MARIE E. SIC *v.* MICHAEL E. NUNAN
(SC 18816)

Norcott, Palmer, Zarella, Eveleigh and Harper, Js.

Argued September 20—officially released November 6, 2012

Linda L. Morkan, with whom were *Thomas A. Kyzi-*

vat and, on the brief, *Jeffrey J. White*, for the appellant (defendant).

M. Hatcher Norris, with whom, on the brief, was *A. Patrick Alcarez*, for the appellee (plaintiff).

Opinion

NORCOTT, J. The sole issue in this certified appeal is whether a motorist, who is lawfully stopped in his own lane of travel while awaiting an opportunity to make a left turn, owes a legal duty to oncoming motorists to keep the wheels of his vehicle straight to ensure that he will not be propelled into the travel lane of oncoming traffic in the event that another motorist crashes into him from behind. The defendant, Michael E. Nunan, appeals, following our grant of his petition for certification,[1] from the judgment of the Appellate Court reversing the summary judgment rendered by the trial court in his favor. *Sic* v. *Nunan*, 128 Conn. App. 692, 697–98, 18 A.3d 667 (2011). On appeal, the defendant claims that the Appellate Court improperly focused on whether he had breached a general duty of reasonable care by turning his wheels while awaiting an opportunity to make his turn, rather than whether he owed a duty to oncoming drivers to foresee and defend against the possibility that a third driver would crash into the rear of his stopped vehicle and thrust it into the path of oncoming traffic. We agree and, therefore, reverse the judgment of the Appellate Court.

The record, viewed in the light most favorable to the nonmoving party, reveals the following relevant facts and procedural history. On September 21, 2007, the defendant lawfully stopped his vehicle in the eastbound travel lane of Route 66 at the intersection with Buck Road in Hebron, intending to make a left turn onto Buck Road, and waiting for a break in oncoming traffic to do so. Id., 694. While he was waiting to turn, a vehicle operated by Jessica Thoma[2] struck the defendant's vehicle from behind and propelled him into the travel lane of oncoming traffic, where it collided with the vehicle operated by the plaintiff, Marie E. Sic. Id. The plaintiff suffered serious, permanent injuries as a result of the collision.

Subsequently, the plaintiff filed this negligence action, alleging, inter alia,[3] that the defendant was negligent in that he "had stopped his vehicle in such a position that he was not facing directly ahead, but was facing the lane of oncoming traffic," and "had stopped 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." The defendant then moved for summary judgment claiming, inter alia,[4] that "there is no duty under Connecticut law to stop a vehicle in such a way that it is not pushed to the left into oncoming traffic if rear-ended . . . ." In objecting to that motion, the plaintiff claimed that the defendant "failed to meet his duty to operate a motor vehicle safely," that "there is a legal duty not to turn one's wheels at an intersection prior to making a turn" and that there were issues of fact that require that the case

be resolved by a jury. In support of her opposition, the plaintiff submitted an affidavit from an accident reconstructionist, who opined that the defendant's vehicle was pushed ahead and to the left, rather than straight forward, because the vehicle's front tires were turned to the left both while the vehicle was stopped at the intersection and when it was struck from behind by Thoma's vehicle. The plaintiff also submitted the deposition testimony of James MacPherson, a master driving instructor, who indicated that, although there is no Connecticut statute or regulation requiring a driver to keep the wheels of his vehicle straight when waiting to turn, in his opinion, it is "unwise and unsafe for anybody to turn the wheels while stopped waiting to make a turn at an intersection," and that "the majority of the drivers who [he] encounter[s] . . . are keenly aware of [the necessity to keep the wheels of their vehicles straight when waiting to turn]."

The trial court granted the defendant's motion for summary judgment, concluding that the defendant was "under no duty to defend the plaintiff against [the potential that his vehicle would be struck from behind] by having his wheels positioned in a particular direction." In so concluding, the trial court observed that drivers are entitled to assume that other motorists are operating their vehicles safely, that there was no evidence that the defendant was, or should have been aware that another driver was about to "collide violently into the rear of his properly stopped car," and that there are no statutes or regulations requiring motorists who are awaiting an opportunity to turn to keep their wheels straight.

The plaintiff appealed from the judgment of the trial court to the Appellate Court. In a divided opinion, the Appellate Court reversed the summary judgment rendered by the trial court, concluding that, because operators of motor vehicles are always under a duty to exercise reasonable care, "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 . . . [and] should not have been determined by summary judgment."[5] *Sic* v. *Nunan*, supra, 128 Conn. App. 697–98. This certified appeal followed. See footnote 1 of this opinion.

On appeal to this court, the defendant claims that the Appellate Court improperly framed the dispositive question in the present case as whether the defendant breached a general duty of reasonable care, and improperly omitted a determination of whether the defendant owed, to the plaintiff, the specific duty of keeping his wheels straight. The defendant further claims that he owed the plaintiff no duty of care because Thoma's conduct—and the consequences of being rear-ended by Thoma—were not foreseeable, particularly given that Connecticut law permits drivers to presume that other

motorists will act lawfully, and, even if this court concludes that the harm suffered by the plaintiff was foreseeable, public policy militates against the imposition of a new, specific duty of care to position the vehicle's wheels in a certain direction while waiting to turn, under the circumstances of the present case.

In response, the plaintiff argues that the Appellate Court properly determined that the defendant owed her a duty of reasonable care, and that whether the defendant's conduct[6] constituted a breach of that duty was a question of fact for the jury. Specifically, the plaintiff argues that, because rear-end collisions are normal occurrences, they are foreseeable and are eventualities for which a reasonably prudent driver always has a duty to prepare. The plaintiff further contends that public policy favors the imposition of a duty under the circumstances of the present case in order to guard against the consequences of the all too frequent occurrence of rear-end collisions. Thus, the plaintiff argues that the Appellate Court properly determined that whether the defendant's conduct in failing to position the wheels of his vehicle so as to minimize the risk that he might be thrust into her travel lane constituted a breach of the defendant's duty of care was a factual question for the jury.

We agree with the defendant and conclude that the Appellate Court improperly failed to assess the specific question of whether he owed the plaintiff a duty to anticipate and to guard against the tortious and unlawful conduct of another driver. Upon consideration of that question, we further conclude that the Appellate Court improperly reversed the judgment of the trial court, which properly determined that Connecticut drivers do not owe oncoming motorists a duty to keep their wheels straight when waiting to turn in anticipation of a potential rear-end collision.

Initially, we set forth the requisite standard of review. "The standards governing our review of a trial court's decision to grant a motion for summary judgment are well established. 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 seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . Finally, the scope of our review of the trial court's decision to grant the

plaintiff's motion for summary judgment is plenary." (Internal quotation marks omitted.) *DiPietro* v. *Farmington Sports Arena, LLC*, 306 Conn. 107, 115–16, 49 A.3d 951 (2012).

"The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury. . . . Contained within the first element, duty, there are two distinct considerations. . . . First, it is necessary to determine the existence of a duty, and then, if one is found, it is necessary to evaluate the scope of that duty. . . . The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand. . . . If a court determines, as a matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant. . . .

"Duty is a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action. The nature of the duty, and the specific persons to whom it is owed, are determined by the circumstances surrounding the conduct of the individual. . . . Although it has been said that no universal test for [duty] ever has been formulated . . . our threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant. 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. . . . By that is not meant that one charged with negligence must be found actually to have foreseen the probability of harm or that the particular injury which resulted was foreseeable . . . ." (Citations omitted; internal quotation marks omitted.) *Pelletier* v. *Sordoni/Skanska Construction Co.*, 286 Conn. 563, 593–94, 945 A.2d 388 (2008). "[T]he test for the existence of a legal duty entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case." (Internal quotation marks omitted.) *Mazurek* v. *Great American Ins. Co.*, 284 Conn. 16, 29, 930 A.2d 682 (2007).

Thus, in the present case, we must first look to the circumstances surrounding the accident to determine if a reasonable person in the defendant's position, knowing what the defendant knew or should have known, would anticipate being rear-ended and propelled into the lane of oncoming traffic. To begin, we note that our case law is clear that "a driver is entitled to assume that other users of the highway will obey

the law, including lawful traffic regulations, and observe reasonable care, until he knows or in the exercise of reasonable care should have known that the assumption has become unwarranted." *Gross* v. *Boston, Worcester & New York Street Railway Co.*, 117 Conn. 589, 596, 169 A. 613 (1933). Therefore, a reasonable driver in the defendant's position would be entitled to presume that drivers approaching him from behind would not be driving in an illegal or careless manner that would make them likely to crash into his lawfully stopped vehicle.[7] Accordingly, we conclude that a reasonable driver in the defendant's position is not required to anticipate the potential that he would be rear-ended by another motorist or to guard against that eventuality by positioning his wheels in a particular direction.[8]

