

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MICHAEL J.L CERVINSKY and	:
LORRAINE C. CERVINSKY,	:
Administrators for the ESTATE OF	:
RYAN J. CERVINSKY, and in their	: No. 03-01,731
Individual capacity	:
Plaintiffs	:
	:
vs.	: CIVIL ACTION – LAW
	:
BRIAN S. HOBENSACK, KIMBERLY	:
GETZ, GENERAL MOTORS	:
CORPORATION, THE PEP BOYS-	:
MANNY MOE & JACK,	: Defendant Kimberly Getz’
RALLY MANUFACTURING, INC.	: Motion for Summary Judgment
Defendants	:

ORDER

This matter came before the Court on Defendant Kimberly Getz’ Motion for Summary Judgment. The basis for the motion for summary judgment was that Plaintiffs failed to produce evidence of facts essential to their negligence cause of action under Pennsylvania Rule of Civil Procedure 1035.2(2). The relevant facts follow.

Getz was traveling eastbound on Interstate 180 near the Faxon exit and on-ramp. The speed limit in this section of Interstate 180 is 55 mph. Getz testified in her deposition that she was traveling at 60-62 mph. Her friend Valerie Neidig, who was in the front passenger seat of the Getz vehicle, estimated that they were traveling 65-70 mph. As Getz was approaching the Faxon on-ramp, she observed a Pontiac Sunfire at the bottom of the on-ramp. The Sunfire was being driven by Hobensack and contained three passengers. Getz did not move into the passing lane to allow Hobensack’s Sunfire to enter the highway, because she had the right-of-way and she did not expect Hobensack to traverse the loop of

the on-ramp as quickly as he did. When the Sunfire completed the loop it was approximately parallel to the Getz vehicle. Getz could see Hobensack and the front passenger, but could not observe the rear passengers. Hobensack pulled in behind Getz, and then moved into the passing lane. He rapidly accelerated. He and the passengers in his vehicle were yelling and making gestures at Getz as the Sunfire passed the Getz vehicle. Although there was no other traffic in the vicinity, Hobensack suddenly cut in front of the Getz vehicle. Hobensack's Sunfire was close enough to the Getz vehicle that Getz could not see its tailpipes, but it never came in contact with the Getz vehicle. Hobensack lost control of the Sunfire. It fishtailed twice, crossed the passing lane, went across the median, and into the westbound lanes of Interstate 180. The driver's side of the Sunfire impacted with the front of a Ford Taurus traveling westbound. Ryan Cervinsky, the driver's side rear passenger, was killed. The Trooper who conducted an accident reconstruction calculated Hobensack's speed at 90 mph at or about the time he lost control.

The Court finds there is insufficient evidence to satisfy the elements of Plaintiffs' negligence cause of action against Getz. To proceed to a jury trial, Plaintiff must have sufficient evidence to establish a prima facie case of each element of a negligence cause of action: (1) duty; (2) breach; (3) causation; and (4) damages. Plaintiffs' theory is that Getz engaged in road rage by speeding and trying to keep Hobensack out of her lane. Getz' failure to move into the left lane to allow Hobensack to enter the highway was not negligent, because Getz did not have a duty to move over. Getz had the right-of-way and Hobensack had the duty to slow down or stop if necessary to safely enter the highway. See 75 Pa.C.S.A. §§ 3321(b)(1), 3323(c). Getz' failure to move into the left lane also did not cause the accident, because Hobensack successfully merged onto the highway behind Getz.

Although there may be evidence that Getz was exceeding the speed limit, the record does not support Plaintiffs' contention that Getz was trying to keep Hobensack out of her lane of travel or that the speed of her vehicle in any way contributed to the accident. Getz testified that she didn't recall if she accelerated when Hobensack was on the ramp trying to merge onto the highway. Getz Deposition, p. 13, lines 18-21. She didn't remember accelerating at all, but there was a possibility that she did **to make room** for someone to get on the highway. Getz Deposition, p. 54, lines 9-14. When the Sunfire was in the left lane passing her, Getz testified she slowed down. Getz Deposition, p. 54, lines 15-17. Neidig didn't know or couldn't recall whether the speed of the Getz vehicle remained constant. Neidig Deposition, p. 46, lines 11-14; p. 61, lines 1-4. Plaintiffs submitted these depositions and the police accident report in opposition to Getz' motion for summary judgment. These are the only references in the record regarding whether Getz accelerated and at what point. Hobensack successfully merged onto the highway behind Getz. Therefore, even assuming she accelerated when Hobensack was on the ramp, such acceleration did not cause the accident. There is no evidence from which the jury could reasonably conclude that Getz accelerated while Hobensack was in the left lane passing her. Although Getz may have been traveling in excess of the speed limit, her vehicle never came in contact with the Sunfire driven by Hobensack, even though Hobensack lost control of his vehicle when he attempted to cut in front of her. Based on the record before the Court, Plaintiffs' theory that Getz accelerated to prohibit Hobensack from passing her and engaged in a mutual act of road rage that contributed to the accident is nothing more than speculation or conjecture.

AND NOW, this ___ day of January 2007, the Court GRANTS Defendant Kimberly Getz' Motion for Summary Judgment.

By The Court,

Kenneth D. Brown, P.J.

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