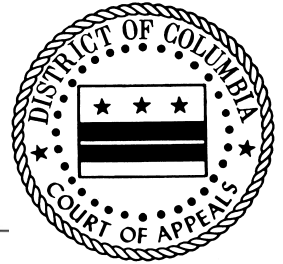


22-CV-595



DISTRICT OF COLUMBIA COURT OF APPEALS

Clerk of the Court
Received 02/28/2023 09:10 AM
Resubmitted 02/28/2023 09:30 AM
Filed 02/28/2023 09:30 AM

FRENNIEJO D. NIXON

Petitioner

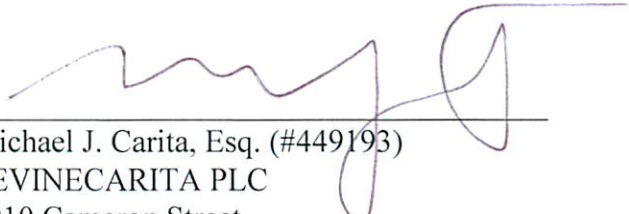
v.

GIOVANNI IPPOLITIO, *et al.*

Respondents

APPEAL FROM THE
DISTRICT OF COLUMBIA SUPERIOR COURT

BRIEF OF NATIONAL GENERAL ASSURANCE COMPANY



Michael J. Carita, Esq. (#449193)

LEVINECARITA PLC

1010 Cameron Street

Alexandria, VA 22314

Tel.: (703) 370-5569

Fax: (703) 370-5572

mcarita@comcast.net

Counsel for National General Assurance Company

TABLE OF CONTENTS

I.	<u>RULE 28(a)(2)(A) AND (B) STATEMENTS</u>	3
II.	<u>TABLE OF AUTHORITIES</u>	5
III.	<u>ASSERTION</u>	6
IV.	<u>STATEMENT OF ISSUES</u>	6
V.	<u>STATEMENT OF FACTS</u>	6
VI.	<u>ARGUMENT</u>	
A.	<u>Standard of Review</u>	8
B.	<u>There are no facts that would have established Mr. White was negligent in this matter and any judgment against Mr. White would have to be based on impermissible guesswork and speculation</u>	9
C.	<u>If Mr. White could not have been found negligent in this accident, then Ms. Nixon is not entitled to an UM coverage from National General Assurance Company, and it did not breach its contract as alleged</u>	10
VII.	<u>CONCLUSION</u>	11
VIII.	<u>CERTIFICATE OF SERVICE</u>	11

I. RULE 28(a)(2)(A) AND (B) STATEMENTS

(A) Shaketta A. Denson, Esq.
Michael D. Reiter, Esq.
CHASENBOSCOLO
7852 Walker Drive, Suite 300
Greenbelt, MD 20770
sdenson@chassenboscolo.com
Counsel for Appellant Nixon

Jennifer H. Fitzgerald, Esq.
Diana Korbin, Esq.
11350 McCormick Road
Executive Plaza III, Suite 704
Hunt Valley, MD 21301
Counsel for Appellee Etile

Anne K. Howard, Esq.
Alane Tempchin, Esq.
12300 Twinbrook Parkway, Suite 540
Rockville, MD 20852
Counsel for Appellee Deer

Jennifer L. Servary, Esq.
Wilson Forte LLP
1115 Professional Court
Hagerstown, MD 21740
jservary@wfortelaw.com
Counsel for Appellees Ippolito & Chayka

Jack D. Lapidus, Esq.
6106 MacArthur Boulevard, Suite 110
Bethesda, MD 20816
Attorney for Appellee GEICO

Tyrese White
1201 Oak Drive, SE
Apt. B203
Washington, DC 20032-5904
Appellee *pro se*

Donnita Bennett
1201 Oak Drive, SE
Apt. B203
Washington, DC 20032-5904
Appellee *pro se*

- (B) National General Assurance Company, a Missouri insurance company, is a wholly-owned subsidiary of National General Holdings Corp., which is a Delaware corporation. National General Holdings Corp. is a wholly-owned subsidiary of Allstate Insurance Holdings, LLC, which is a Delaware limited liability company. Allstate Insurance Holdings, LLC is a wholly-owned subsidiary of The Allstate Corporation, which is a Delaware corporation. The stock of The Allstate Corporation is publicly traded. No publicly-held entity owns 10% or more of the stock of The Allstate Corporation.

