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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2024-000335

Vernon R. Graham.....Respondent,

v.

Carolina Tractor & Equipment Company, Inc
and Lonnie D. Gates.....Defendants,

of which Carolina Tractor & Equipment Company, Inc.
is the .....Appellant.

INITIAL REPLY BRIEF OF APPELLANT CAROLINA TRACTOR & EQUIPMENT COMPANY, INC.

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In responding to Respondent's Brief, Appellant avers the Circuit Court improperly granted summary judgment in Respondent's favor on Respondent's claim of vicarious liability under the doctrine of respondeat superior. Appellant presented affidavits and other supporting documents in opposition to Respondent's Motion for Partial Summary Judgment, which demonstrated that there were several material issues in dispute that needed to be resolved by a fact finder. A jury may reasonably draw inferences as to, inter alia, Gates' use of care in operating the vehicle and whether the collision caused Respondent's alleged bodily injuries. Further, Respondent's memorandum in support of their Motion for Partial Summary Judgment illogically applied our court's doctrine of respondeat superior to conclude that Appellant was barred from arguing on the merits Gates' alleged negligence due to his default status in the litigation.

I. THERE ARE GENUINE ISSUES OF MATERIAL FACT FOR TRIAL

In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Cunningham ex rel. Grice v. Helping Hands, Inc., 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003). Moreover, since it is a drastic remedy,

summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. Id. If triable issues exist, those issues must go to the jury. Worsley Companies, Inc. v. Town of Mount Pleasant, 339 S.C. 51, 55, 528 S.E.2d 657, 660 (2000).

A party opposing summary judgment must do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a **genuine issue for trial**. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023) (citing Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)).

Because reasonableness depends upon the evidence and the rational inferences that may be drawn from it in its context, granting summary judgment **in a negligence case** is infrequent, for the court's duty at this stage is to presume the credibility of the evidence. Abdelgheny v. Moody, 432 S.C. 346, 349–50, 852 S.E.2d 225, 227 (Ct. App. 2020) (emphasis added). If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied. Id.

II. RESPONDENT'S ARGUMENT RELIES UPON A VAST OVERSIMPLIFICATION OF THE BURDEN HE MUST CARRY TO PREVAIL ON HIS NEGLIGENCE CAUSE OF ACTION.

Respondent avers the trial court did not rely on Gates' default when ruling on Gates' negligence, but rather relied on the factual record, including admissions by both Gates and Appellant. However, even if this were so, the trial court erred because the factual record and evidence presented creates a jury question on the key issue of whether Gates acted with due care.

The record contains some evidence from which a jury could infer Gates was not negligent, thus creating more than one reasonable inference with regards to negligence. Therefore, established precedent requires a jury's consideration of the reasonableness of Gates's conduct.

The mere fact Gates's vehicle collided into the back of Respondent's vehicle does not prove negligence when conflicting evidence of Gates's due care has been established. Gates admitted that he "was stopped behind [Respondent's] vehicle on the exit ramp. Traffic ahead of us began to move and I bumped into [Respondent's] vehicle." (Gates' Aff., March 9, 2022, ¶ 2). Appellant admits that Gates "made contact with the rear of a vehicle driven by [Respondent]… on an exit ramp[.]" (R. at __, Ans. ¶ 7).

"South Carolina has consistently refused to adopt the doctrine of res ipsa loquitur ... the burden rests upon the plaintiff to prove negligence. This burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of the injury indicates negligence. In order, therefore, for a plaintiff to recover damages, she must prove by the greater weight or preponderance of the evidence not only the injury but that it was caused by the actionable negligence of the defendant." King v. J.C. Penney Co., 238 S.C. 336, 339-340, 120 S.E.2d 229, 230 (1961).

"To establish a negligence cause of action under South Carolina law, the plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty." J.T. Baggerly v. CSX Transp., Inc., 370 S.C. at 368-369, 635 S.E.2d at 101.

A duty of care is "that standard of conduct the law requires of an actor in order to protect others against the risk of harm from his actions. It embodies the principle that the plaintiff should not be called to suffer a harm to his person or property which is foreseeable and which can be avoided by the defendant's exercise of reasonable care." Snow v. City of Columbia, 305 S.C. 544, 554, 409 S.E.2d 797, 803 (Ct. App. 1991).

"Negligence is a relative term to be decided upon the facts of each particular case and because its existence turns on the facts it is normally a question left to the jury ..." Mahaffey v. Ahl, 264 S.C. 241, 247, 214 S.E.2d 119, 122 (1975). "A driver's failure to keep a proper lookout and maintain his vehicle under proper control are normally questions to be resolved by the jury." Id., at 248, 214 S.E.2d at 122. "The Court truly cannot lay down with much precision any rule as to what will constitute due care under all circumstances." Carter v. Atlantic Coast Line R. Co., 192 S.C. 441, 452, 7 S.E.2d 163, 168 (1940). "The question of whether due care was exercised is controlled by the circumstances of the particular case and will not be determined by the court, as a matter of law, if the testimony is conflicting or the inferences to be drawn therefrom are doubtful." Anderson v. South Carolina Dep't of Highways and Pub. Transp., 322 S.C. 417, 421, 472 S.E.2d 253, 255 (1996).

An essential element of a negligence cause of action is proof of the alleged tortfeasor's breach of this duty by failing to act with ordinary care. Baggerly, 370 S.C. at 368-369, 635 S.E.2d at 101. The occurrence of an accident is not, in and of itself, proof of such a breach. King, 238 S.C. at 339, 120 S.E.2d at 230.

