

SIXTH DIVISION
September 28, 2018

No. 1-17-2928

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(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANNETTE SCIASCIA-HALLINAN,)	Appeal from the Circuit
)	Court of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 15 L 11461
)	
BARBARA BLY, as special representative of the Estate of)	
John Tierney,)	Honorable
)	Daniel Gillespie,
Defendant-Appellee.)	Judge Presiding.
)	

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 **Held:** The circuit court correctly granted summary judgment in favor of defendant and against plaintiff. Plaintiff's evidence regarding the automobile collision at issue is barred by Section 8-201 of the Code of Civil Procedure, more commonly known as the Dead-Man's Act.

¶ 2 Plaintiff Annette Sciascia-Hallinan appeals the decision of the circuit court granting summary judgment in favor of defendant, Barbara Bly, as special representative of the Estate of John Tierney. Sciascia-Hallinan contends that her evidence regarding an automobile collision was not barred by the Dead-Man's Act and created an issue of material fact. We affirm.

¶ 3 BACKGROUND

¶ 4 As this case comes before us following the grant of summary judgment, we recite the facts in the light most favorable to the non-moving party. According to her complaint, Sciascia-Hallinan was driving westbound in the left lane of Touhy Avenue before the Lehigh Street intersection in Niles on November 21, 2013. John Tierney, the decedent, was also driving westbound on Touhy Avenue just behind Sciascia-Hallinan's vehicle. About 4:30 p.m., Sciascia-Hallinan alleges, Tierney struck the rear end of her vehicle near the Touhy-Lehigh intersection. Sciascia-Hallinan was injured as a result of the collision.

¶ 5 No one else witnessed the collision. On July 19, 2015, Tierney died of causes unrelated to the collision. On November 10, 2015, Sciascia-Hallinan filed the underlying negligence complaint against Tierney. On February 29, 2016, the circuit court appointed Bly as special representative of Tierney's estate, and Sciascia-Hallinan filed an amended complaint naming Bly as defendant. The amended complaint does not allege that Sciascia-Hallinan's vehicle had stopped before the collision occurred, where her vehicle sat at the time of the collision, or for how long her vehicle had been stopped at the location.

¶ 6 Bly's answer to the amended complaint admitted that Tierney drove his vehicle just behind Sciascia-Hallinan, but denied that Tierney struck the rear end of Sciascia-Hallinan's vehicle. Bly also denied that Tierney was negligent or careless.

¶ 7 Sciascia-Hallinan testified by deposition that her vehicle was stopped at a red light at the intersection of Touhy and Lehigh for about thirty seconds before her vehicle was struck from behind. Sciascia-Hallinan also testified that she had to pump her brakes to avoid hitting the two

vehicles stopped in front of her at the intersection, her vehicle moved forward one or two feet due to the collision, and the undercarriage of her vehicle was damaged as a result of the collision.

¶ 8 Bly moved for summary judgment, arguing that no evidence or admissions existed in the record from which a trier of fact could infer the collision occurred due to Tierney's negligence, because: (1) no independent witnesses of the collision could testify in support of Sciascia-Hallinan's case; (2) the admissions on file did not create an inference of negligence; and (3) Sciascia-Hallinan was barred from testifying about the facts of the collision by Section 8-201 of the Code of Civil Procedure, known as the Dead-Man's Act. 735 ILCS 5/8-201 (West 2014).

¶ 9 Sciascia-Hallinan responded to Bly's motion arguing that that the occurrence of the rear end collision was sufficient to deny the motion for summary judgment. In her response, Sciascia-Hallinan identified certain deposition testimony and statements from her affidavit which she argued should not be barred by the Dead-Man's Act.

¶ 10 Following arguments, the circuit court granted summary judgment to Bly. This appeal followed.

