

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
Case No. 2016-CP-39-001346

Chelsea Abdelgheny f/k/a Chelsea Jackson,)
Plaintiff,)

vs.

Gerald L. Moody,)
Defendant.)

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
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SC Court of Appeals

This matter comes before the Court upon Defendant's Motion for Summary Judgment heard October 13, 2017. After careful review of the memoranda presented by counsel, the case law and relevant portions of the parties' depositions and pleadings, the Court finds that Summary Judgment should be awarded in favor of the Defendant. The sole issue before the court is the degree of negligence, if any, of the Defendant.

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." Bloom v. Ravoir. 339 S.C. 417, 422-23, 529 S.E.2d 710, 712 (2000) (citing Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994)). "Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Id at 422.

"Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide." Id. (citing Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997); accord Brown v. Smalls, 325 S.C.

547, 481 S.E.2d 444 (Ct.App. 1997)). In comparative negligence cases, "the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." Id. (citing Creech, 328 S.C. at 33, 491 S.E.2d at 575. "Where evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury." Id., 339 S.C. at 424, 529 S.E.2d at 714.

In Bloom, the South Carolina Supreme Court affirmed the trial court's grant of summary judgment where a pedestrian's negligence in crossing the street exceeded that of the plaintiff's. See id. at 425. In that case, the plaintiff was struck by the defendant's car while crossing a street in Charleston. Id. 339 S.C. at 420, 529 S.E.2d at 711. The undisputed facts established that the defendant attempted to cross in the middle of the street despite the existence of crosswalks and traffic signals. Id. 339 S.C. at 423, 529 S.E.2d at 713. The defendant was driving within the speed limit, he was not driving recklessly, and his car lights and windshield wipers were on. Id. 339 S.C. at 424. The accident occurred a split second after the plaintiff entered the street, and the defendant did not see the plaintiff prior to the accident indicating the plaintiff entered the street quickly and without warning to drivers. Id. 339 S.C. at 420, 529 S.E.2d at 711. The Court found that the plaintiff did not cross the street in a safe, reasonable manner, and that, as a matter of law, the plaintiff's negligence exceeded fifty percent. Id. 339 S.C. at 425, 529 S.E.2d at 714.

The present case occurred in rainy conditions similar to those in Bloom. The undisputed facts establish that the Defendant was traveling 25-30 miles per hour, had his headlights and windshield wipers on, and did not see the plaintiff until just before he struck her in his lane of travel. The plaintiff was wearing a hoody, talking on her cell phone, and was not crossing at an intersection or cross walk despite the fact that one existed not far from her location. While the

plaintiff testified she looked both ways, she also testified that she did not see the Defendant's car when she crossed the street. Based on this evidence, the Court finds that the plaintiff did not cross the road in a safe, reasonable manner. Moreover, the plaintiff was negligent *per se* in crossing the road. See S.C. Code §§ 56-5-3150 (a) (“every pedestrian crossing a roadway at any point other than within a marked crosswalk...shall yield the right-of-way to all vehicles on the roadway”); see also 56-5-3150(c) (“Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.”).

Additionally, the Court must also look at the allegations and evidence against the Defendant. Under paragraph 7 of the Complaint, the Plaintiff asserts general allegations of negligence and includes: a) failing to keep vehicle under proper control; b) failure keep vehicle properly equipped; c) failure to use degree of care; d) failing to maintain a proper lookout; e) driving too fast for conditions; f) failing to control speed of vehicle; g) failing to exercise proper precautions; and h) failing to use due care. The evidence, based on the depositions of both parties was that the defendant was traveling 25-30 miles per hour, had his lights on, his vehicle was in good working condition, he was not talking on the phone or changing the radio station or otherwise distracted, and he saw the Plaintiff in front of his vehicle when he was 10 feet away and immediately slammed on his brakes. However, he had no time to do anything to avoid colliding with the plaintiff. Thus, even if it could be argued that the evidence establishes that the Defendant was slightly negligent it is not, as a matter of law, greater than the Plaintiff's negligence.

In light of Bloom and the evidence presented, the Court finds that Summary Judgment in favor of the Defendant is warranted. The Court holds that there is no material issue of fact and

the Defendant is entitled to judgment as a matter of law. Defendant's Motion for Summary Judgment is granted.

Perry H. Gravely
Presiding Judge

Pickens, South Carolina

October ____, 2017



Pickens Common Pleas

Case Caption: Chelsea Abdelgheny , plaintiff, et al VS Gerald L Moody

Case Number: 2016CP3901346

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755