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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-316

No. COA20-537

Filed 6 July 2021

Guilford County, No. 18 CVS 5632

CINCINNATI INSURANCE COMPANY, AS SUBROGEE OF VAN S. REED, JR. AND SUSAN REED, Plaintiff,

v.

MICHAEL TODD HALL AND CURTIS WAYNE LANIER AND MORGAN BRIDGES CARSON, Defendants.

Appeal by Plaintiff from order entered 17 February 2020 by Judge L. Todd Burke in Guilford County Superior Court. Heard in the Court of Appeals 14 April 2021.

Carruthers & Roth, P.A., by Trisha L. Barfield and Jack B. Bayliss, Jr., for Plaintiff-Appellant.

McAngus Goudelock & Courie, PLLC, by Elizabeth H. Overmann, for Defendant-Appellee.

COLLINS, Judge.

I. Factual Background

¶ 1 On 19 May 2017, Michael Todd Hall was driving a car with his wife in the front passenger seat and Van S. Reed, Jr., and Susan Reed in the backseat. At approximately 9:20 PM, Hall was driving northbound on West Greenway Drive

("Greenway") towards West Friendly Avenue ("Friendly"). At the same time, Morgan Bridges Carson was stopped in his pickup truck on southbound Greenway, at the intersection of Greenway and Friendly. Hall approached the stop sign on northbound Greenway at the intersection with Friendly, while Carson was stopped at the stop sign on southbound Greenway at the intersection with Friendly. At this time, there were no other cars visible on Friendly or Greenway.

¶ 2 Hall stopped at the stop sign and waited for Carson to enter the intersection. Carson put on his left turn signal, then put on his right turn signal, but remained stopped. Hall remained stopped at the intersection for "20 to 30 seconds" while he watched Carson "intently." Hall testified that he commented to his wife, "I don't know what the hell [Carson] is going to do, but I'm going to . . . venture out," and that he was "obviously, still keeping my eye on him." Hall looked left and then right—but did not check again to the left—before he moved into the intersection and attempted to make a left turn onto Friendly. Hall was moving at approximately 17 miles per hour when Curtis Wayne Lanier, who was driving east on Friendly and did not have a stop sign, struck Hall's car. Hall explained that he "pulled out . . . looked and the impact happened at the same time I saw the car coming." Hall's car slid and collided with the front of Carson's truck.

¶ 3 Hall spoke with Carson following the accident and noticed that Carson was "obviously intoxicated." Carson told Hall that he was "confused about where he was

-- where he was headed." Greensboro Police Officer A.D. Reed talked to Carson at the scene of the collision and "noticed an odor of alcoholic beverage that became stronger and stronger." Reed conducted field sobriety tests on Carson; Carson performed poorly on the nystagmus tests and the heel-to-toe walking test. Approximately two hours after the collision had occurred, Carson blew a 0.10 breath alcohol concentration on an alcohol screening test device. The Reeds were transported to the hospital for treatment. Hall was charged with two counts of "fail to yield right of way causing serious bodily injury."

¶ 4 Plaintiff Cincinnati Insurance Company ("Cincinnati Insurance") provided underinsured motorist coverage to the Reeds. Cincinnati Insurance filed a negligence complaint against Hall on 1 June 2018, alleging that Hall's negligence was the direct and proximate cause of the Reeds injuries. With leave of the court, Cincinnati Insurance filed amended complaints, adding Lanier and Carson as defendants.

¶ 5 Carson timely answered and moved to dismiss the complaint under North Carolina Rule of Civil Procedure 12(b)(6). The trial court denied Carson's motion. Carson filed a motion for summary judgment. In opposition to Carson's motion, Cincinnati Insurance submitted a response and memorandum of law; a copy of Hall's deposition testimony; investigational records from the Greensboro Police Department; and the affidavit of Andrew Ewens, Ph.D., DABT, along with supporting exhibits. The trial court granted Carson's motion for summary judgment by order

entered 17 February 2020.

¶ 6 Cincinnati Insurance dismissed with prejudice defendants Hall and Lanier. Cincinnati Insurance timely filed written notice of appeal from the trial court's order granting Carson's motion for summary judgment.

II. Discussion

¶ 7 Cincinnati Insurance argues that summary judgment was improper because "a jury could find that in the exercise of reasonable care Carson might have foreseen that some injury could result from his giving confusing and contradictory turn signals to another driver."

A. Standard of Review

> Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. The party moving for summary judgment ultimately has the burden of establishing the lack of any triable issue of fact.
>
> A defendant may show entitlement to summary judgment by (1) proving that an essential element of the plaintiff's case is nonexistent, or (2) showing through discovery that the plaintiff cannot produce evidence to support an essential element of his or her claim, or (3) showing that the plaintiff cannot surmount an affirmative defense. Summary judgment is not appropriate where matters of credibility and determining the weight of the evidence exist.