II. TABLE OF AUTHORITIES

Cases

<i>Anderson v. Ford Motor Co.</i> , 682 A.2d 651 (D.C.1996).....	8
<i>Colbert v. Georgetown Univ.</i> , 641 A.2d 469 (D.C.1994).....	8
<i>Harris v. Safeway Stores, Inc.</i> , 329 A.2d 436 (D.C. 1974)	10
<i>King v. Pagliano Bros. Stone Co.</i> , 703 A.2d 1232 (DC 1997)	9
<i>McMahon v. Anderson, Hibey and Blair</i> , 728 A.2d 656 (D.C. 1999)	8
<i>Mixon v. Washington Metro. Area Transit Auth.</i> , 959 A.2d 55 (D.C. 2008)	9
<i>Pazmino v. WMATA</i> , 638 A.2d 677 (D.C. 1994)	9, 10
<i>Warrick v. Walker</i> , 814 A.2d 932 (D.C. 2003).....	10

Statutes and Rules

<i>Super Ct. Civ. R. 56(c)</i>	8
---------------------------------------	---

III. ASSERTION

This appeal is from a final order of the Superior Court for the District of Columbia.

IV. STATEMENT OF ISSUES

1. Did the Superior court err in granting Respondents' Motions for Summary Judgment.

V. STATEMENT OF FACTS

This case arose out of a July 4, 2018 multiple vehicle accident. (App. pg. 3). The accident consisted of various impacts between four vehicles. These vehicles were all in the same lane of travel, and were owned or operated by and in this order:

1. Etile - first car 'in line'; (Nixon was a passenger in the Etile vehicle - App. pg. 3);
2. White - second car; (Third Party Defendant Bennett was the owner of the vehicle Mr. White was driving - App. pg. 3, 14):
3. Deer - third car;
4. Ippolito - fourth, and last car.

(App. pg. 3).

Ms. Nixon testified that she felt only one impact to the vehicle in which she was a passenger;

Q. How many impacts did you feel?

A. I felt the one big boom, and the car moved.

(App. pg. 195);

and that she has no personal information regarding the order of any impacts that occurred behind her.

Q. Yes. Do you have any personal information as far as the order of impacts that happened behind you?

A. I don't remember. No, I don't.

(App. pg. 301).

Mr. Etile testified that he felt one impact from the rear, but doesn't know if there was a second impact to his vehicle.

Q. You're absolutely sure that you felt one impact from the rear, correct?

A. I'm absolutely certain that I felt, at least, one.

Q. Okay.

A. Now, if there was more than one, then I don't know.

Q. Well, that was going to be my next question. But you really don't know whether there was a second impact or not to your vehicle, do you?

A. That's correct.

(App. pg. 401)

Mr. White testified that his vehicle did not hit the car in front of him (Etile/Nixon) before he was hit from the rear.

Q. Okay. And at the time – when you're first hit from the rear, did – had you hit the car in front of you? Had the front end of your car hit anything before you were hit from the rear?

A. No.

(App. pg. 587)

Q. But as far as the sequence, the first thing you remember is you got hit from the rear, correct?

A. Correct.

Q. And before that, no other – your car wasn’t involved in any other impacts on July 4th, 2018, on 295 before you got hit from the rear, is that right?

A. Correct.

(App. pg. 593).

Mr. Deer, (driving the vehicle immediately behind Mr. White), testified:

Q. And just to be clear, you are aware of no facts or have no evidence to support that the sedan that was in front of you struck any vehicle, prior to your hitting it in the rear, correct?

