22-CV-595

DISTRICT OF COLUMBIA COURT OF APPEALS

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FRENNIEJO NIXON

Appellant,

v.

GIOVANNI IPPOLITO, et al.

Appelle, et. al.

APPEAL FROM THE
DISTRICT OF COLUMBIA SUPERIOR COURT

SUPPLEMENTAL BRIEF OF MS. NIXON

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I. RULE 28-A STATEMENT

Frenniejo Nixon v. Giovanni Ippolito, et al., Appellees.

22-CV-595
Certificate required by Rule 28(a)(1) of the Rules of the District of Columbia Court of Appeals
Appeal
The District of Columbia Court of Appeals

The undersigned, counsel of record for Frenniejo Nixon, certifies that the following listed parties appeared below:

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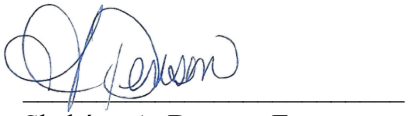
These representations are made in order that judges of this Court, *inter alia*, may evaluate possible disqualification or recusal.



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Attorney for Frenniejo Nixon

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This Appeal is from a final Order of the DC Superior Court granting Appellee's Motions to Dismiss and Denying Appellant's Motion to Reconsider that disposes of all parties' claims.

V. STATEMENT OF ISSUE PRESENTED

1. Did the Superior Court err in granting the Appellees' respective motions for summary judgment when there were multiple disputes of material facts and a rebuttable presumption of negligence in a rear-end collision?

VI. STATEMENT OF THE CASE

On May 27, 2021, Ms. Nixon filed her lawsuit in the District of Columbia Superior Court against Appellee Gustavio K. Etile (hereinafter "Appellee Etile"), Appellee Abron W. Deer (hereinafter "Appellee Deer"), Appellee Giovanni Ippolito (hereinafter "Appellee Ippolito"), and Appellee Anna Chayka (hereinafter "Appellee Chayka") for negligence and against the Uninsured Motorist Carriers, Appellee National General Insurance Company (hereinafter "Appellee National") and Appellee Geico Casualty Insurance Company (hereinafter "Appellee Geico") for breach of contract due to the injuries she sustained proximately caused by the July 4, 2018 subject collision. *App*. at p. 1. (Ms. Nixon has attached the complete deposition transcript to the Appendix for inclusiveness purposes, however, is asking the court to only consider the pages cited in this brief). Appellee Geico filed a Third-Party Complaint against the uninsured drivers, Appellee Tyrese A. White (hereinafter "Mr. White") and Donnita D. Bennett (hereinafter "Ms. Bennett"). *App*. at p. 13.

In May 2022, Appellees Ippolito and Chayka, Deer, Etile, Geico and National, all filed their Motions for Summary Judgment, alleging that they were entitled to judgment as a matter of law. *App.* at p. 17; p. 27; p. 34; p. 39; and p. 49 respectively. All Appellees filing Motions requested a hearing on the issues.

Ms. Nixon timely filed separate Oppositions to all the above-referenced Motions for Summary Judgment, which Ms. Nixon adopts and incorporates herein by reference, addressing the claims made by the Appellees. *App*. at p. 52; p. 65; p. 77; and p. 89 respectively.

On June 13, 2022, the Superior Court, without hearing, ordered all Appellees' Motions for Summary Judgment granted and dismissed the case in its entirety with prejudice. *App*. at p. 102. On July 7, 2022, Ms. Nixon filed a Motion to Reconsider. *App*. at p. 109. Appellee's Deer, National, Etile, Ippolito and Chayka, and Geico filed Oppositions to the Motion to Reconsider on July 8, 11, 12, 13 and 14 respectively. *App*. at. p. 125; p. 136; p. 141; 144; and p. 152 respectively. On July 22, 2022, the Superior Court issued an Order denying the Motion to Reconsider stating that Ms. Nixon did not point to any specific evidence of responsibility or the cause, order, and number of impacts that occurred and that speculative testimony is insufficient to support a finding of negligence. *App*. at 160.

