

No. 1-10-3338

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SECOND DIVISION

June 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ABIGAIL SOLLIE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 08 L 10559
)	
TARUN NAGIA,)	The Honorable
)	Drella C. Savage,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Cunningham and Justice Connors concurred in the judgment.

ORDER

HELD: Where plaintiff cannot establish that defendant was driving the car that she alleges negligently caused her injuries in a motorcycle accident; we hold that the trial court properly granted defendant's motion for summary judgment because plaintiff cannot prove that defendant owed her a duty of care, a necessary element in an action for negligence.

Plaintiff, Abigail Sollie, sustained injuries when she was ejected off the motorcycle she was driving allegedly as a result of defendant's oncoming car making a sudden unexpected left hand turn in front of her. Defendant, Tarun Nagia, filed a motion for summary judgment, which

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the trial court granted. The sole issue on appeal is whether the trial court erred in granting defendant's motion for summary judgment. We hold that the trial court properly granted defendant's motion for summary judgment because plaintiff cannot establish that defendant was driving the car involved and owed plaintiff a duty of care.

JURISDICTION

On October 25, 2010, the circuit court entered its final judgment denying plaintiff's motion to reconsider. On November 2, 2010, plaintiff filed her notice of appeal. Plaintiff filed an amended notice of appeal, on November 10, 2010. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

BACKGROUND

Plaintiff claims that on August 3, 2007, at approximately 5:15 p.m., she was driving east on her motorcycle on Algonquin Road, in Rolling Meadows, Illinois. At that time, defendant was driving a 2004 blue Mazda automobile traveling west on Algonquin Road and "abruptly made a left hand turn at an unsafe interval directly in front of the path of Plaintiff." Plaintiff states that defendant:

“(a) Carelessly and negligently operated said motor vehicle without keeping a proper and sufficient lookout when the danger and hazard of striking plaintiff was imminent;

(b) Carelessly and negligently failed to keep said motor vehicle in the proper control so that it could be stopped readily if

danger was imminent;

(c) Carelessly and negligently failed to yield the right of way ***.

(d) Failed to remain at the scene of the accident or report the accident ***.

(e) Trave[.]led at a speed that was greater than reasonable and proper for traffic conditions;

(f) Was otherwise negligent in the operation and maintenance of his vehicle[.]”

As a result of these acts or omissions, plaintiff states that she had to “brake abruptly to avoid a collision with Defendant *** and was caused to be ejected over the handlebars of her motorcycle and collid[ed] with the pavement.” As a direct and proximate result of one or more of defendant’s alleged acts or omissions, she suffered both personal and pecuniary injuries. In his answer, defendant claims he has no knowledge of the facts contained in plaintiff’s complaint and denies all of her allegations.

Defendant filed a motion for summary judgment pursuant to section 2-1005 of the Illinois Code of Civil Procedure, claiming that there was no genuine issue of material fact between himself and plaintiff as plaintiff has not shown any evidence identifying him as the driver of the vehicle that caused the accident. 735 ILCS 5/2-1005 (West 2008). Defendant attached to his motion plaintiff’s complaint, his answer denying all material allegations of plaintiff’s complaint, plaintiff’s discovery deposition, defendant’s discovery deposition, plaintiff’s answers to

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interrogatories, the discovery deposition of the occurrence witness, and the discovery deposition of the responding officer.

In her discovery deposition, plaintiff stated that she did not see the driver of the vehicle that turned in front of her, but that she did see a blue four door car with a “Mazda” emblem on the back of the car. She did not know the license plate number or what state issued the license plate. She noticed the “Mazda” emblem because the vehicle paused in the driveway of an apartment complex nearby for only about five seconds. Other than the emblem, she did not see a make or model of the car. She did not see the driver of the car nor could she see how many occupants, if any, were in the car. The occurrence witness, Lawrence Delegge, stopped to assist her and stayed with her for five minutes, until the police came. After the police arrived, plaintiff waited with Delegge and the responding police officer for an ambulance to arrive, which took about one to three minutes. The police officer later went to her room at the hospital and told her that he was going to pursue an investigation of the blue car, which he thought was in the parking lot of the nearby apartment complex. The police officer informed her that the engine of the suspected car was still warm, and that he ran the suspected car’s licence plate.

Defendant stated during his discovery deposition that on the day of the incident he had just woken up and was in the washroom when a police officer knocked at his apartment door. The police officer was alone. Defendant stated that he had slept in all day and had not left his apartment. Defendant lived alone and owned a blue 2004 Mazda 3S automobile. On the day of the incident he had not let anyone else use his car. He had two sets of keys for the car, one he had at his apartment and one set at his mother’s house. Defendant stated that no one at his

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mother's house was able to drive his car because they do not know how to drive a car with a manual transmission.