A. That’s correct.

(App. pg. 557).

No fact witness testified, (nor is there any other type of evidence to support), that Mr. White struck the vehicle Plaintiff was in before Mr. White’s vehicle was struck in the rear.

VI. ARGUMENT

A. Standard of Review.

The review of summary judgment orders is *de novo*, and the record is reviewed independently using the same substantive standard as the trial court. *See, e.g., Anderson v. Ford Motor Co.*, 682 A.2d 651, 652 (D.C.1996). The movant must demonstrate that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *See, e.g., Colbert v. Georgetown Univ.*, 641 A.2d 469, 472 (D.C.1994) (*en banc*); *Super Ct. Civ. R. 56(c)*. The evidence is viewed in the light most favorable to the party opposing the motion. *McMahon v. Anderson, Hibey and Blair*, 728 A.2d 656, 657 (D.C. 1999).

- B. There are no facts that would have established Mr. White was negligent in this matter and any judgment against Mr. White would have to be based on impermissible guesswork and speculation.

For a plaintiff to establish negligence in a rear-end collision, she “must show more than just the occurrence of the collision”; and “the mere happening of an accident does not constitute proof of negligence.” *King v. Pagliano Bros. Stone Co.*, 703 A.2d 1232, 1234 (DC 1997) (quoting *Pazmino v. Washington Metropolitan Transit Authority*, 638 A.2d 677, 679-80 (DC 1994)). There is simply no fact established, nor piece of evidence produced, to support that Mr. White struck the Etile/Nixon vehicle BEFORE Mr. White was struck in the rear and pushed into the Etile/Nixon vehicle.

Since there is no factual evidence to support a claim that Mr. White struck the Etile/Nixon vehicle PRIOR to Mr. White’s vehicle being rear-ended and pushed into it, the only way for a jury to find against Mr. White would be by impermissible guesswork and speculation. Ms. Nixon has only provided speculation as to the possibility of the number and order of impacts. This is not sufficient to obtain a verdict in her favor. *See Mixon v. Washington Metro. Area Transit Auth.*, 959 A.2d 55, 59 (D.C. 2008) (judgment was proper where plaintiff “had not shown, beyond his own speculation, that any act or omission by WMATA or its personnel had anything to do with his fall.”). Here the only fact Ms. Nixon has established are at least a certain number of impacts that occurred between the four vehicles, but just the number of impacts provide no information at all about who may or may not have been negligent. There is no specific evidence to establish the cause and sequence of impacts that occurred. Instead, Ms. Nixon argues different theories of how the accident occurred, and argues that a jury could choose an interpretation of any theory to hold any Defendant liable. This is not an inference of negligence, it is nothing more than speculation. There is no

evidence on which the jury could have found negligence on any particular defendant without speculating. *See Harris v. Safeway Stores, Inc.*, 329 A.2d 436, 437 (D.C. 1974). Speculation is not the province of a jury. *Id.*

Ms. Nixon's assertion in her brief that a rear end accident gives rise to a presumption of negligence of the driver of the following vehicle is properly cited, but not properly read. In the cited cases, each of them contains the qualifying language "in the absence of emergency or unusual conditions..." *Pazmino v. WMATA*, 638 A.2d 677, 679 (D.C. 1994); *Warrick v. Walker*, 814 A.2d 932, 933 (D.C. 2003). Here the only facts are that White stopped his vehicle without striking the Etile/Nixon vehicle, then White was rear-ended. This is certainly the "emergency" or "unusual" conditions which would make any such presumption inapplicable.

Accordingly, Ms. Nixon did not meet her burden of producing specific facts showing there is a genuine issue for trial on her negligence claims.

- C. If Mr. White could not have been found negligent in this accident, then Ms. Nixon is not entitled to an UM coverage from National General Assurance Company, and it did not breach its contract as alleged.

