

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PA

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|------------------------------------|---|--------------|
| MARIA N. WOOD, individually and as | : |              |
| Administratrix of the Estate of    | : |              |
| CHRISTOPHER WOOD, SR.,             | : |              |
| Plaintiff                          | : | NO: 07-02658 |
|                                    | : | 08-00547     |
| vs.                                | : |              |
|                                    | : |              |
|                                    | : |              |
| GLENN O. HAWBAKER, INC.,           | : | CIVIL ACTION |
| Defendant                          | : |              |
|                                    | : |              |
| vs.                                | : |              |
|                                    | : |              |
|                                    | : |              |
| COMMONWEALTH OF                    | : |              |
| PENNSYLVANIA, DEPARTMENT OF        | : |              |
| TRANSPORTATION,                    | : |              |
| Additional Defendant               | : |              |

**OPINION**  
**Issued Pursuant to Pa.R.A.P. 1925(a)**

This action arose out of a single-vehicle accident that occurred on July 28, 2006 along State Route 549 in Mansfield, Pennsylvania. Plaintiff's decedent, Christopher Wood, Sr., allegedly lost control of his 1988 Toyota pick-up truck during inclement weather conditions, crossed the centerline, and ultimately collided with a tree. Plaintiff brought two separate suits – one against Defendant, Commonwealth of Pennsylvania, Department of Transportation (hereinafter “Defendant PennDOT”) and a second action against Defendant Glenn O. Hawbaker, Inc. (hereinafter “Defendant Hawbaker”). The cases were subsequently consolidated by the Court. Motions for Summary Judgment were filed by the Defendants and granted by this Court on

November 24, 2009. The standard of review of a grant of summary judgment is limited to determining whether the trial court committed an error of law or abused its discretion. Martinowski v. Commonwealth, Department of Transportation, 916 A.2d 717 (Pa.Comm. 2006), *appeal denied*, 932 A.2d 1290 (Pa. 2007). The Plaintiff's Statement of Errors Complained of An Appeal asserts three (3) grounds for appeal.

Plaintiff first asserts that the trial court erred in granting summary judgment because sufficient factual evidence existed on the issue of causation. This Court disagrees.

In the case at bar, the Plaintiff's Complaint states:

On July 28, 2006, at approximately 5:30 a.m., Plaintiff's Decedent, Christopher Wood, Sr., while attempting to negotiate a sharp curve to the left, under inclement weather and lighting conditions, at or near Route 549 and Jenkins Road in Mansfield PA, **slid off the road** and went into a drop-off in the road which caused him to lose control of his vehicle, slide sideways across the lane and collide with a tree. The road and the aforesaid drop-off were constructed by Defendant, Commonwealth of Pennsylvania, Department of Transportation.

(Plaintiff's Complaint, ¶ 5)(Emphasis added).

Plaintiff's expert report states:

This is an accident that occurred when a pick-up truck while rounding a curve to the left under wet surface conditions, went out of control and crossed the opposing lane. The pick-up truck continued out of control along the grassy roadway until it struck a large tree, thereby killing its driver.

\* \* \* \* \*

The manner where the Wood vehicle translated and rotated in a southeasterly direction is consistent with its right tires **having left the paved portion along the westerly side** as Mr. Wood attempted to bring them back onto the pavement.

(Report of Joseph B. Muldoon p. 3-4, 7)(Emphasis added).

The Commonwealth Court has repeatedly upheld rulings on dispositive motions when plaintiffs are unable to establish how or why their vehicles left the roadway. Martinowski v. Commonwealth, Department of Transportation, 916 A.2d 717 (Pa. Commw. 2006), *appeal denied*, 932 A.2d 1290 (Pa. 2007)(summary judgment upheld); Fritz v. Glen Mills Schools, 894 A.2d 172 (Pa. Commw.), *appeal denied*, 909 A.2d 1291 (Pa. 2006)(summary judgment upheld); Felli v. Commonwealth, Department of Transportation, *supra*, (judgment on the pleadings upheld); Baer v. Department of Transportation, 713 A.2d 189 (Pa. Commw. 1998)(summary judgment upheld); Fagan v. Commonwealth of Pennsylvania, Department of Transportation, 946 A.2d 1123 (Pa. Commw. 2008)(summary judgment upheld).

In upholding the lower court's entry of summary judgment in Fagan, *supra*, the Commonwealth Court, relying on Martinowski, *supra*, stated:

The PennDOT conditions of which Plaintiffs complain begin with the shoulder. Plaintiffs do not offer to prove, however, how the vehicle came to be on the shoulder. The failure to prove why the vehicle left its intended place on the paved portion of the highway results in a gap in the chain of causation between the intended use of the highway and contact with PennDot instrumentality." Id. at 1128.

The Commonwealth Court additionally noted the emerging trend on this issue, stating:

Courts faced with the causation question in leaving-the-pavement cases may resolve the issue with different language, but recent results are consistent: the loss tends to fall on the party with some responsibility for the vehicle leaving the pavement and not on an owner of land or objects nearby. Fagan, *supra*, at 1129.

See also Pritts v. Commonwealth of Pennsylvania, Department of Transportation, 969 A.2d 1 (Pa. Commw. 2009), *allocator denied*, 2009 WL 3850440

(Pa.)(Nov. 18, 2009)(summary judgment upheld). As in Fagan, the Plaintiff failed to produce evidence to establish how Decedent's vehicle came to be on the shoulder, creating precisely the same fatal gap in the chain of causation between intended use of the highway and contact with a condition off the roadway that required summary judgment in Fagan. Accordingly, insufficient factual evidence existed and summary judgment was properly granted as to the Defendants.

