

**SUPERIOR COURT
of the
STATE OF DELAWARE**

Susan C. Del Pesco
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Submitted:February 18, 2004
Decided:May 28, 2004

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**Re: *Stephen W. Pringle and Ellen L. Darnell v. Lorraine Herbus as Personal
Representative of the Estate of Albert Guilfoil, Jr.***
C.A. No. 03A-07-004 SCD

Dear Counsel:

This case comes to the Court on appeal from a decision from the Court of Common Pleas. It arises from an automobile accident. The plaintiff was backing into a driveway from the highway when struck by a car traveling down the highway. The case is reversed and remanded on two grounds.

After hearing the evidence, the Court ruled:

I have reviewed my notes in this matter, and I have reviewed the submissions of the parties, and I've reviewed the testimony.

In reviewing the Complaint, this matter is brought by the plaintiff on the basis of negligence, and the substance of the allegation is that the defendant, one Albert Guilfoil, is negligent, and as a result of that negligence, they sustained injuries. The alleged negligence is primarily on the basis that he failed to maintain a proper lookout, that he failed to assess an emergency situation, and he failed to take appropriate actions. On that basis, they conclude that he is responsible for the accident and as a result of that failure, they sustained injuries.

In reviewing the evidence, it is clear that at the time that the parties were involved in this accident, both of them were involved in motor vehicle procedures, which at best, may be evaluated as operating on the edge, or, not consistent with what one would deem good motor vehicle or traffic practices in the State of Delaware.

It is clear that the defendant has a duty to avoid an accident and to, and to [*sic*] not create an emergency situation. But the plaintiff has an equal duty to ensure that at the time that he is backing his vehicle across an oncoming traffic lane, that that backing is done with safety. In this instant, the van for which the plaintiff was using was 17 feet, the roadway, as indicated by the testimony, was only 19 feet, so he was using most of the roadway when he was backing his vehicle. At the time the collision occurred, it is clear that the defendant at some point left the roadway.

There is testimony that there is some indicia of speed, but I do not find that testimony or that evidence credible. Therefore, I'm unable to conclude that speed was a factor in the causation of this accident.

Under the provision of 8132, the comparative negligence statute, in order to recover, the plaintiff must show that the defendant was negligent more than fifty-one percent, or that his action, that is plaintiff's action, was less than forty-nine percent. In reviewing all of the evidence in this case, I conclude that under the comparative negligence statute, the parties were equally responsible and, therefore, there is no basis for recovery.

In essence, I find for the defendant in these proceedings.¹

The first reason to remand is that the Court erred as a matter of law. The contributory negligence statute, 10 *Del. C.* § 8132, does not mandate the conclusion reached. It states:

In all actions brought to recover damages for negligence which results in death or injury to persons or property, the fact that the plaintiff may have been contributorily negligent shall not bar a recovery by the plaintiff or the plaintiff's legal representative where such negligence was not **greater than** the negligence of the defendant or the combined negligence of all defendants against whom recovery is sought, but any damages awarded shall be diminished in proportion to the amount of negligence attributed to plaintiff.²

The statute provides that a plaintiff's claim is not barred so long as plaintiff's negligence was not **greater than** the negligence of the defendant. Here, the Court found that the parties were "equally responsible" for the accident. That can only mean that the negligence was 50%-50%. Since 50% negligence is not **greater than** the negligence of the defendant, the plaintiff's claim for damages is not barred; it is to be reduced proportionately.³

The second reason to remand is that the decision of the Court does not distinguish between the two plaintiffs. One plaintiff, Stephen W. Pringle, was the operator of the vehicle being backed into the driveway. It appears that the Court's assignment of 50% negligence is attributable to the conduct of Pringle. However, there was a passenger in the Pringle vehicle, co-plaintiff Ellen L. Darnell. The court does not explain why a non-driver would be charged with the negligence of the vehicle operator. "The Delaware comparative negligence statute

¹*Pringle v. Barakat, as Personal Representative of the Estate of Albert Guilfoil, Jr.*, Del. CCP, C.A. No. 99-12-250, Smalls, C.J. (June 20, 2003) at 183-85.

² DEL. CODE ANN. tit. 10, §8132 (1999). (emphasis supplied)

³ *In Re Asbestos Litigation Pusey Trial Group Ann M. North*, 669 A.2d 108, 112 (Del. 1995).

unequivocally makes an *attribution of negligence to the plaintiff a condition precedent* to denial or proportionate *reduction in the damages* that the plaintiff would otherwise receive.”⁴

The plaintiff has made other arguments on appeal regarding the sufficiency of the evidence to support the findings below. In view of the rulings here, those issues are not reached at this time.

Wherefore, the case is reversed and remanded for further consideration of the Court below.

IT IS SO ORDERED.

Sincerely,

Susan C. Del Pesco

Original to Prothonotary

⁴ *Id.* (emphasis in original)