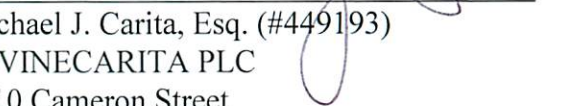
Ms. Nixon's claim against National General Assurance Company is a breach of contract claim for uninsured motorist coverage due to the alleged negligence of Mr. White. (App. pg. 9). At the time of the accident, Third-Party Defendants White and Bennett did not possess automobile insurance. (App. pg. 4). Accordingly, Ms. Nixon filed suit against Defendants Geico and National General Assurance for breach of contract for "fail[ing] to make any payment under the uninsured/underinsured motorist provision of [her] policy[.]" (App. pg. 9).

Because there is no evidence that the accident was caused by the negligence of Third-Party Defendant White, Ms. Nixon's claim for uninsured motorist benefits against National General

Assurance fails as a matter of law.

VII. CONCLUSION

Wherefore, National General Assurance Company requests this Court to affirm the judgment below and dismiss this appeal.



Michael J. Carita, Esq. (#449193)
LEVINECARITA PLC
1010 Cameron Street
Alexandria, VA 22314
Tel.: (703) 370-5569
Fax: (703) 370-5572
mcarita@comcast.net
Counsel for National General Assurance Company

VIII. CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed and served, this 28th day of February, 2023 to:

Shaketta A. Denson, Esq.
Michael D. Reiter, Esq.
CHASENBOSCOLO
7852 Walker Drive, Suite 300
Greenbelt, MD 20770
sdenson@chassenboscolo.com
Counsel for Appellant Nixon

Jennifer H. Fitzgerald, Esq.
11350 McCormick Road
Executive Plaza III, Suite 704
Hunt Valley, MD 21301
Counsel for Appellee Etile

Anne K. Howard, Esq.
Alane Tempchin, Esq.
12300 Twinbrook Parkway, Suite 540
Rockville, MD 20852
Counsel for Appellee Deer

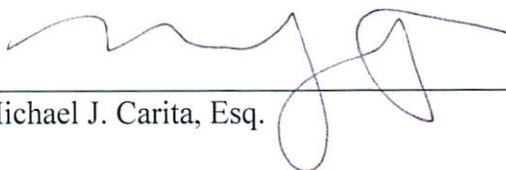
Jennifer L. Servary, Esq.
Wilson Forte LLP
1115 Professional Court
Hagerstown, MD 21740
jservary@wfortelaw.com
Counsel for Appellees Ippolito & Chayka

Jack D. Lapidus, Esq.
6106 MacArthur Boulevard, Suite 110
Bethesda, MD 20816
Counsel for Appellee GEICO

and Mailed, first class postage prepaid to:

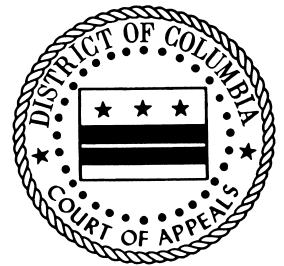
Tyrese White
1201 Oak Drive, SE
Apt. B203
Washington, DC 20032-5904
Appellee *pro se*

Donnita Bennett
1201 Oak Drive, SE
Apt. B203
Washington, DC 20032-5904
Appellee *pro se*



Michael J. Carita, Esq.

District of Columbia Court of Appeals



Clerk of the Court

Received 02/28/2023 09:10 AM

Resubmitted 02/28/2023 09:30 AM

Filed 02/28/2023 09:30 AM

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;

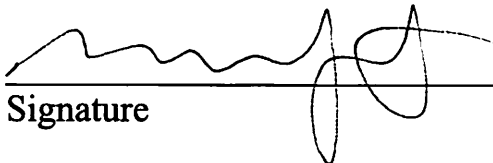
(3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;

(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

Michael CARITA

Name

mcarita@comcast.net

Email Address

22-CV-0595

Case Number(s)

February 28, 2023

Date