"The determination of whether or not there has been a violation of this Statute[1] is ordinarily a jury question." Jarvis v. Green, 257 S.C. 558, 561, 186 S.E.2d 765, 766 (1972). "Just how close to a vehicle in the lead a following vehicle, ought, in the exercise of ordinary care, be driven, just what precautions a driver of such a vehicle must in the exercise of ordinary care take to avoid colliding with a leading vehicle which slows, stops, turns, or swerves in front of him, may not be laid down by any hard and fast or general rule. In each case except when reasonable minds may not differ, what due care so required, and whether it was exercised, is for the jury." West v. Sowell, 237 S.C. 641, 118 S.E.2d 692, (1961).

The question of whether due care was exercised is controlled by the circumstances of the particular case and will not be determined by the court, as a matter of law, if the testimony is conflicting or the inferences to be drawn therefrom are doubtful. Jarvis v. Green, 257 S.C. 558, 562, 186 S.E.2d 765, 767 (1972).

[1] S.C. Code Ann. 1962, §§ 46-393, which states, "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

Even in cases where there is a great amount of evidence against an appellant, it is not the Court's duty to weigh evidence but to look for any evidence in the trial record from which a jury could make more than one inference. Negligence is established as a matter of law if the only inference is that either the driver did not look or did so in such a careless fashion as not to see what was in plain view. Williams v. Davis, 243 S.C. 524, 134 S.E. (2d) 760, (1964).

Under evidence that a forward motorist slowed down and gave a right turn signal but instead turned left in front of a following motorist, and that the following motorist was driving his automobile within the posted speed limit and reduced speed as he approached the intersection, the question of whether the following motorist was guilty of contributory negligence and recklessness causing the ensuing collision was for the jury. Still v. Blake, 255 S.C. 95, 177 S.E.2d 469 (1970) (see S.C. Code 1962, §§ 46-361, 46-363, 46-388(2), 46-402(1), 46-402(2), 46-405, 46-406, 46-408).

Taking the evidence in the light most favorable to Appellant, the jury could reasonably conclude Gates did act with due care in stopping his vehicle on the exit ramp within a reasonable distance behind Respondent's vehicle, Gates observed traffic ahead of Respondent proceeding forward from their

stopped position, Gates prepared to follow the flow of traffic at a reasonable rate of speed, and Gates attempted to maintain a proper lookout.

In contrast, the jury could consider the sequence of events occurred as testified by Respondent: Gates failed to stop his car on the exit ramp before colliding with Respondent at a high rate of speed and there were no vehicles ahead of Respondent's vehicle.

Respondent argues that the Court should find Appellant's argument manifestly without merit, citing several cases it claims are equally without merit. However, the facts in Appellant's case are distinguishable.

In Edwards v. Bloom, 246 S.C. 346, 143 S.E.2d 614 (1965) the plaintiff was found contributorily negligent as a matter of law where she admitted driving while she could not see because of blinding sunlight. Similarly, in Lufkin v. Kyle, 275 S.C. 90, 267 S.E.2d 533 (1980), the defense of sudden sun blindness was unavailing to a defendant that collided with the rear of the plaintiff's vehicle after following closely behind the plaintiff's vehicle for a tenth of a mile, without reducing his speed, the fact that his visibility was already compromised by bright sunlight.

In Epps v. S.C. State Highway Dep't, 209 S.C. 125, 39 S.E. 2d 198 (1946) the plaintiff was contributorily negligent as a matter of law when the evidence

revealed he continued to drive at an excessive rate of speed on a "very foggy" night, when he could not see more than fifteen or twenty feet ahead. Horton v. Greyhound Corp., 241 S.C. 430, 128 S.E.2d 776 (1962) addressed issues related to proximate cause, not negligent conduct (i.e. the breach of a legally recognized duty by failing to act reasonably under the circumstances).

Moreover, the Court in Odom v. Steigerwald, 260 S.C. 422, 196 S.E.2d 635 (1973) relied upon Horton to find that the speed at which the plaintiff's vehicle was approaching the defendant's vehicle was irrelevant and that the defendant was negligent as a matter of law in causing an intersectional collision. As an initial matter, this Court has stated that "a judgment as a matter of law pursuant to Horton and its progeny is proper only in the exceedingly rare case when the evidence, viewed in the light most favorable to the non-moving party, shows that the speed of a vehicle could not have contributed to the cause of the accident. 'Of course, in most automobile accident cases, speed creates imponderable issues of time and distance which must be resolved by the jury."' Clarke v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (quoting Tubbs by Duren v. Bowie, 308 S.C. 155, 158, 417 S.E.2d 550, 552 (1992)).

CONCLUSION

In the present case, even though there are several triable issues, speed is one that creates an imponderable issue of time and distance which must be resolved by the jury. Respondent testified Gates was travelling "at least 40 mph", although Gates testified that he "bumped" Respondent after proceeding from a stopped position on the exit ramp.

A jury could reasonably conclude that Gates was not exceeding a posted speed limit, nor was following too closely to Respondent. A jury could reasonably conclude Gates exercised due care in protecting others on the exit ramp against the risk of harm by initiating his vehicle to follow the flow of traffic which advanced ahead of Respondent.

The aforementioned evidence and all the inferences that can be reasonably drawn from it must be viewed in the light most favorable to Appellant. A jury may reasonably draw inferences as to, *inter alia*, Gates' use of care in operating the vehicle. Given that these triable issues must be considered by a jury, summary judgment was not appropriate as to Respondent's first cause of action.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that I have caused to have served Initial Reply Brief of Appellant Carolina Tractor & Equipment Company, Inc. upon all parties, by electronic mail to all counsel of record on October 24, 2024, addressed to the following:

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