

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

GOVERNMENT EMPLOYEES)
INSURANCE COMPANY @1156317,)
as subrogee of SONJA F. GORE, and)
SONJA F. GORE, individually,)
Plaintiffs)

v.)

LINDA KNOSKY,)
Defendant)

C.A. No. CPU4-11-004300

DECISION AFTER TRIAL

Michael K. DeSantis, Esquire, Wilmington, Delaware, Attorney for Plaintiffs

Linda Knosky, Newark, Delaware, self-represented Defendant

This is a negligence action. Trial was conducted today. Plaintiffs presented the testimony of Defendant and Stephen Teofilak, an employee of GEICO. Defendant also testified in her own case in chief. Plaintiff Sonya F. Gore did not testify. This is the Court's decision after trial.

The Court finds as follows:

1. On November 28, 2010, Defendant struck the left rear side of Plaintiff Gore's vehicle when Defendant pulled out of a parking spot at a bowling alley.
2. Plaintiff Gore's vehicle was not properly parked in a designated parking spot.
3. The accident happened late at night. It was dark in the parking lot. The parking lot of the bowling alley was not well-lit.

4. Defendant did not see Plaintiff Gore's vehicle parked behind Defendant's vehicle before Defendant's vehicle struck Plaintiff Gore's vehicle.

5. Defendant went inside the bowling alley to locate the owner of the car Defendant struck. Defendant also called the police to report the accident.

ANALYSIS

It is the duty of the Court to weigh the evidence that is presented. Plaintiffs bear the burden to prove the case by a preponderance of the evidence. The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists.¹ To establish a cause of action for negligence, (1) a plaintiff must show that a duty existed for the defendant to conform to a specific standard of care; (2) a plaintiff must establish that the defendant breached that duty of care; and (3) it is a plaintiff's burden to prove that the breach proximately caused harm to the plaintiff.²

The Court finds that Defendant owed a duty to Plaintiffs to maintain a proper look-out when backing out of her parking space. Two photographs were admitted in evidence (Defendant's Exhibits 1 and 2) which show that Plaintiff Gore's vehicle was parked behind Defendant's vehicle.

The only record evidence presented was Defendant's own testimony that she is a careful driver who always looks into her mirrors before backing out of a

¹ *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

² *Jones v. Crawford*, 1 A.3d 299, 302 (Del. 2010) (citation omitted).

parking spot. Defendant also testified that she did not see Plaintiff Gore's vehicle parked behind Defendant. Finally, Defendant testified that Plaintiff Gore's vehicle was not parked in a designated parking space. No evidence was presented regarding when Plaintiff Gore parked her vehicle behind Defendant's vehicle. The Court finds that Plaintiffs established by a preponderance of the evidence that Defendant breached the duty of care she owed to Plaintiffs.

However, Defendant contends that Plaintiff Gore was responsible for the accident because Plaintiff Gore did not park in a designated parking space. When a plaintiff is negligent, it is called contributory negligence. Under Delaware law, a plaintiff's contributory negligence does not bar recovery by a plaintiff as long as the plaintiff is not more negligent than the defendant.

The Court accepts the testimony of Defendant as credible and reliable. Furthermore, Defendant's testimony was the only testimony offered regarding the comparative negligence of the parties. Defendant tracked down the owner of the vehicle she struck and Defendant called the police. Defendant testified that she was careful when backing up and that she did not see Plaintiff Gore's vehicle. Defendant also testified that she did not expect Plaintiff Gore's vehicle to be parked behind her. The Court finds that Plaintiff Gore was more negligent than Defendant. Therefore, Plaintiffs may not recover any damages.

Because the Court finds that Plaintiffs are not entitled to any recovery, the Court will not address the evidence presented by Plaintiffs for damages sought.

CONCLUSION

Based on the findings of fact and conclusions of law, the Court concludes that Plaintiffs have not met their burden of proof to establish Defendant's liability. Therefore, Judgment is hereby entered on behalf of Defendant and against Plaintiffs.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli