SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2613-15T2

ARLENE COMPAGNUCCI,

Plaintiff-Appellant,

v.

FRANK COLLURA,

Defendant-Respondent.

Submitted April 3, 2017 – Decided April 19, 2017

Before Judges Sabatino and Nugent.

On appeal from Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2789-13.

The Simantov Law Firm, P.C., attorneys for appellant (Joseph M. Simantov, of counsel and on the brief).

Weir & Associates, LLC, attorneys for respondent (C. Robert Luthman, of counsel and on the brief; Jeffrey J. Dunn, on the brief).

PER CURIAM

Plaintiff Arlene Compagnucci appeals from a January 22, 2016 order of summary judgment dismissing her personal injury action. The trial court determined there were no genuinely

disputed issues of material fact from which a reasonable jury could conclude defendant Frank Collura negligently operated his vehicle at the time of the intersectional collision in which plaintiff was injured. For the reasons that follow, we affirm.

Plaintiff commenced her personal injury action in December 2013, alleging she sustained injuries in a vehicular accident caused by defendant's negligence. Defendant filed an answer, the parties completed discovery, and defendant moved for summary judgment.

The summary judgment motion record, construed in the light most favorable to plaintiff as required by Rule 4:46 and Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), discloses the following facts. The collision occurred on a sunny, dry, December afternoon in 2011 at the intersection of Lalor and Centre Streets in Trenton. There is no proof that either driver was speeding. Plaintiff was driving her Ford Focus west on Lalor Street. She was familiar with the intersection and was aware a stop sign normally controlled southbound traffic on Centre Street. Defendant was driving his Ford Ranger south on Centre Street. He was unfamiliar with the intersection and was unaware a stop sign normally controlled southbound traffic on Centre Street.

On the day of the collision, the stop sign was not there. It is not known why it was missing, and conceivably could have been removed by a vandal.

According to plaintiff's deposition testimony, she first saw the Ford Ranger directly in front of her, "[n]ot even a second" before the impact occurred. The front end of plaintiff's Ford Focus collided with the Ford Ranger's driver-side front tire and door. The investigating police officer, at his deposition, testified he knew from "past knowledge of the area" that there should have been a stop sign for southbound Centre Street traffic. The stop sign was not at the intersection when the accident occurred, and the officer did not know how long the stop sign had been missing.

Based on the foregoing facts, the trial court granted defendant summary judgment. The trial court noted, among other things, that plaintiff offered no proofs to challenge defendant's assertion that he was not exceeding the speed limit. The court determined plaintiff had proffered no competent evidence that created a genuinely disputed issue of fact from which reasonable jurors could conclude defendant was negligent. For these reasons, the court granted defendant summary judgment. Plaintiff appealed.

When a party appeals from an order granting summary judgment, our review is de novo and we apply the same standard as the trial

court under Rule 4:46-2. Qian v. Toll Bros. Inc., 223 N.J. 124, 134-35 (2015); Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007). First, we determine whether the moving party demonstrated there were no genuine disputes as to material facts, and then we decide whether the motion judge's application of the law was correct. Atl. Mut. Ins. Co. v. Hillside Bottling Co., 387 N.J. Super. 224, 230-31 (App. Div.), certif. denied, 189 N.J. 104 (2006). "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier fact." R. 4:46-2(c). We review the legal conclusions of the trial court de novo, without any special deference. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) see also, Qian, supra, 223 N.J. at 135.

To prove a defendant was negligent, a plaintiff must establish that: (1) the defendant owed her a duty of care; (2) the defendant breached that duty; and (3) the plaintiff suffered an injury proximately caused by defendant's breach. Endre v. Arnold, 300 N.J. Super. 136, 142 (App. Div.), certif. denied, 150 N.J. 27 (1997). The mere happening of an accident raises no presumption of negligence. Malzer v. Koll Transp. Co., 108 N.J.L. 296, 297

(1931). Negligence will not be presumed; rather, it must be proved. Rocco v. N.J. Transit Rail Ops., Inc., 330 N.J. Super. 320, 338-39 (App. Div. 2000). There is a presumption against negligence, and the burden of establishing such negligence is on plaintiff. Buckelew v. Grossbard, 87 N.J. 512, 525 (1981).

The parties do not dispute the stop sign controlling southbound Centre Street traffic had been removed before the collision occurred. Consequently, when the collision occurred, the intersection was uncontrolled. "[T]he driver to the right at an uncontrolled intersection . . . [has] the right of way, N.J.S.A. 39:4-90." Civalier v. Estate of Trancucci, 138 N.J. 52, 59 (1994). N.J.S.A. 39:4-90 provides in pertinent part:

> The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection. When 2 vehicles enter an intersection at the same time the driver of the vehicle on the left shall yield the right of way to the driver on the right.

Plaintiff presented no evidence in opposition to defendant's summary judgment motion from which a reasonable juror could conclude defendant violated N.J.S.A. 39:4-90. The evidence on the summary judgment motion record establishes defendant's Ford Ranger was the first vehicle to enter the intersection. But even if that were not so, the evidence on the motion record overwhelmingly establishes that plaintiff was the "driver of the vehicle on the

left" and defendant was the "driver of the vehicle on the right." Thus, under N.J.S.A. 39:4-90, plaintiff was required to "yield the right of way" to defendant.

Plaintiff argues that a discrepancy in the police report as to whether the Ford Ranger was damaged on the driver's side or the passenger's side creates a genuinely disputed issue of fact. We disagree. The photographic evidence and plaintiff's own testimony establish that the front of plaintiff's Ford Focus collided with the driver's side of the Ford Ranger.

Indisputably, defendant had a duty to make proper observations as he approached and entered the intersection. See Beck v. Washington, 149 N.J. Super. 569, 572 (App. Div. 1977). Plaintiff presented no evidence on the motion record, however, from which a jury could conclude defendant breached the duty to make reasonable observations. Plaintiff could not have established the breach through her first-hand observations, because she did not see the Ford Ranger until it was directly in front of her in the intersection. Nothing in the discovery plaintiff submitted establishes that defendant failed to make reasonable observations. As previously noted, the mere happening of an accident raises no presumption of negligence. Malzer, supra, 108 N.J.L. at 297.

In short, "there is no genuine issue as to any material fact challenged and . . . the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill, supra, 142 N.J. at 539-40.

Affirmed.