

FILED

OCT 15 2018

**SUPERIOR COURT OF NEW JERSEY
DEBORAH M. GROSS-QUATRONE, J.S.C.**

PREPARED BY THE COURT

<p>NESTA JENKINS,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>PAUL RAYMOND-MILLER, individually and/or as agent and/or employee of K&B SUMMERS, INC., and K&B SUMMERS INC., individually,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION, ESSEX COUNTY</p> <p>DOCKET NO.: ESX L-7815-15</p> <p style="text-align: center;">CIVIL ACTION</p>
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THIS MATTER, having been brought before the Honorable Deborah M. Gross-Quatrone, J.S.C. for Trial on September 5, 2018, Juan C. Cervantes, Esq. from the firm of Forman & Cardonsky appearing for Plaintiff Nesta Jenkins, and Douglas B. Marcello, Esq. from the firm of Marcello & Kivisto, LLC appearing for Defendants Paul Raymond-Miller and K&B Summers, Inc.,

IT IS on this 15TH day of OCTOBER, 2018

ORDERED that the Complaint of Plaintiff, Nesta Jenkins, is hereby **DISMISSED WITH PREJUDICE** for the reasons stated in the attached written decision; and it is further;

ORDERED that a copy of this order be served to all parties within three (3) days from the date of this order.



 HON. DEBORAH M. GROSS-QUATRONE, J.S.C.

SUPERIOR COURT OF NEW JERSEY

CIVIL DIVISION
ESSEX VICINAGE



Chambers of
Deborah M. Gross-Quatrone, J.S.C.

October 15, 2018

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RE: **NESTA JENKINS v. PAUL-RAYMOND MILLER, Individually
and/or as agent, servant, and/or employee of K&B SUMMERS, INC.,
and K&B SUMMERS, INC. Individually.**
Docket No. ESX-L-7815-15

This is a personal injury automobile negligence action. The parties have consented to an expedited bench trial. The issues presented are whether Defendant was negligent, whether Plaintiff sustained injuries as a result of the accident, whether any such injuries were preexisting, and whether Plaintiff was comparatively negligent.

The summary of the case is as follows: On January 29, 2014, Plaintiff Nesta Jenkins, a New Jersey Transit employee, was operating a NJ Transit bus when she came into contact with a tractor-trailer owned by Defendant K&B Summers, Inc. and operated by Defendant Paul-Raymond Miller. Jenkins maintains that she was fully stopped at a bus stop when Miller's tractor-trailer struck her NJ transit bus, while Miller and K&B Summers maintain that Newark police officer Lt. O'Hara had stopped all traffic to allow the Miller's tractor-trailer to make a wide left-hand-turn

into the construction site, and that Jenkins then drove the NJ transit bus forward into Miller's vehicle in violation of Lt. O'Hara's direction.

I. LIABILITY

On January 29, 2014, Jenkins operated her NJ Transit bus along her regular work route. That same day, Defendant Paul-Raymond Miller drove a tractor-trailer, approximately 85 feet long, 9.5 feet high, and owned by Defendant K&B Summers Inc., from Denver, Pennsylvania to Newark, New Jersey in order to transport 60,000 pounds of concrete to Newark's Prudential Center. At approximately 1:30 p.m., Jenkins's NJ transit bus and Miller's tractor-trailer collided on Broad Street. Jenkins's NJ transit bus was located in the far-right bus lane, while Miller was executing a wide left-hand-turn in order to enter into the construction site, which required him to swing his tractor trailer to the right. Miller was unaware he was involved in a collision and proceeded driving. A NJ transit bus passenger notified an on-scene police officer of the collision, who then escorted Miller to the incident scene.

Neither party disputes that the collision occurred. Instead, the primary factual issues presented are whether Jenkins's NJ transit bus was moving at the time of the collision and whether Lt. O'Hara was present at the scene directing traffic.

The police report of the accident states that police officer Lt. O'Hara was at the scene directing traffic prior to the accident. Def. Ex. 3. According to the report, Lt. O'Hara stopped traffic in all directions so that Miller could swing wide and turn his tractor-trailer into a construction site. Id. The report concludes that the accident was caused by Jenkins when she did not abide by Lt. O'Hara's direction to stop her vehicle, and instead proceeded to drive her NJ transit bus forward into Miller's tractor-trailer. Id.

The police report was prepared by Newark Police Officer Plaza, who did not personally witness the collision. Def. Ex. 3; 87. In her deposition, Officer Plaza testified that Lt. O'Hara witnesses the collision but did not respond himself because he was directing traffic and needed to continue to do so. Def. Ex. 87, p. 10. She testified that while she did not personally observe the accident, she was told of what happened by Lt. O'Hara, Jenkins, and Miller in preparing the report. Id. at 11. In the report itself, she also wrote down the names and telephone numbers of other witnesses at the scene. Def. Ex. 3. Notably, however, Lt. O'Hara testified in his deposition that he currently has no recollection of the accident, even after seeing the police report. Def. Ex. 85.

Jenkins testified that, contrary to the police report, neither Lt. O'Hara nor any other police officer was present directing traffic that day. Instead, Jenkins only observed a police vehicle facing the opposite direction. She noted further that if Lt. O'Hara was at the scene, he would have immediately responded to the accident, and the fact that he did not suggests that he was not there. She also noted that Lt. O'Hara had an incentive to lie, as he would have been at risk of receiving a citation if he was ignoring his traffic detail assignment.

The day after the accident, Jenkins went to Concentra Medical Center for an examination. She told the Concentra medical staff that she was injured when a truck cut in front of her and that she had to steer to keep the bus under control. Def. Ex. 90. Shortly after being examined by Concentra, Jenkins was directed to Dr. Schob for treatment. Jenkins told Dr. Schob that a truck cut her off and struck the front of her NJ transit bus. Def. Ex. 1.

During her testimony, Jenkins explained that to her, being 'cut-off' meant that Miller's tractor-trailer came out of nowhere. She also stated that she was holding onto the steering wheel when the collision occurred, which is why she had to hold the bus still. She testified that the reason

her bus was further forward than the bus stop following the accident was because she moved it forward after the collision in an effort to see Miller's license plate number.

Miller's testimony largely reflected the facts as set forth in the police report. According to Miller, he was on route, but not rushing, to make a concrete delivery at the Prudential Center. He drove down Broad Street, passing two buses in the far-right lane, until he reached the cross-street where he needed to turn. He testified that a police officer was directing traffic and halted all vehicles in either direction to allow him to execute the turn. He swung wide to the right and proceeded to turn left at approximately 5 mph. He was unaware of the collision until a police officer notified him and escorted him to the scene. He stated that he had extensive warnings on his vehicle, including flashing hazard and signal lights, flags on each corner of the trailer, and an oversized load sign. On cross-examination, Miller testified that making the left turn may have required him to move into the far-right lane and that protocol is to ensure that the turn is clear for 125 feet before beginning his turn.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court finds that Jenkins's drove her NJ transit bus forward at the time of the accident. Jenkins told Officer Plaza immediately following the accident that she was driving forward in the bus lane when she came into contact with Miller's tractor-trailer, as reflected in the police report. That account is consistent with Jenkins's statements to medical personnel at Concentra and with Dr. Schob soon after the accident. The language of being 'cut-off' and having to keep the bus under control are both highly suggestive that the bus was in forward motion at the time of collision. These statements are deemed to be reliable as they are in close proximity to the collision and given to medical personnel in anticipation of receiving medical treatment. This Court finds that, after weighing Miller's testimony, the police report, Officer Plaza's deposition testimony, and the

statements made by Jenkins herself to medical personnel, the factual conclusion that Jenkins moved her NJ transit bus forward and caused it to collide with Miller's tractor-trailer is supported by a preponderance of the evidence.

The police report, Miller's testimony, and Officer Plaza all support that Lt. O'Hara was present on Broad Street directing traffic. While Jenkins testified that no police officer was directing traffic at that time, given the evidence, this Court finds that Lt. O'Hara was present and directing traffic at the time of the accident. It is likely that Jenkins simply did not observe Lt. O'Hara.

However, the Court also finds that Miller drove a portion of his tractor-trailer into the far-right bus lane in front of Jenkins's NJ transit bus. Miller testified that the turn was wide enough that he may have to enter that lane. Further, Jenkins and the police report both indicate that Jenkins's NJ transit bus remained in the bus lane when the collision occurred. Therefore, Miller misjudged his turning radius and drove too wide, causing his tractor-trailer to enter the far-right lane and collide with the Jenkin's NJ transit bus. Miller's testimony that O'Hara waved him on is evidence that the route between Miller and the construction site was clear, not that he had enough space in the far-right lane to turn without making contact with Jenkins' NJ Transit bus.

III. CONCLUSIONS OF LAW

To establish a prima facie case of negligence, the Plaintiff must establish the following elements: (1) duty of care, (2) breach of that duty, (3) proximate cause, and (4) damages. See, e.g., D'Alessandro v. Hartzel, 422 N.J. Super. 575 (App. Div. 2011). The burden of proof rests upon plaintiff in a negligence action to prove causal relationship by preponderance of the evidence, and thus plaintiff must show that defendant's conduct constituted cause-in-fact of his injuries. Dawson v. Bunker Hill Plaza Associates, 289 N.J. Super. 309 (App. Div. 1996).

The Court finds that Jenkins was negligent. Jenkins had a duty to drive carefully, observe her surroundings, and obey traffic directions given by police officers. She breached that duty when she drove her NJ transit bus forwards, causing her bus to collide with Miller's tractor-trailer.

The Court also finds that Miller was negligent. Miller also had a duty to drive carefully and observe his surroundings. Further, as the driver of a large tractor-trailer, he had a duty to ensure that he had adequate space available to make his wide turn and that it was safe to do so. Miller himself testified that he knew that there were buses in the far-right lane and that his turn may require him to enter that lane. With that knowledge, and in consideration of the size and weight of his trailer, Miller breached his duty when he did not confirm that it was completely safe to enter another lane to make the wide turn.

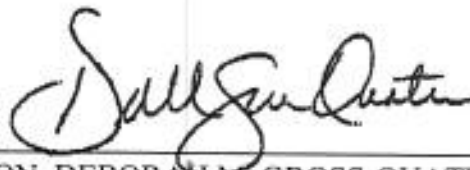
Given that both Jenkins and Miller were at fault, the Court must assess the comparative negligence of the parties and determine their respective liability.

The law of contributory negligence generally addresses the effect of plaintiff's fault, if any, on plaintiff's entitlement to recover damages at all. Erny v. Estate of Merola, 171 N.J. 86, 97 (2002). The doctrine of comparative negligence considers those circumstances under which the plaintiff's contributory fault does not bar recovery, but does serve to reduce the damages he or she would otherwise be entitled to receive. Id. at 97-98. Comparative negligence is governed by the Comparative Negligence Act, N.J.S.A. § 2A:15-5.1, which states that:

Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property, if such negligence was not greater than the negligence of the person against whom recovery is sought or was not greater than the combined negligence of the persons against whom recovery is sought. Any damages sustained shall be diminished by the percentage sustained of negligence attributable to the person recovering. N.J.S.A. § 2A:15-5.1.

The principles of the Comparative Negligence Act require apportionment of fault between ... negligent tortfeasors. Steele v. Kerrigan, 148 N.J. 1 (2001). Further, however, the Act bars a negligent suing party from recovering against a sued party whose negligence, as computed by the jury, is less than the suing party's. Van Horn v. William Blanchard Co., 173 N.J. Super. 280 (App. Div. 1980).

In consideration of the aforementioned findings of fact and conclusions of law, the Court finds that the Plaintiff, Nesta Jenkins, was fifty-one percent (51%) at fault, and that the Defendant, Paul-Raymond Miller, was forty-nine percent (49%) at fault. Pursuant to N.J.S.A. 2A:15-5.1, the Plaintiff may not recover any damages from the Defendant as the Plaintiff retains a higher degree of fault. As Plaintiff is not entitled to recover from Defendants due to her comparative fault in causing the accident, Plaintiff's damages need not be considered by this Court. Plaintiff's case is hereby Dismissed With Prejudice.



HON. DEBORAH M. GROSS-QUATRONE, J.S.C.

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