

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM LOCEY,)
) No. 002, 2000
Defendant Below/)
Third Party Plaintiff Below-)
Appellant,) Court Below: Superior Court of
) the State of Delaware in and for
v.) Kent County
) C.A. No. 97C-10-011
MELINDA HOOD,)
)
Third Party Defendant Below-)
Appellee.)

Submitted: August 8, 2000
Decided: September 15, 2000

Before **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices.

ORDER

This 15th day of September, 2000, upon consideration of the briefs of the parties, it appears to the Court that:

1. The Superior Court granted summary judgment to Third Party Defendant Hood. Third Party Plaintiff Locey appeals claiming that there were issues of material fact in dispute which should be determined by the trier of fact, and that the Superior Court erred by granting Hood's motion for summary judgment.

2. The standard for review by this Court of the Superior Court's grant of summary judgment is *de novo*. Under the *de novo* standard of review, this Court must determine whether or not the facts of record entitle the movant to

judgment as a matter of law, viewing those facts in the light most favorable to the non-moving party. *Kanaga v. Gannett Co.*, Del. Supr., 687 A.2d 173, 176 (1996).

3. In October, 1996, a three car accident occurred on Division Street in Dover. The vehicles were operated, in order of front to rear, by Thomas Sunde, Melinda Hood, and William Locey. On October 7, 1997, Samuels, a passenger in Sunde's car, filed a complaint against Locey, while on November 10, 1997, Locey filed a third party complaint impleading Hood and the owner of the car Hood was driving. Locey contended that Hood negligently operated the vehicle, and that Hood's negligence caused her to strike Sunde's car prior to Locey striking the car Hood drove. Hood contends that Locey first struck the car Hood drove, and that the resulting impact caused her to collide with Sunde's car.

4. Locey argues that the Superior Court's opinion was not based on sound legal reasoning; that the Superior Court erroneously concluded that Hood did not negligently operate her vehicle; and, finally, that the Superior Court erred because summary judgment is inappropriate in a negligence action where the facts of an accident are disputed.

5. Hood contends that the Superior Court granted summary judgment because Locey's arguments were illusory and were not supported by case law. Hood asserts that the Superior Court may properly weigh the evidence and assess credibility when ruling on a motion for summary judgment. Hood also claims that there is no genuine issue of material fact in dispute for the trier of fact to resolve.

Therefore, Hood contends the Superior Court properly granted her motion for summary judgment.

6. This Court has held that issues of negligence are not generally susceptible to summary judgment adjudication. *Ebersole v. Lowengrub*, Del. Supr., 150 A.2d 17 (1959). This Court stringently applies the rule that summary judgment may be granted only where there are no genuine issues of material fact in dispute. *Id.* A trial court might well believe that the non-moving party would be highly unlikely to win at trial, but that belief alone is insufficient to support summary judgment; nor is it sufficient to base summary judgment on the overwhelming amount of testimony that appears to favor the moving party. The weight to be given to testimony by persons who viewed an accident about what they may have observed, when disputed, can be assessed only after a determination of credibility by the trier of fact.

7. In the present case, Locey disputes the testimony of the other drivers and witnesses, all of whom indicate that Locey hit the car driven by Hood who then hit Sunde's car. Instead, Locey contends that Hood first struck Sunde's car and then Locey struck the car driven by Hood. Even though the majority of witnesses support Hood, Locey's testimony disputing the majority presents a genuine issue of material fact which must be resolved at trial. The Superior Court erred by granting Hood's motion for summary judgment.

NOW, THEREFORE, IT IS ORDERED, for all the reasons state above, the Superior Court is **REVERSED** and **REMANDED** for further proceedings consistent with this Order.

BY THE COURT:

s:\Myron T. Steele

Justice