2011 IL App (2d) 11-0196-U
No. 2-11-0196
Order filed December 27, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CHRISTINA K. MAI,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff and Counterdefendant-Appellant,	)	
	)	
v.	)	No. 06-L-0442
	)	
CENTRAL SOD FARMS OF PLAINFIELD and	)	
RICHARD DISTASIO,	)	
	)	Honorable
Defendants-Appellees	)	Stephen Sullivan and
	)	Kevin T. Busch,
(Richard Distasio, Counterplaintiff).	)	Judges, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

ORDER

Held: Summary judgment was properly granted because no genuine issue of material fact existed with respect to whether defendant Distasio could have avoided the collision with plaintiff's vehicle. We affirmed the trial court's judgment.

¶ 1 On August 30, 2006, plaintiff, Christina K. Mai, filed a complaint against defendants, Central Sod Farms of Plainfield and Richard Distasio, seeking damages she allegedly suffered as a result of an automobile accident. The accident occurred on August 18, 2005. On January 25, 2007, Distasio filed a counterclaim alleging negligence against plaintiff. The trial court granted summary

judgment in favor of defendants and against plaintiff, finding that plaintiff was the sole proximate cause of the accident. On appeal, plaintiff contends that the trial court erred in granting summary judgment in favor of defendants. We affirm.

¶ 2 The pleadings, depositions, affidavits, and admissions on file reflect that, on August 18, 2005, plaintiff, was stopped at a T-intersection of Plainfield Road and Route 126. Distasio was traveling west on Route 126, and as he approached the intersection with Plainfield Road, he saw plaintiff's vehicle stopped at the stop sign. As Distasio observed the vehicle in front of plaintiff's car—which was also stopped at the stop sign—turn left onto Route 126, Distasio slowed to provide the driver of that vehicle with ample time to get through the intersection. Thereafter, plaintiff's car attempted to turn left onto Route 126 as Distasio approached the intersection. Distasio applied the breaks and swerved to the left, but the vehicles ultimately collided.

¶ 3 On August 30, 2006, plaintiff filed a single-count complaint alleging negligence against defendants. On January 25, 2007, Distasio filed a counterclaim alleging negligence against plaintiff. On July 7, 2011, Distasio filed a motion for summary judgment arguing that there was no genuine issue of material fact regarding plaintiff's negligence; plaintiff's negligence was the sole proximate cause of the collision; Distasio was not negligent; and his actions were not the proximate cause of the collision. Defendant Central Sod Farms joined in Distasio's motion. Following a hearing, the trial court granted summary judgment in favor of defendants. The trial court's written order provided that there was no genuine issue of material fact regarding plaintiff's negligence proximately causing the alleged injuries she and Distasio sustained. The order also provided that there was no genuine issue of material fact regarding the lack of contributory negligence by Distasio. The order further provided that all disinterested witnesses testified in depositions that plaintiff was negligent in turning into Distasio's lane of travel at an intersection controlled by a stop sign only at

plaintiff's lane of travel. Accordingly, the trial court concluded that plaintiff's negligence was the sole proximate cause of her injuries and the alleged injuries to Distasio. The trial court then found that any purported negligence of defendant Central Sod Farm's could stem only from Distasio's negligence. After the trial court timely denied her motion to reconsider, plaintiff appealed pursuant to supreme court Rule 304(a) (Ill. S. Ct. R. 304(a)(1) (eff. Feb, 26, 2010)), contending that the trial court erred in granting summary judgment in favor of defendants with respect to her complaint.

¶ 4 In the current matter, the record reflects no genuine issue of material fact, and therefore, defendants are entitled to judgment as a matter of law with respect to plaintiff's complaint. See *Chubb Insurance Co. v. DeChambre*, 349 Ill. App. 3d 56, 59 (2004) (noting that summary judgment is proper if, and only if, the pleadings, depositions, admissions, affidavits and other relevant matters on file show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law); but see *Balma v. Henry*, 404 Ill. App. 3d 233, 242 (2010) (stating that, where disputes as to material facts exist or if reasonable minds may differ with respect to the inferences from the evidence, summary judgment will not lie); see also *Travelers Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278 (2001) (stating that reviewing courts apply *de novo* review to summary judgment motions). As noted above, plaintiff's complaint is premised on Distasio's purported negligence in causing the accident. To sustain a negligence action, the plaintiff must establish the existence of a duty of care owed by defendant to plaintiff, a breach of that duty, and an injury proximately caused by that breach. *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). Further, section 2-1116 of the Code of Civil Procedure provides that a plaintiff is barred from recovering for injuries resulting from another's negligence if the plaintiff's contributory negligence was more than 50% of the proximate cause of the injury. 735 ILCS 5/2-1116 (West 2010). When, as here, a negligence action is based on an automobile accident, Illinois courts recognize an

"unavoidable collision," which provides that the driver on a preferential road is without proximate cause and the driver's acts or omissions in breach of a duty are not material when a motorist is confronted with a sudden swerve into his or her right-of-way by an approaching vehicle and the driver lacks sufficient time to take evasive action. *Guy v. Steurer*, 239 Ill. App. 3d 304, 309-10 (1993). More precisely, the motorist on the preferential road has the right to expect that a vehicle approaching the secondary road controlled by a stop sign would obey the stop sign and yield the right of way. *Coole v. Central Area Recycling*, 384 Ill. App. 3d 390, 398 (2008). Therefore, an accident is unavoidable when a motorist traveling on a secondary road drives into the path of a motorist on the preferential road and the circumstances afforded no opportunity to avoid the collision. *Id.* (citing *Guy*, 239 Ill. App. 3d at 309-10).

