

MICHELLE R. HERLOCHER, Plaintiff	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
	:	JURY TRIAL DEMANDED
vs.	:	NO. 01-00,575
	:	
WILLIAM M. McCONNELL, Defendant	:	CIVIL ACTION - LAW
	:	
	:	
vs.	:	
	:	
JULIE M. BREWER, Additional Defendant	:	SCHEDULING ORDER

WAYNE BREWER, natural parent and guardian of MATTHEW BREWER and BLAKE BREWER, Plaintiff	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
	:	
	:	JURY TRIAL DEMANDED
vs.	:	NO. 01-01,046
	:	
WILLIAM M. McCONNELL, Defendant	:	CIVIL ACTION - LAW
	:	
	:	
vs.	:	
	:	
JULIE M. BREWER, Additional Defendant	:	SUMMARY JUDGMENT

Date: November 4, 2002

OPINION and ORDER

The motion before the Court is Defendant, William M. McConnell's, Motion for Summary Judgment filed August 8, 2002. The case arises out of a motor vehicle accident that occurred on October 19, 2000. Michelle Herlocher filed a complaint against McConnell on April 12, 2001 (Docket No. 01-00575). Wayne Brewer filed a complaint on behalf of his minor children, Matthew and Blake Brewer, against McConnell on August 3, 2001 (Docket No. 01-01,046). On June 6, 2002, McConnell filed an Additional Defendant Complaint against

Julie M. Brewer. The two cases, *Brewer v. McConnell* and *Herlocher v. McConnell*, were consolidated by stipulation of counsel on June 13, 2002 (Docket No. 01-00575). Herlocher has settled her claim against Julie Brewer. Wayne Brewer, on behalf of his minor children, has settled his claim against Julie Brewer. Accordingly, the claims left for trial are Herlocher against McConnell and Wayne Brewer against McConnell.

Facts

The following are the relevant and undisputed material facts with regard to the Motion for Summary Judgment.¹ A motor vehicle accident occurred at the intersection of S.R. 220 and Front St. in Woodward Township, Pennsylvania, on October 19, 2002 at approximately 7:48 a.m. On the day in question, Julie M. Brewer had her minor children, Matthew and Blake, with her in a 1991 Ford Escort. Julie Brewer was going westbound on Front St. She intended to cross the northbound lanes of S.R. 220, turn left, and enter the southbound lanes of S.R. 220. William McConnell was operating a vehicle in the right northbound lane of S.R. 220. Michelle Herlocher was operating a motor vehicle in the left northbound lane of travel on S.R. 220, on October 19, 2002. Road construction was under way on S.R. 220 at that time. There were signs south of the accident site instructing drivers to merge into the right lane. At the time of the accident, the flow of traffic in the right northbound lane was slow moving.

¹ The record used by the Court to decide the Motion for Summary Judgment consisted of: the Herlocher Complaint against McConnell; the Answer with New Matter of McConnell to Herlocher's Complaint; the Wayne Brewer Complaint against McConnell; the Answer with New Matter of McConnell to Brewer's Complaint; the McConnell Additional Defendant Complaint; the Answer with New Matter of Julie Brewer to McConnell's Additional Defendant Complaint; McConnell's Motion for Summary Judgment; the Answer of Wayne Brewer to McConnell's Motion for Summary Judgment; McConnell's Brief in Support of the Motion for Summary Judgment; Wayne Brewer's Brief in Opposition to the Motion for Summary judgment; the Reply Brief of McConnell; the Deposition of William McConnell; and the Deposition of Julie Brewer.

Julie Brewer arrived at S.R. 220 from Front St. She stopped at the intersection and waited for an opportunity to proceed. McConnell approached the intersection at Front St. and stopped with the flow of traffic. When traffic started to move again, McConnell made a hand gesture to Julie Brewer.² Brewer proceeded in front of McConnell's vehicle and attempted to enter the southbound lanes of S.R. 220. However, Herlocher struck Brewer's vehicle as it moved into the left northbound lane of S.R. 220.