VII. STATEMENT OF THE FACTS

This action arises from a chain collision involving four vehicles that occurred on July 4, 2018, on Interstate 295 near its intersection with Exit 1, Laboratory Road SW, in Washington, D.C. Third-Party Appellee Mr. White was operating a motor vehicle, with the permission and consent of Third-Party Appellee Ms. Bennett. Mr. White and Ms. Bennett were both uninsured at the time of the collision. Mr. White was traveling directly behind Appellee Etile's vehicle, in which Ms. Nixon was a passenger. Appellee Deer was operating a motor vehicle traveling directly behind Mr. White's vehicle. Appellee Ippolito was operating a motor vehicle, with the permission and consent of Appellee Chayka, traveling directly behind Appellee Deer. Mr. White collided with the rear of Appellee Etile's vehicle, in which Ms. Nixon was a passenger. *App*. at p. 196 -*Ms. Nixon's Deposition Transcript*, L. 11-13; *App.* at p. *358* - *Appellee Etile's Deposition Transcript*, L. 1-11. Appellee Ippolito conceded that he collided with the rear of Appellee Deer's vehicle. *App.* at p. 432 - *Appellee Ippolito's Deposition Transcript,* L. 12-16. Appellee Deer also conceded that he collided with the rear of Mr. White's vehicle. *App*. at p. 508 - *Appellee Deer's Deposition Transcript*, P. 15, L. 10-17.

Appellee Etile, the driver of the vehicle in which Ms. Nixon was a passenger, stated in his deposition that he felt **"[o]ne, for certain, but probably two"** impacts from behind. *App*. at p. 348-349, L. 15-4; *App*. at p. 401, L. 9-15. Appellee Etile also testified that after he was hit from behind, he saw in his rearview more than two impacts behind him and saw that the car behind him, which was a sedan (Mr. White), was hit again. *App*. at p. 356, L. 2-18; *App*. at p. 348, L. 9-11. Mr. White alleges that he lost consciousness as a result of the collision and therefore, has no recollection of what has happened after he blacked out and whether he felt one impact or more. *App*. at p. 585 - *Mr. White's Deposition Transcript*, L 3-10; *App*. at p 586, L. 7-16; *App* at. P. 616-617, L. 20-3; *App*. at p. 589, L. 20-6.

Furthermore, Appellee Deer stated that the impact to the rear of his vehicle happened instantaneously after the impact to the front of his vehicle and that his vehicle was still in contact with the car ahead of him when he was struck from the behind. *App*. at p. 549, L. 18-21; App. at p. 563, L. 12-16.

Finally, Appellee Ippolito's brother, Salvatore Ippolito, who was driving in a separate car, witnessed the whole chain of collisions and stated in his deposition that he first saw a big car, stopped and the back of that car jammed up *App*. at p. 665-666 - Salvatore Ippolito's Deposition Transcript, L. 11-1; App. at p. 668, L. 16-17. He stated that vehicle was the first car and it initiated the chain collision. *App*. at p. 675, L. 7-13. He believes there were six or seven impacts as a result of this chain collision. *App*. at p. 681, L. 12-16. Mr. Salvatore Ippolito stated that he further noticed his brother, Appellee Ippolito, colliding into the car in front of him. *App*. at p. 669, L. 14-20. He further stated that there were several cars between the SUV that initiated the collision and Appellee Ippolito's vehicle. *App*. at p. 675, L. 7-13; *App*. at 697-698, L. 19-1

VIII. SUMMARY OF ARGUMENT

To prevail upon a motion for summary judgment, the moving party must demonstrate that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *D.C. Sup.Ct. R. Civ.*

