PRESENTED

Was it reversible error for the trial court to place the affirmative defense of sudden emergency out of sequence at the top of the special verdict form and without including language identifying the specific conditions limiting its application?

(2) SCOPE OF REVIEW

Appellee Daniels will defer any analysis on Scope of Review to Co-Appellees, William Baker and Bestfield Homes, LLC since this Argument deals exclusively with allegations related to them.

(3) MERITS OF THE ARGUMENT

Appellee Daniels will defer any argument for Argument 1 to Co-Appellee, William Baker and Bestfield Homes, LLC since this Argument deals exclusively with allegations related to them.

ARGUMENT VI

(1) QUESTION PRESENTED

Do not the several errors identified in previous arguments in this brief cumulatively amount to prejudice sufficient to award a new trial?

(2) SCOPE OF REVIEW

Based upon Appellant's arguments in cumulative effect claim, any review would have to be a *de novo* review since there would have been no actual decision by the trial court on the cumulative effect of its alleged errors.

(3) MERITS OF THE ARGUMENT

A. The Court did not commit errors that could cumulate. Therefore, this argument is without merit. Again, the only errors noted by Appellant for Appellee Daniels were not instructing the jury of a common law duty of all drivers to inspect their vehicle before driving on a highway and failing to include jury instructions that did not address any relevant claims or issues within the case in a meaningful way. This has been thoroughly discussed in both Arguments 2 and 4 above.

CONCLUSION

Based upon the above arguments and cited authorities, no basis exists for a new trial to be granted.

Respectfully Submitted,

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