McConnell contends that he is entitled to summary judgment. McConnell argues that he is entitled to judgment as a matter of law because his act of signaling cannot be the legal cause of the car accident under *Askew v. Askew*, 521 A.2d 459 (Pa. Super. 1987). McConnell argues that the hand gesture he made to Julie Brewer was not "in the legally responsible chain of events that caused the accident." See, McConnell's Brief in Support of Summary Judgment (McConnell Brief), p. 11. McConnell asserts that like the signal-receiver juror in *Askew*, Julie Brewer did not rely on McConnell's hand signal as an indication that it was safe to proceed through the left-hand northbound lane of S.R. 220, but rather she merely made an assumption that it was. See, McConnell Brief, pp. 6, 8.

In response, Wayne Brewer argues that McConnell is not entitled to summary judgment as *Askew* does not prevent McConnell's hand gesture from being the legal cause of the accident. Wayne Brewer contends that there are significant issues of fact that do not equate this situation with that of *Askew*. Most significantly, Brewer contends that

² What that hand gesture was is an issue of dispute. Julie Brewer contends that McConnell made a right to left motion with his hand open. See, Deposition of Julie Brewer at 37, 67. William McConnell contends that he motioned to Brewer to come into the right northbound lane by using his right hand and pointing with his index finger extended. See, Deposition of William McConnell at 30-1.

there are genuine issues of fact as to whether or not Brewer relied on the hand signal as an all clear to proceed across to the southbound lanes of S.R. 220. *See*, Brief of Brewer in Opposition to the Motion for Summary Judgment (Brewer Brief), p. 5.

Wayne Brewer also raises a Nanty-Glo issue. Wayne Brewer contends that McConnell cannot use the oral testimony of Julie Brewer to support his Motion for Summary Judgment. *See*, Brewer Brief, p. 8. Wayne Brewer argues that Julie Brewer and McConnell are not adverse parties. If the case against McConnell was dismissed via summary judgment, then Julie Brewer would be freed from further liability. Julie Brewer would no longer be concerned with being “found liable on a contribution claim to McConnell.” *See*, Brewer Brief, p. 9. Therefore, it would be in both Julie Brewer and McConnell’s interests for McConnell to prevail on the Motion for Summary Judgment.

McConnell counters that there is no Nanty-Glo issue because the deposition testimony used to support his Motion for Summary Judgment is from an adverse non-moving party, Julie Brewer. *See*, Reply Brief of McConnell, p. 4. McConnell contends that Julie Brewer is adverse because he filed an Additional Defendant Complaint against her and seeks “contribution and or indemnification from Brewer as he avers that Brewer’s negligence, carelessness and or recklessness caused the accident. *See*, Reply Brief of McConnell, p. 5.

Discussion

A party may move for summary judgment when the relevant pleadings are closed. *See*. Pa. R.C.P. 1035.2. Summary Judgment may be properly granted “when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of fact and that the moving party is

entitled to judgment as a matter of law.” See, *Godlewski v. Pars Mfg. Co.*, 597 A.2d 106, 107 (Pa. Super. 1991). “Summary judgment may be entered only in cases that are clear and free from doubt.” See, *Ibid.* In evaluating a Motion for Summary Judgment, the court must examine the record “ ‘in the light most favorable to the non-moving party accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.’” See, *Ibid.* “Any doubt must be resolved against the moving party.” See, *Garcia v. Savage*, 586 A.2d 1375, 1377 (Pa. Super. 1991).

Proximate cause or legal causation is a question of law that must be resolved before the case can proceed to the jury. See, *Brown v. Philadelphia College of Osteopathic Medicine*, 760 A.2d 863, 868 (Pa. Super. 2000). Legal causation is determined by asking “whether the defendant’s conduct was a ‘substantial factor’ in producing the injury.” See, *Id.* at 869. In the case *sub judice*, it is “whether the driver’s signal can support an inference that the act of signaling was [a substantial factor in causing] the victim’s injury. See, *Askew*, 521 A.2d at 463.

In *Askew v. Askew*, the Superior Court held that the hand signal given by a driver in traffic to another “had no connection with the accident.” See, 521 A.2d at 463. The hand signal was not the legal cause of the accident; it “was not in the legally responsible chain of events that caused the accident that injured Askew.” See, *Ibid.* In *Askew*, two cars were proceeding in opposite directions at an intersection on a four-lane road. Zeller was facing west and Olson facing east. See, *Id.* at 461. Zeller wanted to turn left in front of Olson and indicated such by turning on her left turn signal. See, *Ibid.* Olson then signaled Zeller with a left-to-right hand motion. See, *Ibid.* Olson did not look to her right or in her rear view mirror

to ascertain if traffic was approaching in the right lane prior to signaling. *See, Ibid.* From his position, Zeller had “a clear view of approaching traffic on Olson’s right.” *See, Ibid.* Zeller proceeded to make a turn in front of Olson. *See, Ibid.* Askew was traveling east in the lane on the right of Olson. Askew continued through the intersection and collided with the side of Zeller’s vehicle. *See, Ibid.*

