

Third Division  
September 19, 2012

No. 1-11-2608

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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JOSEPHINE VAZQUEZ,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
ERICA M. CARLSON,	)	09 L 01690
	)	
Defendant-Appellee,	)	
	)	
and	)	
	)	
(Andrew Blakey, David Michael Productions,	)	
and Jose Robles,	)	Honorable
	)	Lynn M. Egan,
Defendants).	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Salone and Justice Sterba concurred in the judgment.

**ORDER**

¶ 1 *Held:* A scintilla of evidence, created by use of misleading questions in the defendant's deposition, does not create an issue of fact sufficient to withstand a motion for summary judgment, where all other evidence, including the plaintiff's deposition, shows that the

defendant did not act negligently and did not cause the plaintiff's injuries.

¶ 2 Josephine Vazquez sued Erica Carlson to recover for injuries Vazquez suffered after Carlson's car struck Vazquez's car in an accident that involved four vehicles. The trial court granted Carlson's motion for summary judgment, finding that the testimony of all of the drivers supported the conclusion that Carlson did not cause her car to hit Vazquez's car. On appeal, Vazquez argues that two of Carlson's answers to questions at her deposition create a triable issue of fact as to whether Carlson acted negligently and caused the collision with Vazquez's car. We find that the isolated answers on which Vazquez relies cannot support the inferences she seeks. We affirm the trial court's decision to grant Carlson's motion for summary judgment.

¶ 3 **BACKGROUND**

¶ 4 Around 4:30 p.m. on Friday, September 14, 2007, Vazquez stopped her car behind a line of stopped cars in the left hand southbound lane on Interstate 55, near the First Avenue exit. She heard a boom and two or three seconds later she felt the car behind her, which Carlson drove, hit her car. An ambulance took Vazquez to a nearby hospital. Police at the scene found that a truck Andrew Blakey drove struck a car driven by Jose Robles, Robles's car struck Carlson's car, and Carlson's car struck Vazquez's car.

¶ 5 Vazquez sued Carlson, Robles, Blakey, and Blakey's employer, David Michael Productions. Vazquez eventually settled her claims against Blakey and his employer, and dropped her claim against Robles.

¶ 6 Carlson moved for summary judgment on the claim against her. In support, she presented the depositions of all the drivers involved in the accident.

¶ 7 Blakey testified in his deposition that some weeks before the accident, he told his supervisor about problems with the truck's brakes, and a mechanic inspected the brakes. Blakey used the truck again on September 14, 2007. The traffic southbound on I-55 moved "semi-steadily," and in keeping with traffic, he drove his truck 30 to 40 miles per hour, staying about four car lengths behind Robles's car for several miles. As they came to a block of stopped cars where traffic had backed up, Blakey pressed his truck's brake, but the brake failed. His truck hit the back of Robles's car with considerable force, which pushed Robles's car into Carlson's car. Blakey saw nothing to indicate that Robles or Carlson acted negligently or did anything to cause the accident.

¶ 8 Robles testified that traffic on I-55 had moved at over 30 miles per hour for some stretches, as it slowed in some spots but picked up again. He was slowing down, going 5 to 10 miles per hour, when Blakey's truck hit his car. His car hit Carlson's car, damaging his car's front end. He did not remember whether he had his foot on the brake or the accelerator at the time of impact. Vazquez's attorney asked him whether the impact caused Robles's car to "speed up," and Robles said, "I don't remember."

¶ 9 Vazquez testified that her car had been stopped "five, 10 minutes maybe" before she heard the boom when Blakey's truck hit Robles's car. According to Vazquez, Carlson's car had come to a complete stop behind Vazquez's car before the accident.

¶ 10 Carlson, in her deposition, described the traffic on I-55 on September 14, 2007, as "just creeping along." For at least the last mile before the accident, she could not accelerate beyond 20 miles per hour. She had taken her foot off the accelerator and started coasting at less than 20 miles per hour, but she did not remember whether she had applied the brakes prior to the impact. The

impact of Robles's car damaged the trunk of Carlson's car.

¶ 11 Vazquez's attorney elicited the following testimony from Carlson:

"At the time that this impact or collision occurred, were you moving or stopped?

A. We were moving.

Q. Do you know what your speed was at that time?

A. It had to [have] been under 20. We weren't going very fast

—

Q. And —

A. — because we were getting ready to [stop].

\* \* \*

Q. What happened as a result of the impact to the rear of your vehicle?

A. We hit the person in front of us.

Q. \*\*\* [D]id it propel you forward?

A. Yes.

Q. Okay. And what was the distance between the front of your vehicle and the rear of that vehicle at the moment just before the impact? \*\*\*

A. Less than a car length.

Q. And as you were propelled forward, did it cause your

vehicle to accelerate or travel faster than the speed you were traveling before the impact?

A. No.

Q. So, you traveled at the same speed?

A. I believe so.

Q. \*\*\*

The vehicle that was ahead of you, was it traveling at the same speed you were traveling?

A. I believe so because we were all slowing down at that time, because we were in rush hour.

Q. Were you slowing down?

A. Yes.

\* \* \*

Q. \*\*\* So, you're coasting at about somewhere in the area of about 20 miles per hour just prior to the impact?

A. Correct.

Q. Okay. And the other vehicle is slowing down for traffic?

A. They would have had to have been.

\* \* \*

Q. \*\*\*

When the impact occurs to the rear of your vehicle, \*\*\* your

vehicle does not travel any faster at the point in time it's propelled forward, is that correct?

A. From what I can remember, yeah."

¶ 12 Vazquez argued that Carlson's testimony supported the conclusion that she drove too fast for conditions, and she did not leave a proper distance between her car and Vazquez's car. The trial court granted Carlson's motion for summary judgment.

