

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 185-9-19 Ancv

Craig et al vs. Patrons Co-Operative Fire Ins.

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment re Comparative Negligence(Motion: 5)
Filer: Kristin A. Ross
Filed Date: July 30, 2021

The motion is DENIED.

Plaintiffs William and Kathleen Craig seek recovery in this case for injuries resulting from an accident that occurred when Mr. Craig rode his motorcycle into a pile of construction sand left in a highway intersection by an unidentified driver. The Defendant is Plaintiffs' insurance company and compensation is sought under the uninsured insurance benefits coverage in their policy. Defendant has asserted fault on the part of Mr. Craig, and Plaintiffs have moved for summary judgment as to the defense raised by Defendant of comparative fault.

Summary judgment is granted 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(c). The court must draw all reasonable inferences and resolve all doubts in the nonmoving party's favor, and must regard as true all of the opposing party's properly supported allegations. *Mellin v. Flood Brook Union Sch. Dist.*, 173 Vt. 202, 211, 790 A.2d 408, 417 (2001).

Comparative negligence is an affirmative defense provided for by Vermont law. See 12 V.S.A. § 1036. "A fundamental tenet of the comparative negligence doctrine 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." *Barber v. LaFromboise*, 2006 VT 77 ¶ 15.

In this case, since the Defendant insurance company is essentially standing in the shoes of the unidentified driver in defending against a claim of negligence, Defendant has raised the defense of comparative negligence, claiming that Mr. Craig was himself negligent.

Plaintiffs claim that Mr. Craig had no duty that would support a claim of negligence against himself.

Under common law, a person has a duty of care to act as a reasonably prudent person. Common law negligence has four elements: "a legal duty owed by defendant to plaintiff, a

breach of that duty, actual injury to the plaintiff, and a causal link between the breach and the injury.” *Demag v. Better Power Equip., Inc.*, 2014 VT 78, ¶ 6, 197 Vt. 176, 179, 102 A.3d 1101, 1105 (2014) (citing *Zukatis v. Perry*, 165 Vt. 298, 301, 682 A.2d 964, 966 (1996)). “Whether a defendant is negligent depends on whether his or her action was objectively reasonable under the circumstances. . . .*Endres v. Endres*, 2008 VT 124, ¶ 13, 185 Vt. 63, 968 A.2d 336, 340–41 (2008). “[T]he question is whether ‘the actor either does foresee an unreasonable risk of injury, or could have foreseen it if he conducted himself as a reasonably prudent person.’” *Id.* “[T]he degree of care that a reasonably prudent person would exercise, and thus the scope of the legal duty of ordinary care, is determined by the foreseeability of the consequences of an individual’s acts or omissions.” *Edson v. Barre Supervisory Union # 61*, 2007 VT 62, ¶ 10, 182 Vt. 157, 933 A.2d 200 (2007).

Plaintiffs argue that Mr. Craig had no duty because the doctrine of sudden emergency is applicable. They argue that he was presented with a sudden emergency in the form of an unexpected road hazard: a pile of construction sand left in the intersection.

The sudden emergency doctrine recognizes that a person confronted with an emergency cannot reasonably be held to the same accuracy of judgment or conduct as one who has had full opportunity to reflect. A person “confronted with a sudden peril through no fault of [their] own ... is not held to the exercise of the same degree of care as when [the person] has time for reflection, for the law recognizes that a prudent [person] so brought face to face with an unexpected danger may fail to use the best judgment, may omit some precaution [they] could have taken or may not choose the best available method of meeting the dangers of the situation.” *Ziniti v. New England Cent. R.R., Inc.*, 2019 VT 9, ¶ 38, 209 Vt. 433, 449, 207 A.3d 463, 474–75 (2019) (citing *Stevens v. Nuremburg*, 117 Vt. 525, 533, 97 A.2d 250, 256 (1953)). “Under the ‘sudden emergency doctrine’ when an individual is confronted with a sudden peril through no fault of her own, she is not bound to exercise the same degree of care as when she has time for reflection.” *Rotman v. Progressive Ins. Co.*, 955 F. Supp. 2d 272, 289 (D. Vt. 2013) (citing *Hamblin v. United States*, 327 F. Supp. 2d 315, 323 (D. Vt. 2004; *Restatement (Second) of Torts* § 296).

The existence of an emergency depends on the amount of time that an actor is given to react to a situation. The rationale is that in an emergency, an actor is given less time to react and to thoroughly assess the situation. Thus, actions made under a sudden emergency may justifiably be held to a lower standard of care.

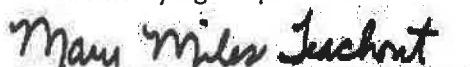
In order to assess whether the sudden emergency doctrine applies, it must first be determined that there was an actual emergency. This calls for a determination of fact, and there are material facts in genuine dispute that affect such a determination. Specifically, while it is undisputed that Mr. Craig did not see the sand, facts are in dispute as to whether he could have and should have seen it in a reasonable time to avoid it. Thus the court is unable to rule as a matter of law that the sudden emergency doctrine precludes negligence on the part of Mr. Craig.

Mr. Craig had a duty of care both under common law and by statute. 23 V.S.A. § 1081 mandates that “no individual shall drive a vehicle on a highway at a speed greater than is

reasonable and prudent under the conditions” and that “in every event, speed shall be controlled as necessary to avoid colliding with any individual, vehicle, or other object on or adjacent to the highway.”

Material facts are in genuine dispute as to whether Mr. Craig breached his duty of care whether under common law principles or as a statutory duty, and whether the sudden emergency doctrine applies. These questions of fact must be left for the jurors as factfinders to determine. Summary judgment cannot be granted given the disputes of material fact.

Electronically signed pursuant to V.R.E.F. 9(d) on December 2, 2021 at 10:06 AM.



Mary Miles Teachout
Superior Court Judge