P. 56[1]*. See also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "The record is review[ed] in the light most favorable to the party opposing the motion." *Weakley,* 871 A.2d at 1173. Once the required showing has been made by the moving party, the burden shifts to the non-moving party to show that an issue of material fact exists. All that is required of the non-moving party is "that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-289 (U.S. 1968). "The party opposing a properly supported motion for summary judgment may not rest upon the mere allegations contained in its pleadings, but must set forth 'specific facts showing that there is a genuine issue for trial.' " *Kibunja v. Alturas, L.L.C.*, 856 A.2d 1120, 1127–28 (D.C. 2004). "On summary judgment, the court does not make credibility determinations or weigh the evidence. 'Any doubt as to whether or not [a genuine] issue of [material] fact has been raised is sufficient to preclude a grant of summary judgment.'" *Weakley*, 871 A.2d at 1173. (emphasis added) (citations omitted). "Accordingly, if an impartial trier of fact, crediting the non-moving party, may reasonably find in favor of that party, then the motion for summary judgment must be denied." *Id*. (emphasis added).

Ms. Nixon's oppositions clearly set forth specific facts showing there are multiple genuine issues of material fact. The Superior Court, in dismissing this matter, did not consider all the disputed facts on how this chain collision occurred, but instead ruled that because Ms. Nixon did "not point to any specific evidence of responsibility and concedes that she has no personal knowledge as to the order of impacts that occurred behind her", Ms. Nixon failed to present sufficient evidence upon which a jury could reasonably rely to find Appellees' Negligence. *App*. at p. 102.

[1] Rule 56. Summary Judgment (a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. (1) In General. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

IX. ARGUMENT

A. The Standard of Review

The District of Columbia Court of Appeals reviews a trial court's grant of summary judgment de novo. *Lumen Eight Media Group, LLC v. Dist. of Columbia*, 279 A.3d 866, 874 (D.C. 2022). In doing so, the court "conduct(s) an independent review of the record, and … standard of review is the same as the trial court's standard in considering the motion for summary judgment." *Critchell v. Critchell*, 746 A.2d 282, 284 (D.C. 2000) (citing *Sherman v. District of Columbia*, 653 A.2d 866, 869 (D.C. 1995)). "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Bruno v. Western Union Fin. Servs., Inc.*, 973 A.2d 713, 717 (D.C.2009). "The record is review[ed] in the light most favorable to the party opposing the motion." *Weakley v. Burnham Corp.*, 871 A.2d 1167, 1173 (D.C. 2005). Once the required showing has been made by the moving party, all that is required of the non-moving party is "that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-289 (U.S. 1968).

B. The Court Erred in Granting Summary Judgement with Respect to Appellee Geico and Appellee National Despite Clear Disputed Material Facts and a Rebuttable Presumption

The DC Superior Court in its Order Granting Appellees' Motions for Summary Judgment, stated that "[b]ecause of this Court's finding that there is no evidence that the accident was caused by the negligence of Third-Party Appellee White, Appellant claim for uninsured motorist benefits against Appellees Geico and National General Assurance fails as a matter of law." In reaching this conclusion, the Superior Court not only failed to consider the material facts argued by Ms. Nixon as to Mr. White's negligence, but also failed to consider the applicable law of rebuttable presumption. In her Motion to Reconsider, Ms. Nixon restated again the material facts giving rise to a rebuttable presumption of Mr.

White's negligence, however, the Superior Court yet again failed to consider or address those arguments in its Order Denying Ms. Nixon's Motion to Reconsider. *App.* at 109.