Smith v. Blythe Dev. Co., 192 N.C. App. 219, 221, 665 S.E.2d 154, 155 (2008) (quoting

Wilkins v. Safran, 185 N.C. App. 668, 671-72, 649 S.E.2d 658, 661 (2007) (internal citations and quotations omitted)).

¶ 8 "An issue is genuine if it can be proven by substantial evidence and a fact is material if it would constitute or irrevocably establish any material element of a claim or a defense." *Lowe v. Bradford*, 305 N.C. 366, 369, 289 S.E.2d 363, 366 (1982) (quotation marks and citation omitted). In a negligence case, summary judgment is proper "where there is no question as to the credibility of witnesses and the evidence shows either (1) a lack of any negligence on the part of the defendant or (2) that plaintiff was contributorily negligent as a matter of law." *Surrette v. Duke Power Co.*, 78 N.C. App. 647, 650-51, 338 S.E.2d 129, 131 (1986) (citations omitted). This Court reviews de novo a trial court's grant of summary judgment. *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007).

B. Analysis

¶ 9 "In order to establish actionable negligence, plaintiff must show (1) that there has been a failure to exercise proper care in the performance of some legal duty which defendant owed to plaintiff under the circumstances in which they were placed; and (2) that such negligent breach of duty was a proximate cause of the injury." *Hairston v. Alexander Tank and Equip. Co.*, 310 N.C. 227, 232, 311 S.E.2d 559, 564 (1984) (citations omitted). Proximate cause is

> a cause which in natural and continuous sequence,

> unbroken by any new and independent cause, produced the plaintiff's injuries, and without which the injuries would not have occurred, and one from which a person of ordinary prudence could have reasonably foreseen that such a result, or consequences of a generally injurious nature, was probable under all the facts as they existed. Foreseeability is thus a requisite of proximate cause, which is, in turn, a requisite for actionable negligence.

Id. at 233, 311 S.E.2d at 565 (citations omitted). A defendant is "not required to foresee events which are merely possible but only those which are reasonably foreseeable." *Id.* at 234, 311 S.E.2d at 565 (citations omitted).

¶ 10 Here, there is no genuine issue of material fact that Carson's actions were not a proximate cause of the collision. Instead, the record evidence shows that: Carson's vehicle was stationary and remained stopped at a stop sign before, during, and after the collision between Hall's car and Lanier's vehicle; Hall intently watched Carson's vehicle for 20 to 30 seconds and saw Carson give contradictory turn signals, which caused Hall to question "what the hell [Carson] was going to do"; Hall "venture[d] out into the intersection maybe a little slower than [he] normally would have because [he was] keeping an eye on [Carson] and making sure he wasn't going to turn right on Friendly"; Hall began his left turn onto Friendly "at a more cautious pace than [he] would normally based on . . . trying to focus on [Carson]"; Hall checked left and right before turning left onto Friendly, but did not check again to the left before turning onto Friendly; and Hall explained that he "pulled out . . . looked and the impact

happened at the same time [he] saw the car coming."

¶ 11 Cincinnati Insurance argues that "Carson's significant impairment and resulting confusion remained an active causal factor in Hall's conduct, 'focusing' on Carson, while Hall was pulling out and, thus, was a direct and proximate cause of the collision between the Hall and the Lanier vehicles." We disagree.

¶ 12 Operating a motor vehicle on the highway while under the influence of intoxicating liquor "will not constitute either actionable negligence or contributory negligence unless—like any other negligence—it is causally related to the accident." *Atkins v. Moye*, 277 N.C. 179, 186, 176 S.E.2d 789, 794 (1970) (citations omitted). While Carson's stationary vehicle and contradictory signaling may have confused Hall, they did not cause Hall to move his vehicle into the intersection directly in the path of an oncoming vehicle that had the right of way. *See* N.C. Gen. Stat. § 20-158(b)(1) (2020) ("When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway.").

¶ 13 Carson's impairment and resulting confusion did not cause, "in natural and continuous sequence, unbroken by any new and independent cause," the collision between Hall and Lanier's vehicles. *Hairston*, 310 N.C. at 233, 311 S.E.2d at 565 (citations omitted). As Carson's actions were not a proximate cause of the collision

and injuries, we need not address whether Carson owed and breached a duty to Hall. *Hairston*, 310 N.C. at 232, 311 S.E.2d. at 564.

III. Conclusion

¶ 14 As there was no material issue of fact that Carson's actions were not a proximate cause of the Reeds injuries, the trial court did not err in granting summary judgment for Carson. *Surrette*, 78 N.C. App. at 650-51, 338 S.E.2d at 131. The trial court's order is affirmed.

AFFIRMED.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).