VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 21-CV-00405

Debra French v. Lisa Hathaway

ENTRY REGARDING MOTION

Title: Plaintiff's Motion for Partial Summary Judgment on the Issue of Liability (Motion: 3)
Filer: Nicholas J. Seldon
Filed Date: May 27, 2022

The motion is GRANTED.

This is a personal injury action arising out of a two-car collision which occurred on June 12, 2020, at the intersection of Route 63 and Miller Road/Miller Road Extension in Barre, Vermont. Plaintiff alleges that Defendant Lisa Hathaway negligently caused the accident, and she seeks an award of damages for her alleged injuries. In her answer, the Defendant denies the Plaintiff's claim, and she asserts "comparative/contributory negligence" as an affirmative defense.

Presently before the Court is the Plaintiff's motion for partial summary judgment on the issue of liability. Plaintiff asserts that, based upon the undisputed facts, the Defendant was negligent as a matter of law, and that the Defendant has no evidence upon which a jury could find comparative or contributory negligence on the part of the Plaintiff.

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). The following material facts are undisputed by the parties.

At the time of the collision, Plaintiff was driving a 2013 Dodge Dart in a westerly direction on Route 63, and the Defendant was driving a 2011 GMC Sierra 2500HD Turbodiesel in a northerly direction across Route 63 at its intersection with Miller Road/Miller Road Extension. The collision occurred as the Defendant was attempting to cross Route 63 in order to get from Miller Road to Miller Road Extension. A stop sign regulated the Defendant's travel from Miller Road to Miller Road Extension; there was no stop sign on Route 63 regulating the Plaintiff's travel through the intersection.

The Defendant accelerated into the intersection even though the sun prevented her from seeing vehicles approaching from both her right and her left. The Defendant accelerated into the intersection while looking straight ahead rather than to her left or right. The Defendant never observed the Plaintiff's car prior to the impact. The Defendant had

her foot on the accelerator at the moment of the impact. The Defendant admits that she could and should have pulled over to allow the sun to set rather than drive forward. The impact caused damage to the front end of the Defendant's truck; there was no side-impact damage to the Defendant's truck. The impact caused damage to the left side of Plaintiff's car and caused Plaintiff's air bags to deploy.

Based upon the foregoing undisputed facts, the Defendant negligently caused the collision, and is liable for any injuries the Plaintiff sustained in the collision, as a matter of law. The Defendant accelerated into the intersection without looking left or right and while blinded by the sun, and she crashed into the side of Plaintiff's car as it was lawfully proceeding through the intersection. In doing so, the Defendant violated 23 V.S.A. § 1048(b), which provides that "every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop" and "[a]fter having stopped, the driver shall yield the right of way to any vehicle that has entered the intersection from another highway or that is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection."

Although the Defendant denied responsibility for the accident in her answer to the complaint, she now concedes the issue. In her opposition to Plaintiff's motion for summary judgment, the Defendants states that she "does not contest that her negligence was a cause of the accident" (Defendant's Memorandum in Opposition, p. 2). Defendant contends, nonetheless, the Plaintiff's motion must still be denied because there is evidence supporting her affirmative defense of "comparative/contributory negligence." Plaintiff denies that contention.

"Comparative negligence requires the negligence of the plaintiff to be compared to the negligence of the defendant, and recovery is reduced according to the proportional amount of plaintiff's negligence." Gilman v. Towmotor Corp., 160 Vt. 116, 121 (1993) (citing 12 V.S.A. § 1036). However, contributory negligence does not bar or reduce recovery unless it is affirmatively demonstrated that it contributed to proximately causing the accident. Duncan v. Wescott, 142 Vt. 471 (1983). The Defendant bears the burden of proving that the Plaintiff was negligent and that her negligence contributed to causing her injuries. Barber v. LaFromboise, 2006 VT 77, ¶15, 180 Vt. 150 ("A fundamental tenant of the comparative negligence doctrine in this and other states is that the defendant, in asserting such a defense, bears the burden of proving by a preponderance of the evidence that the plaintiff was negligent and that such negligence was a proximate cause of the plaintiff's injuries.") (citations omitted).

In support of her "comparative/contributory negligence" defense, the Defendant points out that the Plaintiff admitted to the police that she had been traveling 52 mph though the intersection. Although the Defendant concedes that the posted speed limit on that stretch of Route 63 was 55 mph, she argues that the Plaintiff was nonetheless negligent in driving 52 mph through the intersection because, as she approached the intersection, there were several yellow signs warning her that the intersection was coming up and to reduce her speed to 45 mph. (*see* ¶¶ 16-18 of Defendant's response to Plaintiff's statement of

undisputed material facts). Plaintiff disputes that contention and argues that the yellow warning signs are irrelevant because they were advisory only and therefore of no legal significance; according to the Plaintiff, the fact that she was traveling within the posted speed limit of 55 mph proves that she was not negligent.

The Court does not need to determine the legal significance of the yellow warning signs. The problem with the Defendant's argument is that, even if a jury were to agree that the Plaintiff was negligent in driving 52 mph thorough the intersection, there is no evidence in the record upon which a jury could find that the Plaintiff's speed contributed in any way to causing the accident. The Plaintiff did not collide with the Defendant; it was the Defendant who collided with the Plaintiff as she was proceeding through the intersection. The collision occurred because the Defendant chose to proceed into the intersection while blinded by the sun and without looking left or right for oncoming traffic. Based upon the undisputed facts, this collision would have occurred whether the Plaintiff was travelling 40 mph, 45 mph, 52 mph or some other speed. The Defendant has not come forward with any evidence supporting a finding that the Plaintiff's injuries would have been any different if she had been traveling 45 mph or less. *See* Marshall v. Milton water Corp., 128 Vt. 609, 612-12 (1970) (noting that causation cannot be proved by mere "conjecture, surmise, or suspicion").

"Summary judgment is mandated under the plain language of V.R.C.P. 56 (c) where, after an adequate time for discovery, a party 'fails to make a showing sufficient to establish the existence of an element' essential to his case and on which he has the burden of proof at trial." Poplaski v. Lamphere, 152 Vt. 251, 254-55 (1989) (quoting Celotex corp. v. Catrett, 477 U.S. 317, 322 (1986). The Defendant has had more than an adequate time to discover evidence, if there is any, supporting her "comparative/contributory negligence" defense.[i] She has failed to do so. Therefore, Plaintiff's motion for partial summary judgment as to liability must be, and hereby is GRANTED.

Electronically signed on 10/15/2022 2:30 PM, pursuant to V.R.E.F. 9(d)

Robert A. Mello
Superior Judge

[i] The Defendant argues that the summary judgment motion is premature because "discovery is not yet complete" (Defendant's Memorandum in Opposition, p. 2). According to the Defendant, discovery is not yet complete because the Defendant has not yet had an opportunity to depose the Plaintiff's "liability expert," Officer Joseph D. Lucot (Id., p. 3). For several reasons, the contention is without merit. First, Officer Lucot was disclosed by the Plaintiff as a rebuttal expert, whose opinions were to be used to rebut the Defendant's claim that the Plaintiff was negligent in traveling above 45 mph through the intersection. Officer Lucot was not disclosed as an expert in Plaintiff's case in chief. Second, the deadline set forth in the court-approved scheduling order for conducting

discovery in this case has expired. Thirdly, Officer Lucot's deposition was scheduled to take place on July 18, 2022; if the Defendant had wanted to depose him in connection with her affirmative defense, she had the opportunity to do so then.