

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| KATI JACOBS, | : | |
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| Plaintiff | : | DOCKET NO. 11-00,118 |
| | : | CIVIL ACTION – LAW |
| vs. | : | |
| | : | |
| | : | MOTION IN LIMINE |
| TINA BILBAY, | : | RE: PUNITIVE DAMAGES |
| | : | |
| Defendant | : | |

OPINION AND ORDER

At the time schedule for oral argument on the parties’ initial motions in limine, it was brought to the Court’s attention that Plaintiff planned to either prove that Defendant was intoxicated at the time of the parties’ collision or cross-examine Defendant on this issue. Plaintiff argued that she could attempt to prove Defendant’s intoxication in order to recover punitive damages from the jury. Additionally, Plaintiff informed the Court that she planned to bring into evidence the fact that Defendant left the scene after the collision; Plaintiff argues that this evidence is relevant to the force of impact and that it could be used for impeachment purposes. Because neither of these topics was brought to the Court’s attention before that time, the Court scheduled a supplemental oral argument regarding these issues. On January 24, 2013, the Court held oral argument on these issues. After careful consideration, the Court hereby ORDERS and DIRECTS that Plaintiff is precluded from presenting evidence of Defendant’s alleged intoxication at the time of the parties’ collision and Defendant’s fleeing the scene post-collision.

Initially, Plaintiff argues that she may attempt to prove Defendant’s intoxication through circumstantial evidence because Plaintiff pleaded that Defendant was under the influence of alcohol and/or controlled substances at the time of the collision. Plaintiff argues that by pleading that Defendant was intoxicated at the time of the collision and that Defendant’s conduct was careless and/or reckless, Plaintiff may attempt to recover punitive damages. The Court does not agree that merely by pleading these issues, Plaintiff may introduce unduly prejudicial evidence.

In Plaintiff's Complaint filed February 3, 2011, Plaintiff alleged that Defendant was using illegal, controlled substances and/or alcohol at the time of the parties' collision. Comp., ¶ 26 (s). Additionally, Plaintiff alleged that Defendant fled the scene of the accident because she wanted to conceal her use of controlled substances and/or alcohol. Comp., ¶ 26 (bb). In her Answer filed March 9, 2011, Defendant admitted that she was negligent, but denied Plaintiff's other allegations regarding intoxicants. Answer, ¶ 26. At no other time and in no other pleading was Defendant's intoxication or the possibility of a punitive damages award made at issue.

During oral argument on January 24, 2013, Plaintiff offered that she would attempt to prove Defendant's intoxication by bringing into evidence the following facts: a collision occurred at approximately 2:00 a.m. on a Sunday morning; Defendant fled the scene after the accident; Defendant admitted to her insurance adjuster that she was scared; and Defendant admitted during a deposition that she drank two beers that night. Based upon the following, the Court finds that the proffered evidence fails to prove the requisite degree of intoxication to get the issue properly before the jury.

The Commonwealth's standard for admission of evidence of intoxication to prove negligence is well-settled: evidence of drinking liquor without proof of intoxication is prejudicial. *See Fisher v. Dye*, 125 A.2d 472, 476 (Pa. 1956). In *Fisher*, our Supreme Court provided:

while proof of intoxication is relevant where reckless or careless driving of an automobile is the matter at issue, *the mere fact of drinking intoxicating liquor is not admissible*, being unfairly prejudicial, *unless it reasonably establishes a degree of intoxication which proves unfitness to drive.*

Id. (citations omitted) (emphasis added) (where the trial court admitted evidence showing that both Defendant and his wife had both been drinking heavily at a club prior to an accident). *See Braun v. Target Corp.*, 983 A.2d 752, 760 (Pa. Super. Ct. 2009). *See also Critzer v. Donovan*, 137 A. 665, 666 (Pa. 1927) (holding that the trial court improperly admitted evidence by a lay

witness of the smell of liquor on Defendant's breath to prove intoxication). Intoxication may be established through expert or lay witness testimony or by corroborative evidence. *Braun*, 983 A.2d at 760. No precise amount of corroborative evidence establishes the requisite degree of intoxication; a court's analysis must be performed on a case-by-case basis. *Id.* at 761.

In this instance, Plaintiff has not provided the requisite amount of evidence to get the intoxication issue properly before the jury. Plaintiff alleges that based upon Defendant's own deposition testimony (that the Court has yet to see) she has admitted to being under the influence of alcohol. However, even if the Court agrees that Defendant admitted to drinking two beers prior to the accident, as provided in *Fisher*, this evidence, itself, is insufficient to prove intoxication. Other than Defendant's own deposition testimony, Plaintiff has failed to provide the Court with any other evidence tending to prove intoxication, such as Defendant's blood alcohol content around the time of the collision, Defendant's admission to drinking *heavily* on the night in question, or any witnesses claiming that they smelled alcohol on Defendant's breath or that they witnessed Defendant stumbling or slurring her speech on the night in question. The Court believes any mention of Defendant's consumption of alcohol on the night of the collision would be unfairly prejudicial because of the failure of Plaintiff to establish a degree of intoxication proving Defendant's unfitness drive. Because the Court finds that Plaintiff's proffered evidence fails to prove the requisite degree of intoxication, the Court will not admit this evidence because of its potential to unduly prejudice the minds of the jury.

Based upon this ruling, the Court concludes that no punitive damages should be awarded in this matter. Plaintiff failed to plead any other issue that would support the award of punitive damages. Defendant cites in her motion in limine that Plaintiff might base her punitive damages claim on the fact that Defendant fled the scene after the collision. The Court does not believe that this evidence creates a jury issue on punitive damages. *See Hutchinson v. Luddy*, 870 A.2d 766 (Pa. 2005) (where our Supreme Court held that a claim for punitive damages must be

established by evidence showing that: 1) Defendant had a subjective appreciation of Plaintiff's risk of harm, and 2) Defendant acted in conscious disregard of that risk.) Punitive damages are awarded for outrageous conduct that shows reckless indifference towards the lives of others. *Id.* In this matter, Plaintiff argues that the mere fact that Defendant left the scene shows Defendant's reckless indifference. The Court does not agree. Defendant has testified, and it is her contention, that the accident was so inconsequential that she did not realize that she hit Plaintiff's car until she was halfway across the bridge she was traversing. Plaintiff pleads that she should receive punitive damages because Defendant left the scene of the collision without leaving contact information and without seeing how serious Plaintiff's injuries were; additionally, Plaintiff baldly asserts that Defendant left the scene to conceal her drug and/or alcohol use. Comp. ¶ 26 (z)-(bb). The Court does not believe Plaintiff's uncorroborated allegations support the penal policy behind punitive damages. Therefore, for these reasons, the Court will not instruct the jury on punitive damages.

Along the same lines, Plaintiff argues that she should be able to bring into evidence in her case-in-chief that Defendant left the scene of the accident. Plaintiff argues that this evidence is probative to the force of impact and that she may use it to impeach Defendant's prior statements, made both to her insurance agent and during a deposition. The Court does not agree. As to the probative value of this testimony as it relates to the force of impact, the Court does not understand how leaving the scene of the accident can in any way illustrate the magnitude of the impact. Plaintiff argues that Defendant left the scene because the accident was substantial and serious, while Defendant maintains that she did not even realize that she hit Plaintiff's car until she was halfway across the bridge she was crossing. Plaintiff also argues that this evidence may be admitted to impeach Defendant's credibility. Again, the Court does not believe this testimony would be proper for impeachment; admission of this evidence would merely unduly prejudice the jury against Defendant. The Court believes that the only reason behind Plaintiff's request to

admit this evidence is to inflame the jury. The Court believes that this evidence has little to no probative value, but an extremely high prejudicial effect. Pa. R.E. 403. This evidence will not be admitted.

The Court stresses that, in this matter, Defendant has admitted her liability. Additionally, Defendant's medical expert has admitted that this collision has caused some injury to Plaintiff. It is up to the jury to merely decide the amount of damage that Plaintiff has sustained and/or will sustain in the future.

ORDER

AND NOW, this 25th day of January, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED that Defendant's motion in limine regarding punitive damages is GRANTED. The parties are precluded from bringing the following facts into evidence: Defendant's consumption of alcoholic beverages, the possibility of Defendant's intoxication, and Defendant's leaving the scene of the accident.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Michael J. Pisanchyn, Jr., Esq. – 524 Spruce St., Scranton, PA 18503
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