"[T]he primary duty to avoid collision as between [the] motorist ahead and the motorist following lies with the motorist behind...." *Pazmino v. WMATA*, 638 A.2d 677, 679 (D.C.1994). "'[i]n the absence of an emergency or unusual conditions, the following driver is negligent if he collides with the forward vehicle.' '[T]he nature of a rear-end collision is such that it alone may suggest negligence of the driver of the striking vehicle to a degree that [s]he may be found negligent as a matter of law.'" *Fisher v. Best*, 661 A.2d 1095, 1099 (D.C. 1995) (citation omitted). "[A]bsent emergency or unusual circumstances, where a lawfully stopped vehicle is struck by another car from the rear, there is a 'rebuttable presumption' that the approaching vehicle was negligently operated." *Warrick v. Walker*, 814 A.2d 932, 933 (D.C. 2003); *See also Gebremdhin v. Avis Rent–A–Car Sys., Inc*. 689 A.2d 1202, 1204 (D.C.1997). "Where a party proves the basic facts giving rise to a presumption, it will have satisfied its burden of proving evidence with regard to the presumed fact" and therefore, its adversary's motion should be denied. *Warrick*, 814 A.2d at 934. "[T]he procedural consequences of the application of a rebuttable presumption are clear. Where a party proves the basic facts giving rise to a presumption, it will have satisfied its burden of proving evidence with regard to the presumed fact and therefore, its adversary's motion for a directed verdict will be denied. *See John W. Strong, 2 McCormick on Evidence*, § 344 at 460–61 (4th ed. 1992). In a civil case, such a presumption requires that the person against whom the presumption is directed assume the burden of going forward with the evidence, although the burden of persuasion remains with the plaintiff. Thus, the Appellee was not put to the task of offering evidence of circumstances that might tend to rebut the presumption." *Id*.

Drawing all reasonable inferences in favor of Ms. Nixon, the Court is presented with the basic facts giving rise to a rebuttable presumption of Mr. White's negligence. Ms. Nixon and Appellee Etile (the driver of Ms. Nixon's vehicle) both testified under oath that they were rear-ended by Mr. White. *App*. at p. 196 - *Ms. Nixon's Deposition Transcript*, L. 11-13; *App.* at p. *358 - Appellee Etile's Deposition Transcript*, L. 1-11. Mr. White had a duty to keep a proper distance from the car ahead of him to avoid colliding with it.

See 18 DCMR S. 2200.4; *also see* 18 DCMR S. 2201.9.[2] "Moreover, where (as here) the collision caused substantial damage to both vehicles, one may reasonably infer that the rear car was being operated at a higher rate of speed than the exercise of ordinary care would permit under the circumstances." *Fisher*, 661 A.2d at 1099. Appellee Etile testified that the rear of his car, the bumper and the trunk, was damaged as a result of the subject collision. *App*. at p. 361-362, L. 20-5. The jury can reasonably infer from these facts that Mr. White was negligent in keeping a proper lookout and controlling the speed of his vehicle. Mr. White testified that he was driving 54-55 miles per hour before the car in front of him started slowing down. *App*. at p. 618, L. 7-9. He further testified that he was rear-ended when the vehicle in front of him suddenly slowed down. *App.* at p. 610-611, L. 21- 21. The fact that the collision occurred immediately after Appellee Etile slowed down, clearly shows that Mr. White failed to maintain proper distance with the car ahead of him. *See Fisher*, 661 A.2d at 1099-1100.

Mr. White alleges that he blacked out and denies colliding with Ms. Nixon's vehicle before or after blacking out. *App*. at p. 587, L. 8-17. Mr. White's testimony is in direct contradiction to Ms. Nixon and Appellee Etile's testimony. Such testimony does nothing to overcome the rebuttable presumption of negligence in a rear-end collision. First, viewing the evidence in the light most favorable to Ms. Nixon and all reasonable inferences that can be drawn, it runs contrary to common sense that someone who blacked out could somehow know that they did not collide with the rear of another vehicle in front of them. Further, such testimony at minimum creates an issue of material fact that would preclude the granting of summary judgment. Also, Mr. White's credibility is to be assessed by the fact finder and not by this Court. *See Majeska v. D.C.*, 812 A.2d 948, 950 (D.C. 2002)[3]. Given these disputed facts, a juror could reasonably

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[2] Under District of Columbia Drivers Manual, "In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the street or highway in compliance with legal requirements and the duty of all persons to use due care. 18 DCMR S. 2200.4. "The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the roadway. 18 DCMR S. 2201.9

