
The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

MARIE E. SIC *v.* MICHAEL E. NUNAN
(AC 32196)

Bishop, Alvord and Bear, Js.

Argued March 11—officially released May 17, 2011

(Appeal from Superior Court, judicial district of
Tolland, Sferrazza, J.)

M. Hatcher Norris, with whom, on the brief, was *J. Anthony Doran*, for the appellant (plaintiff).

Thomas A. Kyzivat, for the appellee (defendant).

Opinion

BISHOP, J. In this action arising from a motor vehicle accident, the plaintiff, Marie E. Sic, appeals from the summary judgment rendered by the trial court in favor of the defendant, Michael E. Nunan. On appeal, the plaintiff claims that the court improperly determined as a matter of law that the defendant did not owe her a legal duty of care. We agree with the plaintiff and, accordingly, reverse the judgment of the trial court.

On September 24, 2008, the plaintiff filed this negligence action seeking to recover damages for personal injuries that she sustained as a result of a motor vehicle accident that occurred between herself and the defendant. The defendant filed a motion for summary judgment claiming that he was entitled to judgment as a matter of law because he did not owe the plaintiff a legal duty. For the purposes of the defendant's motion for summary judgment, the following facts are undisputed. On September 21, 2007, the defendant was traveling on Route 66 in Hebron. He stopped at an intersection to wait for a break in oncoming traffic so that he could turn left. While he was stopped, his vehicle was struck in the rear by a vehicle operated by Jessica Thoma,¹ and his vehicle was propelled into the lane of oncoming traffic, where it collided with the plaintiff's vehicle.

In her complaint, the plaintiff alleged that the defendant was negligent in that he, *inter alia*,² "had stopped his vehicle in such a position that he was not facing directly ahead" and that he "had stopped [his vehicle with] his wheels turned to the left, in such a manner that were he to be impacted from the rear . . . his vehicle would move into the lane of travel of any oncoming vehicle rather than straight ahead."

In support of his motion for summary judgment, the defendant provided an affidavit in which he stated that, when his vehicle was struck by Thoma's, he was stopped at the intersection preparing to turn left and he was in his own travel lane until he was hit. In opposition to the motion, the plaintiff submitted an affidavit of John C. Swanson, Jr., an accident reconstructionist, who opined that the defendant's vehicle was pushed ahead and to the left, rather than straight forward, because the front tires of the defendant's vehicle were turned to the left at the time the defendant was stopped at the intersection and struck by Thoma. The defendant did not dispute Swanson's opinion. The plaintiff also submitted the transcript of the deposition testimony of James MacPherson, a master driving instructor. MacPherson testified that, although there is no statute or regulation requiring a driver to keep the wheels of his or her vehicle straight when waiting to turn, proper and safe driving practice requires that they be kept straight.

The court granted the defendant's motion for summary judgment, emphasizing that drivers are entitled

to assume that other drivers are operating their vehicles safely. The court determined that a driver who is stopped while preparing to make a left turn does not owe a duty of care to oncoming drivers to “foresee and defend against the general possibility that a third driver will violate the law, or otherwise operate unsafely, and smash into the rear of his or her stopped vehicle and thrust it into the path of oncoming traffic.” The court, therefore, concluded that the defendant was “under no duty to defend the plaintiff against such an eventuality by having his wheels positioned in a particular direction.” This appeal followed.

“Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law. . . . On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court. . . . Our review of the trial court’s decision to grant [a party’s] motion for summary judgment is plenary.” (Internal quotation marks omitted.) *Brooks v. Sweeney*, 299 Conn. 196, 210, 9 A.3d 347 (2010).

Negligence “is the breach of a legal duty owed by one person to another, and such legal duty is the exercise of reasonable care.” (Internal quotation marks omitted.) *Phaneuf v. Berselli*, 119 Conn. App. 330, 336, 988 A.2d 344 (2010). “A duty, in negligence cases, may be defined as an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another.” W. Prosser & W. Keeton, *Torts* (5th Ed. 1984) § 53, p. 356. The issue of whether a duty exists is a question of law that is subject to plenary review. *LePage v. Horne*, 262 Conn. 116, 123, 809 A.2d 505 (2002).

Our Supreme Court has defined duty as “a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action. . . . The ultimate test of the existence of the duty to use care is found in the foreseeability that harm may result if it is not exercised. . . . [In other words], would the ordinary [person] in the defendant’s position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?” (Internal quotation marks omitted.) *Monk v. Temple George Associates, LLC*, 273 Conn.

108, 115, 869 A.2d 179 (2005); *Borsoi v. Sparico*, 141 Conn. 366, 369–70, 106 A.2d 170 (1954).

“An operator of a motor vehicle is always under a duty to exercise reasonable care . . . and to keep a reasonable lookout for persons or traffic that he or she is likely to encounter.” (Citation omitted.) *State v. Carter*, 64 Conn. App. 631, 642, 781 A.2d 376, cert. denied, 258 Conn. 914, 782 A.2d 1247 (2001). Thus, generally, as an operator of a motor vehicle, the defendant was under a duty to use reasonable care and to keep a reasonable lookout for persons or traffic that he was likely to encounter. More specifically, as a motorist waiting for a break in oncoming traffic to make a turn, the defendant had a duty to the plaintiff to exercise reasonable care not to cross his vehicle into her lane of traffic and strike her vehicle. In granting the defendant’s motion for summary judgment on this issue, we believe that the court incorrectly focused on whether the defendant had a specific duty to the plaintiff to keep the wheels of his vehicle in a forward alignment rather than the more general duty that the defendant had to the plaintiff to exercise reasonable care to avoid traveling into her lane of traffic. The specific issue regarding the angle of the defendant’s vehicle or the positioning of his wheels toward oncoming traffic goes to the question of whether the defendant was negligent, an inherently factual determination. Because the question of whether the defendant breached his duty of care to the plaintiff in the negligent manner alleged by the plaintiff is a question of fact for the jury, the issue should not have been determined by summary judgment.

The judgment is reversed and the case is remanded for further proceedings according to law.

In this opinion BEAR, J., concurred.

¹ Jessica Thoma is not a party to this action.

² The plaintiff also alleged in her complaint that the defendant failed to brake or to turn to avoid colliding with the plaintiff, failed to keep a proper lookout “for traffic approaching from behind” and “failed to drive in [his] established lane in violation of . . . General Statutes § 14-236.” In an affidavit provided in support of his motion for summary judgment, the defendant indicated that he did not have time to avoid colliding with the plaintiff’s car once he was struck by Thoma. The court concluded that there was no evidence submitted that the defendant had violated § 14-236 and that “an ordinarily prudent driver in the defendant’s situation [would have] lacked sufficient time to brake or turn after being rear-ended to escape colliding with the plaintiff’s vehicle.” The court’s conclusions in this regard are not challenged on appeal. Thus, the only remaining allegations of negligence concern the direction of the defendant’s vehicle and its tires.