¶ 5 Plaintiff maintains that there is a genuine issue of fact warranting trial because a trier of fact could infer that Distasio should have approached the intersection at Plainfield Road with increased caution by keeping a proper lookout for vehicles turning onto Route 126, sounding his horn, and swerving right instead of left to avoid the collision. We disagree. The evidence that would be presented at trial would clearly reflect that Distasio was traveling on the preferential road and plaintiff was traveling on the secondary road that was controlled by a stop sign. Plaintiff then drove into Distasio's lane, leaving him with no opportunity to avoid the collision. See *Coole*, 384 Ill. App. 3d at 395. Therefore, based on the evidence that would be presented at trial, the trial court would have been required to enter a directed finding in favor of defendants. See *id.* (citing *Fooden v. Board of Governors of State Colleges & Universities of Illinois*, 48 Ill. 2d 580, 587 (1971) (noting that, if the evidence submitted before the trial court in support of and in response to the motion for summary judgment would have constituted all of the evidence before the court and, based on that evidence, nothing would be left to go to the jury and the court would be required to direct a verdict,

then a summary judgment should be entered). Accordingly, granting summary judgment in favor of defendants was appropriate.

¶ 6 Specifically, Distasio testified in his deposition that he was traveling the speed limit on Route 126 as he approached the T-intersection with Plainfield Road, which ranged between 40 and 55 miles per hour on that stretch of Route 126. Distasio testified that, prior to plaintiff turning onto Route 126, a black sedan was stopped at Plainfield Road stop sign in front of plaintiff's car, and that the black sedan proceeded to turn left onto Route 126. Distasio said that he was "pretty close" to the Plainfield Road intersection when the black sedan turned onto Route 126, so Distasio "hit [his] [brakes] and slowed down to make sure [the driver of the black sedan] had ample time to get *** through that intersection." Distasio testified that he took his eyes off of the Plainfield Road intersection so he could watch the black sedan complete its left turn onto Route 126. Distasio testified that, when he was approximately 25 to 30 feet from the Plainfield Road intersection, plaintiff's car made a left turn onto Route 126. Distasio testified that as plaintiff's car turned onto Route 126, he applied his brakes and tried to avoid hitting plaintiff's car by swerving to the left, but he did not sound his horn to warn plaintiff.

¶ 7 Distasio's deposition testimony is consistent with the other witnesses. Todd Colvin testified in his deposition that he was driving on Route 126, and as he neared the intersection with Plainfield Road, he observed the truck driven by Distasio collide with plaintiff's car after plaintiff's car pulled in front Distasio's truck. Colvin testified that he was approximately 50 yards from the intersection when the accident occurred. Pamela Kunas testified that, at the time of the accident, she was driving on Plainfield Road and waiting at the intersection with Route 126 to turn onto Route 126. Kunas testified that, although she did not see the collision, she heard Distasio's truck trying to brake before

hearing the impact from the collision and that Distasio was trying to stop the truck. Kunas testified that, from her vantage point, she did not think Distasio could have avoided the collision.

¶ 8 Simply put, after conducting lengthy discovery, plaintiff is unable to point to any evidence in the record leading to any reasonable inference that Distasio could have avoided the accident if he had been driving slower, keeping a better lookout, or sounded his horn. See *Coole*, 384 Ill. App. 3d at 400 (concluding that, after lengthy discovery, the plaintiff could not point to any evidence that the defendant could have avoided a vehicular accident if he would have been driving slower, keeping a better lookout, or applied the breaks). The pleadings, affidavits, depositions, and admissions on file demonstrated that Distasio was driving within the speed limit on Route 126, a preferential road. When he approached the intersection with Plainfield Road, a secondary road controlled by a stop sign, a black sedan that was stopped at the stop sign turned left onto Route 126. Distasio applied his brakes to give that car ample time to complete the turn and then watched the car complete its turn. When Distasio was approximately 25 or 30 feet from the intersection with Plainfield Road, plaintiff's car, which had been stopped at the Plainfield Road stop sign, attempted to make a left turn onto Route 126 in front of Distasio's vehicle. Distasio applied his brakes and swerved to avoid colliding with plaintiff, but to no avail. Based on this evidence, we conclude that a reasonable trier of fact could not find that, but for Distasio not keeping a better lookout, sounding the horn, or swerving in another direction, the collision would not have occurred. See *id.* Thus, because the record reflects no genuine issue of material fact, defendants were entitled to judgment as a matter of law. See *Chubb Insurance Co.*, 349 Ill. App. 3d at 59. As in *Fooden,* the trial court here properly entered summary judgment in favor of defendants. See *Fooden*, 48 Ill. 2d at 587.

¶ 9 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 10 Affirmed.