Plaintiff next asserts that this court erred by applying the cases cited above, which were "predicated on and intertwined with issues of sovereign immunity" to Defendant Glenn O. Hawbaker, Inc.

This Court notes that although the cases relied upon by this Court in its Order of November 24, 2009 are admittedly cases predicated upon issues of sovereign immunity, the decisions rendered by the Commonwealth Court are centered upon common law causation concepts. Plaintiffs seeking to overcome the defense of sovereign immunity must first show that they possess a common law or statutory cause of action. See Felli, *supra*, at 776-7.

In Martinowski, *supra*, a driver lost control of her vehicle and hit a guardrail maintained by PennDOT which sliced through her vehicle and struck her leg requiring its amputation. In analyzing the lower court's grant of summary judgment in favor of PennDOT, the Commonwealth Court stated:

Here, the common pleas court applied Fritz and determined that there was insufficient evidence to justify an inference of causation, a necessary element in a cause of action in negligence. Appellant acknowledges that she had to prove the elements of her negligence claim because her claim was based on common law. As this Court outlined in Fritz, in order to maintain an action against DOT...the moving party must 1) establish a statutory or common law cause of action against DOT; and 2) prove that the cause of action falls under one of the exceptions to sovereign immunity. The elements of a cause of

action in negligence are 1) a duty recognized by law which requires the actor to conform to that standard; 2) failure of the actor to conform to that standard; 3) a causal connection between the conduct and the resulting injury; and, 4) actual loss or damage to the interest of another. Fritz, 894 A.2d at 175. Id. at 722.

In upholding the lower court's grant of summary judgment, the Commonwealth Court stated:

As Appellant is proceeding under a common law negligence claim, she must establish that DOT had a duty to conform to a certain standard with respect to Appellant, that DOT breached that duty, a causal connection between the conduct and the resulting injury, and actual damages. As in Fritz and Saylor, the common pleas court correctly determined that a factfinder would be unable to draw an inference of causation so as to impose liability on DOT. This Court agrees that Appellant's inability to establish how or why she left the road prevented her from making out a cause of action for negligence because she was unable to establish causation. Id. at 725.

Plaintiff claims that the single vehicle accident at issue occurred when the decedent's vehicle slid off of the roadway into a drop off and struck a tree. Plaintiff's claims against Defendant Hawbaker relate to its alleged failure to place back up material in the area of the drop off.<sup>1</sup> All of the Plaintiff's claims are predicated upon the fact that her vehicle inexplicably slid off of the road striking a tree. As the Plaintiff's cause of action against Defendant Hawbaker is based upon the same deficient set of facts, the Plaintiff has failed to establish causation as to all Defendants, including Defendant Hawbaker.

Plaintiff's final argument asserts that Defendant Hawbaker should not have been the beneficiary of immunity pursuant to Svege v. Interstate Safety Service, 862 A.2d 752 (Pa. Commw. 2004). This Court notes that the Plaintiff incorrectly characterizes the basis for this Court's ruling under Svege. In Svege, *supra*, members

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<sup>1</sup> Although additional theories were advanced by Plaintiff in her complaints, this Court found that the Plaintiff failed to produce any evidence supportive of such claims. Moreover, the Plaintiff does not assert error with regard to this holding.

of the appellants’ family died in an accident on the Pennsylvania Turnpike. The accident occurred when a tractor trailer crashed through a 32-inch concrete barrier that separated eastbound and westbound traffic. The appellants argued that the Turnpike Commission was negligent in their design, construction and maintenance of the turnpike. Appellants further argued that the contractor, Stabler Construction Co.-JV-Eastern Industries, Inc., Eastern Industries (hereinafter “Stabler”) and the manufacturer, Interstate Safety Services, Inc. (hereinafter “Interstate”) were negligent in the production and installation of the concrete barriers. In affirming the lower court’s grant of summary judgment, the Commonwealth Court held,

With respect to Stabler and Interstate, the trial court found that there was no dispute that the concrete median barrier in question was manufactured and installed according to Commission contract specifications, not the specifications of Stabler or Interstate. Further, Appellants did not allege that Stabler or Interstate were negligent in performing their duties under the contract or that they had violated the contract specifications. The trial court therefore granted summary judgment to Stabler and Interstate under the “general contractor defense.” This defense was enunciated in Ference as follows:

It is hornbook law that the immunity from suit of the sovereign state does not extend to independent contractors doing work for the state. But it is equally true that where a contractor performs his work in accordance with the plans and specifications and is guilty of neither a negligent nor a willful tort, he is not liable for any damage that might result. 370 Pa. at 403, 88 A.2d at 414 (citation omitted).

\* \* \* \* \*

After a review of the record, the trial court’s findings and conclusions of law, we conclude that the trial court thoroughly, ably and correctly disposed of the issues raised by Appellants before this Court. Id. at 755.

As in Svege, the Plaintiff in the case at bar did not assert that Defendant Hawbaker was negligent in performing its duties under their contract with PennDot or

violated contract specifications. This Court did not hold that Defendant Hawbaker was immune from liability. This Court held that summary judgment was appropriate pursuant to Svege, and pursuant to Plaintiff's inability to establish causation. Accordingly summary judgment was proper and this Court would respectfully urge affirmance of its November 24, 2009 Order.

BY THE COURT,

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Date

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Richard A. Gray, J.

cc: Jules Zacher, Esquire  
Medical Arts Building  
1601 Walnut Street, Suite 707  
Philadelphia, PA 19102

Steven Gould, Esquire  
Office of Attorney General, Torts Litigation  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

David A. Strassburger, Esquire  
Strassburger, McKenna, Gutnick & Gefsky  
Four Gateway Center, Suite 2200  
444 Liberty Avenue  
Pittsburgh, PA 15222

Gary Weber, Esquire