

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TAMMY PARRY and COLIN J. PARRY, in their : NO. 07 – 00,445
own right and as Guardians for SAMANTHA PARRY, :
Plaintiffs :
vs. : CIVIL ACTION - LAW
FRANCIS DYER, Executor of the Estate of :
MABEL DYER, deceased, :
Defendant :

ESTATE OF MABEL DYER, deceased, and FRANK : NO. 06 – 00,679
DYER as Executor and individually, :
Plaintiffs, :
vs. : CIVIL ACTION - LAW
TAMMY PARRY and BOROUGH OF :
MONTOURSVILLE, :
Defendants : Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendant Tammy Parry’s Motion for Summary Judgment, filed September 27, 2007. Argument on the motion was heard November 30, 2007.

These cases arise from an automobile accident on September 29, 2005, wherein vehicles driven by Tammy Parry and Mabel Dyer collided in an intersection of two streets in Montoursville. The intersection was controlled by a traffic control device and both parties are contending the other party ran a red light. Specifically, and as relevant to the instant motion, Plaintiff Dyer¹ contends in his complaint that Defendant Parry operated her vehicle in a reckless manner, drove too fast for conditions, failed to stop at a red light, failed to yield the right-of-way, and failed to see and observe the vehicle operated by Mabel Dyer. In the instant motion for summary judgment, Defendant Parry argues that Plaintiff Dyer has failed to produce

¹ Although both the Estate of Mabel Dyer and Frank Dyer, Mabel Dyer’s husband, are named as Plaintiffs, for ease of reference the Court will simply refer to Plaintiff Dyer.

evidence of facts essential to his cause of action. The Court agrees the evidence offered by Plaintiff Dyer is insufficient to be presented to a jury and thus, that summary judgment is appropriate.

In response to interrogatories, Plaintiff Dyer indicates that the basis for his allegation that Defendant Parry operated her vehicle in a reckless manner is his allegation that she failed to stop at a red light, and failed to yield the right-of-way to traffic. The complaint thus boils down to two allegations of negligence: driving too fast and running a red light.

In support of the first, Plaintiff Dyer indicated in interrogatories that he would be providing a supplement to his response (presumably an expert report) but that he was basing the allegation on “the impact damage severity of damage and crush factor.” No expert report has been forthcoming and the deadline for discovery and the production of expert reports has passed. At argument, Plaintiff Dyer offered as evidence of the alleged excessive speed the “fact” that Defendant Parry was taking her child to school and they were late, but was unable to offer evidence of the starting time of school. Even were the Court to accept that the accident occurred at a time past the starting time of school,² such is woefully insufficient to take the issue of speed to a jury.

In support of her second contention, that Defendant Parry ran the red light, Plaintiff Dyer also points to the “fact” that Defendant Parry was taking her child to school and that they were late, arguing she must have run the red light because she was late. This argument is no more persuasive on this point than it is on Plaintiff’s first point, and is, again, insufficient to take the matter to a jury.

Plaintiff Dyer also argues that Defendant Parry is nevertheless not entitled to summary judgment because she disposed of the vehicle which had a “black box” which could have provided the vehicle’s speed at the time of the accident, citing Schroeder v. Commonwealth, Department of Transportation, 710 A.2d 23 (Pa 1998). In Schroeder, a design defect case arising out of a vehicle accident and involving allegations the vehicle was not crash-worthy, defendants sought summary judgment on the grounds of spoliation, arguing they could not defend the case without being able to examine the vehicle, which the plaintiff had disposed of.

² The accident occurred sometime prior to 8:27 a.m., which is shown on the police report to be the dispatch time.

The Court denied their request, in the process adopting a three-part approach for fashioning a sanction for the spoliation of evidence: the court is to consider fault, prejudice and other available sanctions. Schroeder, *supra*. After considering those factors, the Court in Schroeder allowed defendants to present evidence of spoliation and instructed the jury that it could infer that the truck's remains would have been unfavorable to the plaintiff. While fault in allowing the truck to be sold was placed on the plaintiff, the Court also determined defendants were not severely prejudiced since the allegation of design defect could be defended without examining that particular truck. The Court concluded that the plaintiff's burden of proof was sufficient to protect the defendants and that summary judgment was not warranted.

Schroeder is a products liability case, and its significance in the instant matter is questionable. Even were the Court to consider the Schroeder factors, however, summary judgment would nevertheless be deemed appropriate. First, according to counsel,³ Defendant Parry's vehicle was "totaled" by her insurance company and the title was transferred to State Farm. State Farm sold the vehicle to a junk yard which sold it to a person in Wilkes-Barre who sold it to someone else, unknown at this time. Importantly, all of this occurred prior to the filing of the complaint on January 31, 2007, at a time when Defendant Parry presumably did not know of the claims that would be filed against her and the police report in existence indicated that Plaintiff Dyer had run the red light. The fault factor is therefore considered to lie with neither party. It is also determined that the prejudice factor lies with neither party as without the "black box", neither party will have "proof positive" that Defendant Parry was either going too fast or not going too fast, and both parties continue to have to rely on traditional methods of proof. Defendant Parry has the testimony of someone who had been following her, that she believes Defendant Parry was not traveling too fast, and Plaintiff Dyer has his argument that Defendant Parry was late getting her daughter to school and therefore must have been going too fast. Even if the Court instructed the jury that it could infer from Defendant Parry's actions in signing the vehicle over to her insurance company that examination of the "black box" would have been unfavorable to her, in light of the circumstances of that transfer it is so highly unlikely that the jury would indeed draw such an

inference that it cannot be considered to weigh at all in Plaintiff's favor. The Court is therefore left with Plaintiff Dyer's argument based on pure speculation, and such is simply not enough to withstand summary judgment.

ORDER

AND NOW, this 7th day of December 2007, for the foregoing reasons, Defendant Parry's Motion for Summary Judgment is hereby GRANTED. Judgment is hereby entered in No. 06 – 00,679 in favor of Defendant Parry and against Plaintiff Estate of Mabel Dyer, deceased, and Frank Dyer as Executor and individually.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph F. Orso, III, Esq.
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Hon. Dudley Anderson

³ All of the "spoliation evidence" relied on by Plaintiff Dyer was presented to this Court in the form of argument by counsel.