

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

VERONICA BERGMAN,	:	NO. 08 – 02,494
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
	:	
MAUREEN DINCHER and PATRICIA HARTENSTINE,	:	
Defendants	:	Motion for Summary Judgment

OPINION AND ORDER

Before the Court is a motion for summary judgment filed by Defendant Patricia Hartenstine on September 18, 2009. Argument on the motion was heard December 14, 2009.

In her Complaint, Plaintiff alleges she was injured when her automobile was struck by Defendant Dincher’s automobile as she, Plaintiff, attempted to turn left and head south on Loyalsock Avenue in Montoursville, and Defendant Dincher’s automobile was traveling north on Loyalsock Avenue. Plaintiff had been sitting at a stop sign on Pine Street at the intersection of Loyalsock Avenue, with her left turn signal on. Defendant Hartenstine had been sitting in traffic in the far right lane, headed north on Loyalsock Avenue, just south of the intersection with Pine Street, and signaled to Plaintiff to proceed with the left turn. Defendant Dincher had been traveling north on Loyalsock Avenue in a center turn lane, intending to turn left off of Loyalsock Avenue just at or after the point where she collided with Plaintiff’s vehicle. In the instant motion for summary judgment, Defendant Hartenstine contends she is entitled to judgment as a matter of law as the parties’ deposition testimony shows there is no issue of material fact which would require the issue of causation to be submitted to a jury with respect to the role of her hand signal to Plaintiff.

The Court finds that determination of the issue presented is guided by the case of Askew v. Zeller, 521 A.2d 459 (Pa. Super. 1987).¹ In Askew, when presented with a motion for summary judgment by a “signaling driver”, the Court adopted the view that it is for the jury

¹ There, an accident occurred when a driver, stopped at an intersection, signaled to another, oncoming driver, to turn left in front of him. When that driver did so, a vehicle traveling in the same direction and to the right of the signaling driver, collided with the turning driver.

to determine the significance reasonably attributable to a motorist's hand signal. The Court also stated, however, that the trial court's first line of inquiry should be causation and that it was the function of the trial court to determine that issue in cases in which a jury could not reasonably differ. Askew, *supra*. In that case, since in his deposition Mr. 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", and that "he never relied on Olsson's signal as an indication that no other traffic was approaching the intersection", the Court concluded, as a matter of law, that "[a]s to Zeller, Olsson's hand signal had no connection with the accident." Id. at 463.

In the instant case, Plaintiff testified in her deposition that she did not rely on Defendant Hartenstine's hand signal to pull into the lane in which she was struck,² but, rather, that she interpreted it to mean only that Defendant Hartenstine was not going to move forward but wait until she pulled out.³ Plaintiff testified that she pulled into Defendant Hartenstine's lane and stopped in front of her vehicle and attempted to look to the left (the direction from which she was struck), inching her way out to see further, that she saw nothing and then proceeded and was struck.⁴ As in Askew, the Court concludes that Defendant Hartenstine's hand signal "had no connection with the accident".

Defendant Dincher argues nevertheless that summary judgment is not appropriate in this case because "[a] moving party may not rely on verbal testimony alone to establish the absence of a genuine issue of material fact"⁵, citing Nanty Glo v. American Surety Co., 163 A.523 (Pa. 1932). Defendant Dincher argues that Defendant Hartenstine's motion is entirely dependent on Plaintiff's credibility and that such should be for the jury to decide. Once again, Askew is instructive as the same argument was made there:

The Nanty-Glo rule maintains that one is not entitled to a directed verdict if one's position depends on the uncontradicted oral testimony of one's own witnesses. The other party is entitled to have a jury evaluate the credibility of the witnesses, even if their testimony is not contradicted, and the jury may choose

² N.T., July 22, 2009, at 18.

³ Id. at 53.

⁴ Id. at 16, 55.

⁵ Defendant Dincher's brief at 8.

not to believe their testimony. When applied to a motion for summary judgment, the Nanty-Glo rule prevents a court from granting the motion solely on the basis of oral testimony or undocumented affidavits of the moving party's witnesses.

....

Plaintiff's argument would be well-taken if Olsson's motion depended on her own testimony or the testimony of one of her witnesses. Here, however, Olsson relies on the testimony of Zeller, whose interests in the action are adverse to her own. The uncontradicted deposition testimony of a co-defendant, who is an adverse party and equally liable to the plaintiff, is a sound basis for summary judgment. . . .

Askew, *supra*, at 463-64. In the instant case, Defendant Hartenstine's motion depends on the testimony of Plaintiff, whose interests are unequivocally adverse to her own. Defendant Dincher's argument in this regard is thus without merit. Summary judgment is indeed appropriate.

ORDER

AND NOW, this 18th day of December 2009, for the foregoing reasons, the motion for summary judgment filed by Defendant Hartenstine is hereby GRANTED.

BY THE COURT,

Dudley N. Anderson, Judge

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