Lawrence Delegge's discovery deposition shows that at the time of the accident he was driving his car 40 to 50 feet behind plaintiff's motorcycle when a blue car coming from the opposite direction made a left hand turn in front of plaintiff's motorcycle. The plaintiff then applied her brakes and was thrown from her motorcycle landing on the street. The blue car turned left into the nearby apartment complex. Delegge stated that he never talked to the driver of the blue car nor did he ever find out the driver's identity.

During his deposition, police officer Michael Courtney of the Rolling Meadow's Police Department, stated that he was the investigating officer of plaintiff's motorcycle accident. Officer Courtney stated that when he arrived at the scene, plaintiff and Delegge told him that a car had made a left turn in front of plaintiff's motorcycle, causing plaintiff to brake and be ejected from her motorcycle. Officer Courtney could not recall going to anyone's home in the area during his investigation of the accident. He did not know who made the left turn in front of the motorcycle, but that plaintiff and Delegge told him it was a blue car with four doors. He did not recall ever going to defendant's apartment or going with Delegge to look for a blue car in the parking lot of the apartment complex.

In his motion for summary judgment, defendant argued that the following evidence entitled him to summary judgement: that plaintiff did not see the driver of the vehicle that turned left in front of her, did not know the license plate, could not identify the shade of blue of the vehicle or the vehicle's make or model. Defendant, in his deposition, stated that he had not been

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out of his house all day and did not let anyone use his car. He claimed he only became aware of the accident when a police officer knocked on his door. The occurrence witness, Larry Delegge, stated he could not identify the driver who made the left turn in front of plaintiff, nor did he ever find out the driver's identity. In further support of his motion, defendant relied on Officer Courtney's deposition testimony, in which Officer Courtney stated he did not know who made the left turn causing the accident. Defendant argued that because no other fact witnesses were identified, and none of the identified witnesses could identify either the vehicle that made the left turn or the driver of that vehicle, plaintiff was unable to present a *prima facie* case.

In her response to defendant's motion, plaintiff alleged that circumstantial evidence, tending to show defendant's negligence, barred entry of summary judgment. In support of her motion, plaintiff attached an affidavit from Lawrence Delegge, the occurrence witness. In his affidavit, Delegge stated that he "saw a small blue car approach from the opposite direction and make a sudden left turn in front of plaintiff's motorcycle." Additionally, he "saw the blue car stop at the beginning of the entrance to an apartment complex that it had turned into. The car stopped for about 15 seconds then continued into the complex." Delegge further stated that when the police arrived on the scene, "[t]he responding officer followed me into the parking lot where I saw the blue car drive into. I drove through the lot and saw the blue car I had seen cut the Plaintiff off causing her to crash." Delegge identified that car to the police. In further support of her response, plaintiff attached defendant's discovery deposition where defendant stated that the police came to his apartment and questioned him regarding the accident. Plaintiff argued that this circumstantial evidence presents a question of fact precluding summary judgment.

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It is unknown whether defendant filed a reply to plaintiff's response, as any reply filed by defendant is not part of the record on appeal.

The trial court granted defendant's motion for summary judgment and dismissed defendant with prejudice. The trial court found "there is no factual basis linking the plaintiff's injuries to the named defendant."

Plaintiff filed a motion to reconsider, arguing that the trial court misapplied the law because it weighed the evidence rather than determining whether an issue of material fact existed. After a hearing on the motion, the trial court denied plaintiff's motion to reconsider. Plaintiff timely appealed.

ANALYSIS

Before this court, plaintiff argues that the trial court erred in granting defendant's motion for summary judgment by improperly weighing the evidence, rather than determining whether an issue of material fact exists. Plaintiff contends that summary judgment is precluded here because the question of whether defendant's vehicle was involved in the accident with plaintiff is a question of fact for the jury to decide. Defendant argues that the trial court properly granted his motion for summary judgment because plaintiff failed to establish that he was the vehicle's driver and owed her a duty of care, a necessary element in a negligence action. Specifically, defendant argues that plaintiff did not produce any evidence that he or his vehicle were involved in plaintiff's motorcycle accident.

Summary judgment is proper where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and

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that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2008). In ruling on a motion for summary judgment, the circuit court is to determine whether a genuine issue of material fact exists, not try a question of fact. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A party opposing a motion for summary judgment “must present a factual basis which would arguably entitle him to a judgment.” *Allegro Services, Ltd. v. The Metropolitan Pier & Exposition Authority*, 172 Ill. 2d 243, 256 (1996). When determining whether a genuine issue of material fact exists, the pleadings are to be liberally construed in favor of the nonmoving party. *Williams*, 228 Ill. 2d at 417. “Summary judgment is to be encouraged in the interest of prompt disposition of lawsuits, but as a drastic measure it should be allowed only when a moving party’s right to it is clear and free from doubt.” *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989). Summary judgment in favor of a defendant is proper where the plaintiff fails to establish an element of a cause of action. *Id.* We review summary judgment rulings *de novo*. *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995).

A plaintiff alleging negligence must establish that defendant owed a duty of care to the plaintiff, breached that duty of care, and that the defendant’s breach proximately caused injuries to the plaintiff. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 340 (2003). “A duty is an obligation to conform to a certain standard of conduct for the protection of another against an unreasonable risk of harm.” *O’Hara v. Holy Cross Hospital*, 137 Ill. 2d 332, 337 (1990). Regarding whether a duty exists, we must determine “whether the parties stood in such a relationship to one another that the law imposes an obligation on the defendant to act reasonably for the protection of the plaintiff.” *Gouge v. Central Illinois Public Service Co.*, 144 Ill. 2d 535,

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542 (1991), see also *Barnes v. Washington*, 56 Ill. 2d 22, 26 (1973) (“Necessary to any recovery based on the theory of common law negligence is the existence of a duty or an obligation requiring one to conform to a certain standard of conduct for the protection of another against an unreasonable risk.”).

The determination of whether a defendant owes a plaintiff a duty of care is a question of law decided by the court. *Gouge*, 144 Ill. 2d at 542, see also *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006) (“Whether a duty exists in a particular case is a question of law for the court to decide. [Citation.] On the contrary, whether a defendant breached the duty and whether the breach was the proximate cause of the plaintiff’s injuries are factual matters for the jury to decide, provided there is a genuine issue of material fact regarding those issues.”). Questions of law may be resolved by a motion for summary judgment. *Wojdyla v. The City of Park Ridge*, 148 Ill. 2d 417, 421 (1992). A defendant is entitled to summary judgment, as a matter of law, where the court finds the defendant did not owe the plaintiff a duty of care. *O’Hara*, 137 Ill. 2d at 337.

In this case, plaintiff has not established that defendant owed her a duty of care because she has not provided any evidence that defendant was driving the car that she alleged caused her to crash her motorcycle. In her discovery deposition, she admitted that she did not see the driver of the car she alleges caused her accident. Plaintiff also admitted that she could not see the make or model of the car, the license plate of the car, what state issued the license plate, or how many people were in the car at the time of the accident. During his discovery deposition, Lawrence Delegge admitted he did not know who the driver was that caused the accident. Officer Courtney

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stated he did not know who made the left turn in front of plaintiff causing the accident. Officer Courtney could not recall going to an apartment to investigate the accident nor could he recall going with Delegge to look for a blue car in the nearby apartment complex parking lot.

Defendant denied leaving the house on the day of the accident and denied allowing anyone else to use his car that day. The keys to the vehicle were accounted for and no evidence shows that defendant was driving his car at the time of plaintiff's injuries.

In her response to defendant's motion for summary judgment, plaintiff relied upon the affidavit of Lawrence Delegge and defendant's deposition testimony. Plaintiff contends that Delegge's statements in his affidavit, attesting that he led the responding officer to the nearby apartment complex's parking lot where he identified, to the police officer, a blue car he believed caused the accident, coupled with defendant's deposition testimony that a police officer came to his apartment, raised an issue of fact concerning whether defendant caused the accident.

However, Delegge's affidavit does not establish that defendant was the driver of the car that caused the accident. All it shows is that Delegge pointed out a blue car in the parking lot of the nearby apartment complex to a police officer. It does not establish that the blue car Delegge pointed out to the police was defendant's blue car. Notably absent from Delegge's affidavit is any mention of defendant, his license plate number, or any identification of defendant as the driver of the vehicle that Delegge believed caused the accident. Delegge's affidavit does not even establish who owned the blue car that he showed the police officer or what happened after Delegge identified the car to the police. There is no evidence linking this particular defendant with the blue car that plaintiff alleged caused the accident. Plaintiff has not shown that she and

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this defendant had any relationship such that the law imposed a duty of care on defendant. See *Gouge*, 144 Ill. 2d at 542 (“Whether a duty exists *** depends on whether the parties stood in such a relationship to one another that the law imposes an obligation on the defendant to act reasonably for the protection of the plaintiff.”). Although defendant admitted to owning a blue car, plaintiff has not shown any evidence supporting that defendant’s blue car was the blue car that she alleges caused her accident. Plaintiff has not shown that defendant was the driver who owed her a duty of care, an element of negligence that she needs to show to establish a cause of action. *Chandler*, 207 Ill. 2d at 340.

Plaintiff’s failure to establish that this particular defendant owed her a duty of care is fatal to her claim against defendant. Plaintiff’s failure to prove an element of her cause of action entitles defendant to summary judgment. *Pyne*, 129 Ill. 2d at 358 (summary judgment in favor of defendant is proper where the plaintiff fails to establish an element of the cause of action); *O’Hara*, 137 Ill. 2d at 337 (a defendant is entitled to summary judgment as a matter of law where the court finds that the defendant did not owe the plaintiff a duty of care). The trial court did not err in granting defendant’s motion for summary judgment.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.