[3] "'Automobile collisions … nearly always present questions of fact. The credibility of witnesses must be passed on, conflicting testimony must be weighed, and inferences must be drawn. From this conflict and uncertainty the trier of facts, whether judge or jury, must determine the ultimate facts of the case. Only in exceptional cases will questions of negligence, contributory negligence, and proximate cause pass from the realm of fact to one of law.'" *Majeska v. D.C.*, 812 A.2d 948, 950 (D.C. 2002).

conclude that Mr. White failed to use ordinary care to avoid colliding with Ms. Nixon's vehicle and thus, was negligent. Appellee Geico and National General Assurance's liability under breach of contract is solely based on whether or not Mr. White, an uninsured driver, was negligent. Therefore, because there are clear issues of material fact with respect to Mr. White's negligence, the Court erred in Dismissing Appellee Geico and National General Assurance and with the Superior Court's Order should reversed and Ms. Nixon's breach of contract counts against Appellees Geico and National General Assurance should be reinstated.

C. The Court Erred in Granting Summary Judgement with Respect to Appellee Deer Despite Clear Disputed Material Facts

"In order to prove liability for negligence, a plaintiff must show that '(1) the Appellee owed a duty of care to the plaintiff, (2) the Appellee breached that duty, and (3) the breach of duty proximately caused damage to the plaintiff.' A plaintiff can defeat a Appellee's motion for summary judgment if a reasonable inference may be drawn from evidence, properly proffered, that the alleged injury would not have occurred but for the Appellee's negligence." *Tolu v. Ayodeji*, 945 A.2d 596, 601 (D.C. 2008) (Citation omitted). The DC Drivers Manual states as follows: "In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the street or highway in compliance with legal requirements and the duty of all persons to use due care. 18 DCMR S. 2200.4. "The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and the condition of the roadway." 18 DCMR S. 2201.9.

"While it is true, …, that 'the mere happening of an accident . . . does not prove negligence on the part of anyone . . . ,' it is the law of this jurisdiction that under the theory of res ipsa loquitur the happening of an accident may be sufficient to prove negligence if 'the facts not in dispute raise such a strong presumption of negligent behavior by one of the parties that the trier of fact . . . could logically infer in the absence of countervailing evidence that the accident would not have occurred had such party exercised due care.' In other words, in certain cases, even though there is no allegation of a specific act of negligence, a plaintiff may withstand a directed verdict if a reasonable inference may be drawn that the injury would not

have occurred but for the negligence of the Appellee." *Sullivan v. Snyder*, 374 A.2d 866, 867 (D.C. 1977) (Citation omitted) (emphasis added).

Even the undisputed facts support the inference that Appellee Deer's negligence caused Ms. Nixon's injuries. The Court, in dismissing this matter, ruled that because Ms. Nixon did "not point to any specific evidence of responsibility and concedes that she has no personal knowledge as to the order of impacts that occurred behind her, Ms. Nixon failed to present sufficient evidence upon which a jury could reasonably rely to find Appellees' Negligence." *App*. at 102. The fact that Ms. Nixon and Appellee Etile felt only one impact from behind does not mean that the subject impact was not caused by Appellee Deer. Appellee Deer **concedes** that he rear-ended Mr. White's vehicle prior to being rear-ended by Appellee Ippolito. *App*. at p. 508, L. 3-17. That testimony taken alone, should be sufficient to create an issue of material fact with respect to his negligence. Appellee Deer's negligence in striking Mr. White and pushing him into the vehicle that Ms. Nixon occupied as a passenger, in conjunction with Mr. White's testimony alleging that he had not impacted Ms. Nixon's vehicle prior to blacking out are sufficient to create an issue of material fact with respect to Appellee Deer's negligence. *App*. at p. 587, L. 8-17. Therefore, a jury can reasonably infer that the "one impact" that Ms. Nixon felt from behind was caused by Appellee Deer as he conceded rear-ending Mr. White's vehicle. Also, there is a testimony of an eyewitness that the first SUV in the chain of vehicles involved initiated the collision. App. at p. 665-666, L. 11-1; App. at p. 668 L. 16-17; App. at p. 675 L. 7-13. Appellee Deer, not only testified that he was driving an SUV, but also in his Motion requested that the Superior Court take judicial notice that Appellee Deer was the first SUV in line. *App*. at p. 540, L. 19-22; also see *App.* at p. 27, footnote 5. Appellee Deer admitted that at the time of the subject incident, he was looking into his right attempting to change lane and when he looked back to the front, it was too late to avoid the car in front of him. *App*. at p. 522-524. Given his effective admission of fault, and the inference logically arising from the nature of the collision, a jury can reasonably find that Appellee Deer was negligent causing the chain collision. *See Fisher*, 661 A.2d at 1099-1100.

