

[Cite as *Holly v. Delahanty*, 2010-Ohio-5015.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94479

DAVID L. HOLLY, ET AL.

PLAINTIFFS-APPELLANTS

vs.

MICHAELENE DELAHANTY

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-658718

BEFORE: Boyle, J., Blackmon, P.J., and Cooney, J.

RELEASED AND JOURNALIZED: October 14, 2010

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MARY J. BOYLE, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Plaintiffs-appellants, David Holly (“Holly”) and Sarah Baines-Holly, appeal the trial court’s judgment granting directed verdict to defendant-appellee, Michaelene Delahanty. The trial court found that reasonable minds could come to but one conclusion, i.e., any negligence committed by Delahanty did not cause Holly to crash into the back of Delahanty’s vehicle. After review, we find no error and affirm.

{¶ 3} The Hollys sued Delahanty, alleging that she negligently caused injuries to them. A jury trial commenced, and the following evidence was presented.

{¶ 4} Delahanty testified that she was driving a Ford Taurus on the I-490 entrance ramp, attempting to merge into the right-hand lane onto I-77 south. It was raining heavily. Delahanty's car hydroplaned, spun around, and struck the driver's-side door of a Ford Escape in front of her. Her vehicle came to rest in the right-hand merger lane, facing south. Delahanty turned to check on her son who was in the back seat of her car when the Hollys' vehicle "slammed" into the left rear of her car, pushing it into a tractor-trailer in front of her, resulting in the entire front end of her car being smashed.

{¶ 5} Holly testified that he was driving his Plymouth Voyager on I-77 south in the far left lane at 50 m.p.h. He was planning to get off at the Rockside Road exit. Holly testified that it "started raining real, real bad" and he saw an accident occur ahead of him on the highway. He tried to slow down and "tried to get over to avoid the accident," but he "couldn't slow down." He ran into the rear of Delahanty's vehicle and then ran into the rear of the tractor-trailer. He said that Delahanty "cut him off" and that her vehicle spun into the left-hand lane and that there was nothing he could do to avoid the accident. He identified a photo taken after the accident that showed him in the far right lane.

{¶ 6} On cross-examination, Holly admitted that he was traveling in the left-hand lane, next to the concrete median wall, when he saw the accident occur in the right merger lane. He said when he saw the accident, he switched lanes to the right lane. He tried to explain that he switched lanes — from the left lane to the right lane — to avoid the accident in the right lane. He agreed that Delahanty’s vehicle had already come to a complete stop — in the merger lane — when he hit her vehicle.

{¶ 7} After Holly testified, Delahanty moved for directed verdict. Considering the evidence, the trial court stated that Delahanty “testified that there was impact with the vehicle, then ultimately she went to the right, came to a complete stop. She turned and checked on her son who was in the car ***, then was struck by [Holly]. [Holly] testified that he struck her in the rear *** of her vehicle.” The trial court further explained that Holly “testified he was in the left-hand lane. He saw something in front of him and he went to the right-hand lane. That’s where the accident occurred.” The trial court found the photographs depicted that Delahanty’s vehicle was hit from “the rear left-hand side,” which was “consistent with him coming from the left-hand lane to the right-hand lane.” The trial court stated that according to Holly’s own testimony, when he saw the accident in the right-hand lane, “[h]e did not proceed to go forward, he went to the right.” Regarding Sarah Baines-Holly’s claims, the court determined that appellants had sued only Delahanty and not the drivers in

the other two vehicles, indicating that they had sued the wrong party. The trial court then issued a directed verdict in favor of Delahanty.

{¶ 8} The Hollys appeal the trial court's judgment and assign one error:

{¶ 9} "The trial court erred to the prejudice of David Holly and Sarah Baines-Holly when it granted Defendant Michaelene Delahanty's motion for directed verdict."

{¶ 10} The Hollys argue that the trial court erred when it granted directed verdict to Delahanty because the jury should have been allowed to decide whether Delahanty's negligence caused him to crash into her car based upon Holly's testimony that his "assured clear distance was cut off by defendant's failure to maintain control of her vehicle."

Standard of Review

{¶ 11} In reviewing a directed verdict, this court must construe the evidence most strongly in favor of the nonmoving party, without weighing it, and determine whether reasonable minds could come to but one conclusion that is adverse to such party. *Ramos v. Kalfas* (May 19, 1994), 8th Dist. No. 64806, citing *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 284, 423 N.E.2d 467. If so, we will affirm a directed verdict. *Id.*; Civ.R. 50(A)(4). A motion for directed verdict does not present factual issues, but a question of law, even though in deciding such a motion, it is necessary to review and consider the evidence. *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 95 Ohio

St.3d 512, 2002-Ohio-2842, 769 N.E.2d 835, ¶4, quoting *O'Day v. Webb* (1972), 29 Ohio St.2d 215, 280 N.E.2d 896, paragraph three of the syllabus.

Analysis

{¶ 12} Holly argues that he presented competent evidence upon which reasonable minds might reach different conclusions regarding the accident. He claims that his testimony created a question of fact as to whether Delahanty caused him to hit her vehicle and thus, violate the “assured clear distance” statute. Specifically, he argues that there is a question of fact as to whether Delahanty “suddenly appeared in [his] path’ such that [he] could not have been found to have violated the assured clear distance ahead rule.” We disagree.

{¶ 13} According to R.C. 4511.21(A): “No person shall operate a motor vehicle, *** at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any conditions, and no person shall drive any motor vehicle in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.” As Holly maintains, if “an object *** suddenly appear[s] in the driver’s path,” the driver cannot have violated his assured clear distance. *Junge v. Brothers* (1985), 16 Ohio St.3d 1, 3, 475 N.E.2d 477, quoting *Blair v. Goff-Kirby Co.* (1976), 49 Ohio St.2d 5, 7, 358 N.E.2d 634.

{¶ 14} But here, contrary to the Hollys' argument that there was evidence establishing that David Holly's assured clear distance was cut off by Delahanty negligently spinning her vehicle, there is no such evidence in the record. Holly testified that he was driving southbound on I-77 in the far left lane, and after seeing "something occur" ahead in the right-hand lane, which he knew to be some kind of accident, he elected to switch lanes from the far left lane to the far right lane, rear-ending Delahanty's car. Although he stated he switched lanes to avoid the accident, he admitted the accident did not happen directly in front of him — in the left lane — where he was traveling. He switched lanes because he saw the accident — in the right merger lane where the I-490 entrance ramp merges into I-77. Delahanty testified that after her vehicle had spun out from hydroplaning and she had stopped, her vehicle was facing south in the right merger lane. Thus, Delahanty's vehicle was stationary in the right-hand merger lane pointing in the same direction as the Hollys' vehicle and was already stopped when Holly hit it.

{¶ 15} A review of the facts demonstrates that Holly was driving in the far left lane and had he continued in his path of travel, i.e., in the far left lane, he would not have rear-ended Delahanty's vehicle. By his own admission and choice, Holly switched lanes from the left to the right. This is what caused him to rear-end Delahanty in the right merger lane — not any negligence on Delahanty's part.

{¶ 16} Thus, we overrule the Hollys' sole assignment of error and conclude that reasonable minds could come to but one conclusion, i.e., that Delahanty's alleged negligence did not cause Holly to crash into her vehicle.

Judgment affirmed.

It is ordered that appellee recovers from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

PATRICIA ANN BLACKMON, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR