

NORTH CAROLINA)	IN THE GENERAL COURT OF JUSTICE
)	SUPERIOR COURT DIVISION
MECKLENBURG COUNTY)	13 CVS 1234
)	
SANDRA JOHNSON)	
Plaintiff)	
)	
v.)	DEFENDANT'S PRE-TRIAL
)	MOTION FOR SUMMARY JUDGMENT
CHRIS WILLIAMS)	
)	
Defendant)	

Defendant, Chris Williams, (hereinafter "Defendant") in the above-entitled action, by and through counsel, moves the Court to grant summary judgment in favor of Defendant pursuant to Rule 56, based on Defendant's contributory negligence affirmative defense of plaintiff Sandra Johnson's (hereinafter "Plaintiff's") negligence claim against Defendant.

In support of this motion, Defendant shows the Court:

FACTS AND LITIGATION HISTORY

On November 1, 2013, at approximately 6:00 p.m., Plaintiff and Defendant were involved in an automobile accident (hereinafter "the Collision") at the intersection of Elm Street and Maple Street, in Charlotte, North Carolina. Plaintiff, who was travelling north on Elm Street, was alone in Plaintiff's vehicle, and Defendant, who was travelling west on Maple Street, was alone in Defendant's vehicle at the time of the Collision. There are no traffic signs at the intersection of Maple Street and Elm Street.

Plaintiff, who was positioned to the left of Defendant, proceeded into the intersection, and at the middle of the intersection struck the driver-side rear quarter panel of Defendant's vehicle. According to the Police report, there were two witnesses to the Collision. Wendy Jacobson testified under oath that, "... both the Plaintiff and the Defendant's vehicles reached the intersection at the same time or a few seconds later." Ms. Jacobson lives on the northeast corner of Elm Street and Maple Street, and witnessed the Collision from her front porch. Mr. Wood lives on the northwest corner of Elm Street and Maple Street, and he observed the Collision from his driveway. Both witnesses stated that although it was getting dark outside, they could clearly see both vehicles.

On the night of the Collision, the law enforcement officer on the scene issued the Defendant a traffic citation for “failure to have lights on after dark,” but the citation was subsequently dismissed in court by the presiding magistrate. The approximate speed of both vehicles is not certain. Although Ms. Jacobson stated the Defendant was driving 35-40 mph, both the Plaintiff and the Defendant claim they were driving around 25 mph, which is the posted speed limit at the intersection of Elm Street and Maple Street. Neither the Plaintiff nor the Defendant were issued a citation for speeding.

On April 10, 2016, Plaintiff filed a lawsuit against Defendant, alleging negligence under both North Carolina General Statute § 20-129, “Required Lighting Equipment of Vehicles,” and North Carolina General Statute § 20-141, “Speed Restrictions.” (Complaint is part of the file and is not be annexed hereto).

ARGUMENT

I. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT BASED ON THE DOCTRINE OF CONTRIBUTORY NEGLIGENCE.

North Carolina is one of only a few jurisdictions that applies the doctrine of “contributory negligence.” Pursuant to the doctrine of contributory negligence, if a plaintiff sues a defendant under a theory of negligence, the plaintiff may not recover if her injuries were caused in any way by her own negligence. See *Sorrells v. M.Y.B. Hospitality Ventures*, 332 N.C. 645, 648 (1992). In North Carolina, there is no apportioning of negligence and a plaintiff’s contributory negligence is a complete bar to recovery from a defendant who commits an act of ordinary negligence. *Id.*

A. Plaintiff’s contributory negligence was a cause of the Collision.

A plaintiff is negligent when she fails to exercise such care as an ordinarily prudent person would exercise under the circumstances in order to avoid injury. See *Newton v. New Hanover County Bd. of Educ.*, 342 N.C. 554, 564 (1996). However, the doctrine of contributory negligence only applies where the plaintiff’s negligence was a cause of the collision. For instance, if a plaintiff is negligent, her negligence does not bar her recovery from a claim of ordinary negligence, unless it is shown that the plaintiff’s negligence was a cause of the accident.

1. Plaintiff failed to perform her duty to yield the right-of-way to Defendant.

Plaintiff was negligent when she failed to yield the right-of-way to Defendant and struck defendant’s automobile. Plaintiff and Defendant arrived at the intersection of Maple Street and Elm Street at approximately the same time. Subsection (a) of North Carolina General Statute §

20-155, “Right-of-way,” states, “when two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.” Plaintiff was travelling north on Elm Street, and Defendant was travelling west on Maple Street at the time of the Collision. Thus, Plaintiff had a duty to yield the right of way to Defendant.