Here, the disputed facts are supported and derived from the testimony contained in all parties' deposition transcripts. These facts, including the testimony of an eyewitness that there were six or seven

impacts as a result of the chain collision, all demonstrate genuine issues of material fact that must be decided by a jury. *App*. at p. 681, L. 12-16. In granting the motion for summary judgment, the Superior Court chose to ignore deposition testimony creating clear issues of material fact, and specifically the testimony of the eyewitness, Mr. Salvatore Ippolito, all of which go to show that the facts are such that a reasonable mind could find in Ms. Nixon's favor. There are multiple issues of fact materially in dispute which would preclude granting summary judgment as a matter of law. As such, the Court should reverse the Order and reinstate this matter with respect to Appellant negligence counts against Appellee Deer.

D. The Court Erred in Granting Summary Judgement with Respect to Appellees Ippolito Despite Clear Disputed Material Facts Vehicle

Ms. Nixon has the burden of proving her case by the preponderance of the evidence. "To establish an element by a preponderance of the evidence, the party must show evidence that produces in your mind the belief that the thing in question is more likely true than not true. The party need not prove any element beyond a reasonable doubt, the standard of proof in criminal cases, or to an absolute or mathematical certainty." *D.C. Std. Civ. Jury Instr*. No. 2-3. In determining whether a party has carried its burden of proof, the jurors are permitted to draw, from the facts that you find have been proven, such reasonable inferences/conclusions as [they] feel are justified in the light of [their] experience and common sense." *Id*. On summary judgment, the court does not make credibility determinations or weigh the evidence. 'Any doubt as to whether or not [a genuine] issue of [material] fact has been raised is sufficient to preclude a grant of summary judgment.'" *Weakley*, 871 A.2d at 1173 (emphasis added) (citations omitted). "Accordingly, if an impartial trier of fact, crediting the non-moving party, may reasonably find in favor of that party, then the motion for summary judgment must be denied." *Id*.

Appellee Ippolito conceded that he impacted Appellee Deer's vehicle in the subject chain collision. *App*. at p. 432, L. 12-16. Furthermore, Appellee Deer testified that he felt two impacts, first from the front of his vehicle making contact with Mr. White's vehicle and the second one from the behind of his vehicle. *App*. at p. 508, L. 3-17. Appellee Deer also stated the impact to the rear of his vehicle happened instantaneously after the impact to the front of his vehicle and his vehicle was still in contact with Mr.

White's vehicle when he was struck from behind. *App*. at p. 549-550. These facts along with the testimony of an eyewitness testifying that there were at least five or six impacts as the result of the chain collision, if considered in the light most favorable to Ms. Nixon, should be more than sufficient to cause doubt as to whether or not a genuine issue of material fact has been raised. *App*. at p. 681, L. 12-16. As such, the Court should reverse the Order and reinstate this matter with respect to Appellant negligence counts against Appellee Ippolito.