¶ 11 ANALYSIS

¶ 12 At the outset, we note that the brief Sciascia-Hallinan has filed with this court violates Supreme Court Rule 341(h)(6). Ill. S.Ct. R. 341(h)(6) (eff. May 25, 2018). Specifically, the statement of facts does not contain the facts "necessary to an understanding of the case, stated accurately and fairly without argument or comment." Ill. S.Ct. R. 341(h)(6). Instead, Sciascia-Hallinan's two-sentence long statement of facts describes only the collision and does not include citations to the record. The statement of facts omits any mention of Bly's motion for summary judgment nor the order granting that motion upon which this appeal is based. As we

stated in *North Community Bank v. 17011 South Park Avenue, LLC*, 2015 IL App (1st) 133672, ¶ 14:

“Supreme court rules are not mere suggestions; they are rules that must be followed. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57. ‘Where an appellant’s brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal.’ *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). In addition, this court may strike an appellant’s brief for noncompliance with Rule 341. *See People v. Thomas*, 364 Ill. App. 3d 91, 97 (2006).”

¶ 13 We recognize, however, that striking a brief or dismissing an appeal is a particularly harsh sanction. *Id.* (citing *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005)). Although this deficient brief complicates, but does not completely frustrate, our review, we will consider the merits of the appeal.

¶ 14 Sciascia-Hallinan argues that the court erred in granting summary judgment because her deposition testimony and affidavit are not barred by the Dead-Man’s Act. She argues that the facts to which she testified did not occur during the “event” of the collision or in the “presence” of the decedent. Specifically, Sciascia-Hallinan argues that Tierney could not refute her testimony that her vehicle was stopped at a red light for thirty seconds prior to the collision and that her foot was on her vehicle’s brake pedal for twenty to thirty seconds prior to the collision. Sciascia-Hallinan contends her testimony created a question of fact that should have been submitted to a jury.

¶ 15 Summary judgment is appropriate “if 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 that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West

2018). Summary judgment should not be granted unless the movant's right to judgment is free and clear from doubt. *Mitchell v. Special Education Joint Agreement School District No. 208*, 386 Ill. App. 3d 106, 111 (2008). We review a trial court's entry of summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 16 The Dead-Man's Act addresses the evidentiary conundrum that occurs when a party sues a deceased person or defends a suit as the representative of a deceased person. *Rerack v. Lally*, 241 Ill. App. 3d 692, 695 (1992). The statute provides:

“In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability ***.” 735 ILCS 5/8–201 (West 2014).

¶ 17 In other words, an adverse party cannot testify to any conversation with the deceased or to any event which took place in the presence of the deceased. *Rerack*, 241 Ill. App. 3d at 695. The law is intended to bar only evidence which the decedent could have refuted, and is not intended to disadvantage the living. *Id.*; see also *Peacock v. Waldeck ex rel. Waldeck*, 2016 IL App (2d) 151043, ¶ 4. Additionally, a party opposing a motion for summary judgment may not rely on evidence barred by the Dead-Man's Act to establish the existence of a question of material fact. *Peacock*, 2016 IL App (2d) 151043, ¶ 4.

¶ 18 In *Peacock*, a rear-end collision case, the court affirmed summary judgment for the defendant special representative who argued that the plaintiff could not establish the decedent's negligence without testimony that would be barred by the Dead-Man's Act. *Id.* ¶ 9. The court

noted that the deceased defendant admitted, prior to her death, that her vehicle struck the rear end of the plaintiff's vehicle, and neither admitted nor denied that the plaintiff's vehicle was stopped at a stoplight when the collision occurred. *Peacock*, 2016 IL App (2d) 151043, ¶ 2. Also, the court further noted that if the defendant had admitted that the plaintiff was stopped at a stoplight when the accident occurred, the holding of *Burns v. Grezeka*, 155 Ill. App. 3d 294 (1987) would control. *Id.* ¶ 7; *see Burns*, 155 Ill. App. 3d at 298 (finding that "although the fact of a rear-end collision into a parked vehicle is not sufficient to establish liability as a matter of law, it is adequate to raise a *prima facie* case of negligence on the part of the driver of the rear vehicle"). However, since the decedent in *Peacock* only admitted that her vehicle struck the plaintiff's vehicle, the court found that the only evidence of negligence, the decedent's admissions, might lead the trier of fact to base its verdict on conjecture, and such a verdict could not stand.