The Superior Court concluded that Olson’s hand gesture was not the legal cause of the accident between Zeller and Askew. *See, 521 A.2d at 463.* The Superior Court reached that conclusion on the basis that Zeller “clearly and unequivocally stated that he interpreted Olson’s signal only to mean she would remain stopped and he could proceed in front of her.” *See, Ibid.* “He maintained that he never relied on Olson’s signal as an indication that no other traffic was approaching the intersection.” *See, Ibid.* Also, Zeller had “a clear view of approaching traffic on Olson’s right.” *See, Id.* at 461. On the facts of *Askew*, the hand gesture was not the legal cause of an accident since there was no reliance on the hand signal as an indication that it was safe to proceed and the signal recipient had a clear view of the approaching traffic.

The case *sub judice* is different than *Askew*. Drawing all reasonable inferences in favor of the non-moving party and resolving all doubts against the movant, there is evidence that Julie Brewer did rely on the hand gesture and she did not have an unobstructed view of the oncoming traffic in the left northbound lane of S.R. 220. Julie Brewer testified in her deposition that she did not see McConnell do anything to indicate that he looked in the left lane to check for traffic. *See, N.T. Brewer, 37-8.* However, Julie Brewer did testify that if McConnell had not waived to her then she would not have pulled out onto S.R. 220. *See, N.T.*

Brewer, 55. She did so relying on her assumption that no oncoming traffic would be in the left northbound lane of S.R. 220. *See*, N.T. Brewer, 56. Julie Brewer made that assumption based on a further assumption that McConnell had checked to see if traffic was coming. Also, Julie Brewer assumed that McConnell had checked for traffic because he was in the better position to see if there was on-coming traffic in the left northbound lane. *See*, N.T. Brewer, 62. *See*, N.T. Brewer, 56. Julie Brewer also assumed it was safe to proceed across the northbound lanes of S.R. 220 since McConnell stopped, made a hand gesture, and let her proceed. Based on an earlier situation, when a car was going to let her out but did not after she put her left turn signal on, Julie Brewer concluded that the car did not allow her to proceed since it was unsafe to move left. *See*, N.T. Brewer, pp. 56, 62-3. Julie Brewer testified that she proceeded forward, believing no traffic was coming, relying on the construction signs telling motorists to merge right and McConnell's hand gesture. *See*, N.T. Brewer 56-7.

Brewer also stated in her deposition that she could not see the left northbound lane of S.R. 220. *See*, N.T. Brewer, 36. She testified that she could not see the lane, and the approaching traffic thereon, from her position stopped on Front St. *See*, N.T. Brewer, 36. Julie Brewer also testified that she could not see the left lane once she entered the northbound lanes of S.R. 220. According to Julie Brewer, in order for her to view the left lane, once she entered the northbound lanes of S.R. 220, she would have had to pull into the left lane, exposing the front of her vehicle. *See*, N.T. Brewer, 41-2.

Resolving all doubts against McConnell and giving all favorable inferences to Wayne Brewer, the testimony given by Julie Brewer places the case *sub judice* in a different situation than *Askew*. Unlike *Askew*, if the facts alleged are true, there was reliance on the

hand gesture and the signal receiver did not have a clear view of the on coming traffic. Unlike *Askew*, the facts, if true, could lead to a conclusion by the fact finder that the signal was a substantial factor in causing the accident between Herlocher and Julie Brewer in light of the surrounding circumstances. Therefore, McConnell is not entitled to summary judgment under *Askew*.

Since the Court has disposed of the summary judgment motion on other grounds, there is no need to address the Nanty-Glo issue raised by Wayne Brewer.

ORDER

It is hereby **ORDERED** that McConnell's Motion for Summary Judgment filed August 8, 2002 is DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Denise Dieter, Esquire
Richard A. Gray, Esquire
Mark A. Givler, Esquire
9 West Church Street; P. O. Box 466; Lock Haven, PA 17745
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)