¶ 13 ANALYSIS

¶ 14 We review *de novo* the order granting the motion for summary judgment. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). To decide a motion for summary judgment, "the trial court should construe pleadings, depositions, admissions, exhibits, and affidavits strictly against the movant and liberally in favor of the respondent." *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989). The court should grant the summary judgment motion only if the movant has a clear right to judgment. *Outboard Marine*, 154 Ill. 2d at 102. The court may draw inferences from the evidence, but the court must hold a trial to decide the case if reasonable persons might draw divergent inferences from the evidence. *Pyne*, 129 Ill. 2d at 370.

¶ 15 Here, Vazquez asks us to infer from Carlson's testimony that she had her car moving about 20 miles per hour, less than one car length behind Vazquez's stopped car, when Blakey's truck hit Robles's car. Robles's car may have barely touched Carlson's car, but it did not propel it forward because it did not cause Carlson's car to change its speed. Vazquez then asks us to infer that Carlson would not have stopped without striking Vazquez's car even if the accident between Blakey and Robles had not occurred.

¶ 16 The inferences Vazquez seeks to draw hinge on Carlson's responses to two questions. After Carlson testified that her car was coasting slowly to a stop at the time of the accident, Vazquez's attorney referred back to Carlson's testimony that she might have gone as fast as 20 miles per hour some place in the last mile before the accident. The attorney asked if Carlson was "coasting at about somewhere in the area of about 20 miles per hour just prior to the impact," and she answered, "Correct." Later, the attorney asked, "[Y]our vehicle does not travel any faster at the point in time it's propelled forward, is that correct?" Carlson answered, "From what I can remember, yeah."

¶ 17 All of the evidence apart from these two responses shows that Carlson did not act negligently and she did not cause the accident. Robles testified that he had slowed to five to ten miles per hour before the impact, yet he had pulled close enough to Carlson's car that the rear end collision with Blakey's truck pushed his car into Carlson's car with enough force to damage both the front of his car and Carlson's trunk. Robles's testimony supports the inference that Carlson must have coasted to less than 10 miles per hour before the impact. At that rate of speed, a distance of almost one car length between Carlson's car and Vazquez's car cannot support a finding of negligence. See *Rocco v. Goldman*, 23 Misc. 2d 995, 996 (N.Y. Sup. Ct. 1960) ("one car length or 20 feet for each 10 miles per hour of speed, is considered a safe following distance"). Vazquez testified that Carlson's car had completely stopped before the collision between Blakey and Robles. Carlson testified that she had coasted from a high of 20 miles per hour, slowing to the point that she had nearly stopped before Robles's car hit hers. Yet she answered "Correct" when Vazquez's attorney added into his question an assumption that she continued to drive at "somewhere in the area of about 20 miles per hour " at the time of impact.

1-11-2608

¶ 18 On the issue of cause, Blakey admitted that his truck caused the accident, and he saw no indication that Carlson did anything to cause the collision with Vazquez's car. Robles said his car's front end sustained damage, and Carlson said her trunk needed repairs, due to the impact with Robles's car, which propelled her car into Vazquez's car.

¶ 19 Robles said he did not remember whether the impact caused his car to speed up, and Carlson answered that she thought the impact with Robles's car did not accelerate her car. Vazquez in her brief on appeal points out that her attorney's questions to Robles and Carlson include internal inconsistencies that make "yes" an impossible answer to either question. If the impact between the truck and Robles's car did not change the speed of Robles's car, then that impact did not propel his car forward at all, and the truck had no effect on the collision between Robles's car and Carlson's car. Yet Robles said he did not remember whether the impact with the truck caused his car to speed up. Similarly, if the impact between Robles's car and Carlson's car did not affect the speed of Carlson's car, then that impact did not propel Carlson's car, and it had no effect on the collision between Carlson's car and Vazquez's car.

¶ 20 Robles's answer and Carlson's answer show that both of them thought Vazquez's attorney must have meant to ask whether they felt that the car accelerated beyond a brief jolt that pushed their cars into nearby cars. Their answers do not undercut their testimony that both of their cars sustained damage on the impact between their cars, from which the court can infer that they were hit with considerable force that propelled Carlson's car into Vazquez's car.

¶ 21 "The plaintiffs' ability to obfuscate issues in the record does not manufacture issues of fact." *Texas Manufactured Housing Ass'n v. City of Nederland*, 905 F. Supp. 371, 381 (E.D. Tex. 1995).

The mere fact that a rear-end collision occurred is not enough to support a finding of negligence against a defendant. *Rerack v. Lally*, 241 Ill. App. 3d 692, 696 (1992). Carlson's two responses constitute no more than a scintilla of evidence that Carlson drove too fast for conditions or that she left insufficient space between her car and Vazquez's car. A scintilla of evidence to support a verdict against a defendant does not create an issue of material fact that will defeat a motion for summary judgment. *Benner v. Bell*, 236 Ill. App. 3d 761, 768-69 (1992). Based on the evidence in this record, we hold that no finding that Carlson acted negligently could ever stand, and no finding that Carlson's negligence caused the collision with Vazquez's car could ever stand. See *Fooden v. Board of Governors*, 48 Ill. 2d 580, 587 (1971); *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). Therefore, we affirm the order granting the motion for summary judgment in favor of Carlson.

¶ 22

#### CONCLUSION

¶ 23 Carlson's two deposition answers in which she responded affirmatively to misleading questions do not create a triable issue of material fact on this record, where all other evidence, including Carlson's testimony and Vazquez's testimony, supports the conclusion that Carlson did not drive negligently and her driving did not cause the collision between her car and Vazquez's car. Accordingly, we affirm the judgment entered in favor of Carlson.

¶ 24 Affirmed.