Peacock, 2016 IL App (2d) 151043, ¶ 9. In so holding, the court distinguished the case before it with *Rerack*, noting that the plaintiff in *Rerack* was capable of showing that his vehicle had been stopped at a red light for two minutes before the rear end collision. *Id.*; *see Rerack*, 241 Ill. App. 3d at 695. In *Rerack*, the deceased defendant admitted, prior to his death, that his vehicle struck the rear end of the plaintiff's vehicle. *Rerack*, 241 Ill. App. 3d at 696.

¶ 19 In this case, the pleadings are insufficient to establish a *prima facie* case of negligence on the part of Tierney. Bly, unlike the defendants in *Peacock* and *Rerack*, specifically denied that Tierney's vehicle struck the rear end of Sciascia-Hallinan's vehicle in her answer. Additionally, Sciascia-Hallinan did not allege in her sparse amended complaint that her vehicle was stopped at a red light at the intersection of Touhy and Lehigh before the collision, nor for how long she was stopped. Accordingly, no admissions exist as to whether Sciascia-Hallinan's vehicle was stopped at a red light prior to the collision or whether Tierney was the individual who struck the

rear end of Sciascia-Hallinan's vehicle. Thus, the pleadings do not give rise to a *prima facie* case of negligence on the part of Tierney. See *Burns*, 155 Ill. App. 3d at 298 (finding that a rear-end collision into a parked vehicle is adequate to raise a *prima facie* case of negligence on the part of the driver of the rear vehicle).

¶ 20 Since the pleadings do not give rise to a *prima facie* case of negligence on the part of Tierney, Sciascia-Hallinan attempts to establish negligence through her deposition testimony and affidavit. She argues that such evidence should not be barred by the Dead-Man's Act because the facts to which she testified and offered in her affidavit did not occur during the "event" of the collision or in the "presence" of Tierney. Unlike the plaintiff in *Rerack*, who testified that her vehicle was stopped for two minutes before the collision, Sciascia-Hallinan testified that her vehicle was stopped for roughly thirty seconds and stated that her foot was on her vehicle's brake pedal for twenty to thirty seconds prior to the collision. Such a length of time is brief enough to be considered within the "event" of the collision for purposes of the Dead-Man's Act. See *Rerack*, 241 Ill. App. 3d at 695. But even if Sciascia-Hallinan's twenty to thirty seconds of continuous braking was not within the "event," it still occurred in the "presence" of Tierney because Bly admitted in her answer to the amended complaint that Tierney operated his vehicle "just behind" Sciascia-Hallinan's vehicle on Touhy. Thus, the circuit court correctly found that the Dead-Man's Act barred Sciascia-Hallinan's evidence regarding the collision from its consideration as to whether a question of material fact existed.

¶ 21 In *Parkway Bank v. Korzen*, 2013 IL App (1st) 130380, ¶ 36, we explained that civil litigants are not free to simply deny allegations for the sake of forcing the plaintiff to formally prove them, when they either know the allegation is true, or they lack sufficient knowledge to admit or deny the allegation. Viewed in that light, Bly's outright denial of any collision

whatsoever is puzzling. Bly was not present at the accident. We note that although it is unclear how Bly obtained the knowledge necessary to deny that Tierney's vehicle struck the rear end of Sciascia-Hallinan's vehicle, Sciascia-Hallinan did not use the tools of discovery to ascertain Bly's good faith, or lack thereof, so as to create a foundation for striking the answer. Doing so might also have permitted the court to apply *Rerack* to defeat Bly's summary judgment motion. In the absence of any admission by Bly, Sciascia-Hallinan can only establish that Tierney's vehicle struck the rear end of Sciascia-Hallinan's vehicle through her deposition testimony and affidavit alone. But the Dead-Man's Act bars that testimony and affidavit.

¶ 22 In sum, the pleadings did not establish a *prima facie* case of negligence on the part of Tierney and the court correctly barred Sciascia-Hallinan's evidence under the Dead-Man's Act. Accordingly, the court properly granted summary judgment in favor of Bly because the non-barred evidence and the pleadings did not create a question of material fact of negligence on the part of Tierney.

¶ 23 Affirmed.