E. The Court Erred in Granting Summary Judgement with Respect to Appellee Etile Despite Clear Disputed Material Facts

"It is only in a case where the facts are undisputed and, considering every legitimate inference, only one conclusion may be drawn, that the trial court may rule as a matter of law on negligence, contributory negligence or proximate cause." *Washington Metro. Area Transit Auth. v. Jones*, 443 A.2d 45, 50 (D.C. 1982). "While it is true, as appellee asserts, that 'the mere happening of an accident . . . does not prove negligence on the part of anyone . . . ,' it is the law of this jurisdiction that under the theory of res ipsa loquitur the happening of an accident may be sufficient to prove negligence if 'the facts not in dispute raise such a strong presumption of negligent behavior by one of the parties that the trier of fact . . . could logically infer in the absence of countervailing evidence that the accident would not have occurred had such party exercised due care.' In other words, in certain cases, even though there is no allegation of a specific act of negligence, a plaintiff may withstand a directed verdict if a reasonable inference may be drawn that the injury would not have occurred but for the negligence of the Appellee." *Sullivan v. Snyder*, 374 A.2d 866, 867 (D.C. 1977) (Citation omitted).

Appellee Etile conceded that immediately prior to the subject collision, he reduced his speed to avoid colliding with a car in front of him that suddenly changed lanes. *App*. at p. 353, L. 5-11. Mr. White, the driver behind Appellee Etile, also testified that Appellee Etile suddenly slowed down causing him to slow down as a result and that was when Mr. White was rear-ended. *App*. at p. 611. To be sure as stated in the DC Pattern Jury Instructions, "When a person is using, or is about to use, a roadway either as a driver or a pedestrian, he has a duty to keep a proper lookout. That means he must reasonably observe traffic and other conditions which confront him to protect himself and others while using the roadway. A person must

always use ordinary care to avoid an accident. The law does not try to regulate in detail what particular observations a person should make or what a person specifically should do for his own safety. The law does require, however, that a person look effectively. One who looks and does not see what is plainly there to be seen is as negligent as one who never looked at all." *D.C. Std. Civ. Jury Instr*. No. 7-3.

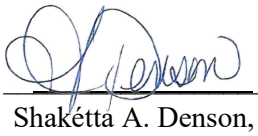
Ms. Nixon does not need to prove her case with certainty in order to survive a motion for summary judgment. Appellee Etile by his own testimony, viewing the evidence in the light most favorable to Ms. Nixon, could be found negligent by the trier of fact for stopping short and braking suddenly and failing to keep a proper lookout and control his vehicle to avoid a collision. This testimony creates a genuine issue of material fact, from which different reasonable inferences could be drawn viewing the evidence in the light most favorable to Ms. Nixon and thus precluding the granting of summary judgment with respect to whether Appellee Etile was negligent. Furthermore, Mr. Salvatore Ippolito, who was driving in a separate car witnessed the whole chain of collisions happened and stated in his deposition that he first saw a vehicle stopped and the back of that car jammed up. *App*. at p. 665-666, L. 11-1; *App*. at p. 668, L. 16-17. He further stated that vehicle was the first car in the chain and it initiated the chain collision. *App.* at p. 675, L. 7-13. These facts are sufficient for an impartial tier of fact, crediting Ms. Nixon, to reasonably find Appellee Etile was negligent in keeping a proper lookout and to react to the changing traffic in a way to avoid a chain collision. As such, Ms. Nixon has sufficiently complied with the requirements of Rule 56, and therefore the Court should reverse the Order and reinstate this matter with respect to Appellant negligence counts against Appellee Etile.

XII. CONCLUSION/REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, Ms. Frenniejo Nixon request that the District of Columbia Court of Appeals Vacate and Reverse the decisions of the Superior Court and re-instate the case as to ALL Appellees.

Respectfully submitted,

CHASENBOSCOLO, INJURY LAWYERS

By: 

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XI. CERTIFICATE OF SERVICE

I, Shakétta A. Denson, hereby certify that on December 30, 2022, I mailed first class, postage prepaid a copy of the foregoing Supplemental Brief and Appendix to the following individuals:

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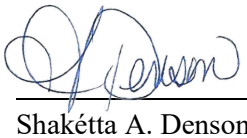


Shakétta A. Denson, Esq.

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

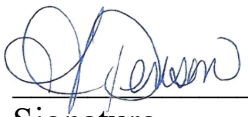
2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.



Signature

22-CV-595
Case Number(s)

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