However, Plaintiff did not yield the right of way to defendant. On November 1, 2013, Plaintiff struck Defendant’s automobile in the middle of the Elm Street and Maple Street intersection. Defendant testified that Plaintiff and Defendant arrived at the intersection at approximately the same time. Furthermore, Ms. Jacobson, an eye witness, testified under oath that, “. . . both vehicles reached the intersection at the same time . . .” Plaintiff has offered no evidence to the contrary. Since the Plaintiff and Defendant arrived at the intersection at approximately the same time, and Defendant was positioned to the right of Plaintiff, the Defendant had the right-of-way. Plaintiff failed to perform her duty to yield to Defendant, as required under N.C.G.S. § 20-155 (a), and consequently Plaintiff was negligent.

2. Plaintiff’s negligence was a cause of the Collision.

In *Bennett*, the North Carolina Supreme Court granted the defendant’s motion for judgment of nonsuit based on the allegation that the plaintiff was contributory negligent. See *Bennett v. Stephenson*, 75 S.E. 2d 147, 150 (N.C. 1953). The plaintiff was contributory negligent because the plaintiff failed his duty to yield the right-of-way to the defendant, despite the fact that the defendant was speeding. *Id.* 147. In *Bennett*, the plaintiff’s automobile approached a residential street intersection positioned to the left of the defendant. *Id.* In the intersection, the plaintiff struck the defendant’s automobile on the driver’s side. *Id.* The plaintiff testified his speed was 15 to 20 miles per hour and the defendant’s was 35 to 40 miles per hour. *Id.* The highway patrolman who investigated the accident did not issue a speeding citation. *Id.* at 148. The court cited subsection (a) of North Carolina General Statute § 20-155, “right-of-way,” which states, “when two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.” The court reasoned that even if the defendant was speeding at a rate of 35 to 40 miles an hour in a residential district, since the plaintiff’s automobile approached the intersection from the left of the defendant’s automobile, the plaintiff owed the defendant the right-of-way. *Id.* 149. The court concluded that, if two automobiles approach an intersection at approximately the same time, if the vehicle to the left fails to yield the right-of-way, that failure is constitutes a cause to warrant a judgment of contributory negligence, even if the vehicle to the right was speeding. *Id.*

Making due allowance for inexact estimates of distance, speed, and visibility the facts demonstrate that the Collision occurred on a clear day. According to the Police report, both

witnesses stated that although it was getting dark outside, they could clearly see both vehicles. Ms. Jacobson lives on the northeast corner of Elm Street and Maple Street, and witnessed the Collision from his front porch. Mr. Wood lives on the northwest corner of Elm Street and Maple Street, and he observed the Collision from his driveway. A reasonable person would assume that if a witness could see both automobiles from either their driveway or front porch of their home, an ordinary person of reasonable prudence approaching an intersection in their vehicle would have seen the Defendant's automobile at the intersection. Plaintiff should have seen Defendant's automobile before she entered the intersection.

Based on the court's ruling in *Bennett*, this court should hold that Plaintiff was a cause of the Collision. Like in *Bennett*, the Plaintiff's automobile struck Defendant's automobile in the middle of a residential street intersection. *Id.* Additionally, like in *Bennett*, both automobiles approached the intersection at approximately the same time from perpendicular directions, and plaintiff struck defendant's automobile on the driver side. Like in *Bennett*, the Plaintiff claims that the Defendant failed to perform his duty to drive at a reasonable speed. However, the *Bennett* court addressed this issue directly, holding that regardless of respective speeds, the driver who fails to yield the right-of-way is a cause of the collision, and is thus contributory negligent. *Id.* Here, the facts prove that the Plaintiff failed to yield the right-of-way to Defendant. Hence, according to *Bennett*, because Plaintiff failed to yield the right-of-way, and subsequently struck Defendant's vehicle, Plaintiff is a cause of the Collision.

CONCLUSION

The Defendant had the right to assume that Plaintiff would yield the right-of-way and stop or slow down sufficiently to permit Defendant to pass through the intersection safely. Plaintiff did not yield the right-of-way and stop or slow down, and consequently Plaintiff struck Defendant's vehicle. The argument above proves that Plaintiff was contributory negligent. Therefore, Plaintiff's claim must be dismissed pursuant to N.C.G.S. 1A-1, Rule 56.

Summary judgment is appropriate if the pleadings, affidavits, depositions, and other discovery documents show that there is no genuine dispute as to any material fact, while considering the evidence in a light most favorable to the non-movant, and that the moving party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56; *Cutchin v. Pledger*, 321 S.E.2d 462 (N.C. App. 1984).

Per *Sorrells*, in North Carolina, there is no apportioning of negligence, a plaintiff's contributory negligence is a complete bar to recovery from a defendant who commits an act of ordinary negligence. *Id.* In this matter, Plaintiff's negligence was a contributing cause to the Collision. Therefore, Defendant requests that the Plaintiff's claim be dismissed in its totality based on Rule 56.

WHEREFORE, Defendant respectfully requests that the Court issue an Order:

1. Granting summary judgment based on Defendant's contributory negligence affirmative defense to Plaintiff's negligence claim; and,
2. For such other and further relief that the Court deems just and proper.

This 20th day of April, 2016.

Matt Stiles

Attorney for Defendant

By:

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