Although we acknowledge that there are certain foreseeable risks of accidents associated with the operation of a motor vehicle, being thrust into the travel lane of oncoming traffic while one is lawfully stopped awaiting an opportunity to turn simply does not fall within the category of foreseeable risk, and the defendant cannot reasonably be required to defend against such an unforeseeable risk. "[W]hat is relevant . . . is the . . . attenuation between [the defendant's] conduct, on the one hand, and the consequences to and the identity of the plaintiff, on the other hand." (Internal quotation marks omitted.) *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 574, 717 A.2d 215 (1998). "[D]ue care does not require that one guard against eventualities which at best are too remote to be reasonably foreseeable." (Internal quotation marks omitted.) Id., 575, quoting *Palsgraf* v. *Long Island Railroad Co.*, 248 N.Y. 339, 345, 162 N.E. 99 (1928). We agree with Judge Alvord's conclusion in her dissenting opinion that "[t]he law should not countenance the extension of legal responsibility to such an attenuated result"; *Sic* v. *Nunan*, supra, 128 Conn. App. 703; and accordingly conclude that the defendant owed the plaintiff no duty to prevent the harm suffered because that harm was not a reasonably foreseeable consequence of his conduct.[9]

Even if it was foreseeable that lawfully stopping at an intersection can result in injuries to oncoming motorists, however, the plaintiff's argument that public policy supports the imposition of a duty in this case is also unavailing. First, it is undisputed that the legislature, which has the "primary responsibility for formulating public policy"; (internal quotation marks omitted) *Lewis* v. *Gaming Policy Board*, 224 Conn. 693, 709, 620 A.2d 780 (1993); has not seen fit to enact any statutes requiring Connecticut drivers to keep their wheels pointed in a particular direction when stopped at an intersection waiting to turn. It is also undisputed that the department of motor vehicles—the agency tasked with the promotion of public safety and security through the regulation of drivers; see General Statutes §§ 4-38c and 4-12t; has also not deemed it necessary or

appropriate to promulgate instructions or regulations in this regard.

Furthermore, under the circumstances of the present case, imposing a duty to position the wheels in a certain manner when waiting at an intersection would not only open up innumerable avenues of additional liability for drivers, despite the fact that neither the department of motor vehicles nor the legislature has considered it necessary to impose this duty, but also would make a determination of which direction the wheels of a vehicle should be positioned in the multitude of potential intersection situations very difficult, if not impossible, for drivers to ascertain.[10] Thus, it would impose an undue burden on a driver to require that he both anticipate that his vehicle will be struck from behind and also determine to whom, if anyone, he owes a duty to guard against the consequences of a potential rear-end collision every time he lawfully stops his vehicle.[11] See *Lodge* v. *Arett Sales Corp.*, supra, 246 Conn. 581.

We therefore conclude that it was not foreseeable that the defendant would be hit from behind while he was lawfully stopped, in his own lane of travel, awaiting an opportunity to make a safe left turn, or that he would, as a result of that collision, be thrust into the oncoming lane of traffic where he would collide with the plaintiff's vehicle. Nor are there public policy concerns that would justify the imposition of new liability under the circumstances of the present case. Accordingly, we conclude that the trial court properly rendered summary judgment in the defendant's favor, and the Appellate Court improperly reversed that judgment.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion the other justices concurred.

[1] We granted the defendant's petition for certification to appeal limited to the following issue: "Did the Appellate Court properly determine that the trial court order granting summary judgment should be reversed?" *Sic* v. *Nunan*, 301 Conn. 936, 23 A.3d 729 (2011).

[2] Jessica Thoma is not a party to the present action. *Sic* v. *Nunan*, supra, 128 Conn. App. 694 n.1.

[3] The plaintiff also alleged in her complaint that the defendant: (1) "failed to turn his vehicle . . . to avoid [the] collision"; (2) "failed to keep a proper lookout for traffic approaching him from behind"; (3) "failed to brake his vehicle to avoid [the] collision"; and (4) "failed to drive in the established lane in violation of . . . General Statutes § 14-236 . . . ."

[4] The defendant also moved for summary judgment on the ground that there was "no genuine issue of material fact as to the operation of his vehicle and in a rear-end collision such as this one, he [was] entitled to judgment as a matter of law." On the basis of uncontested affidavits submitted by the defendant averring that he remained in his lane of travel while waiting to turn and that there was insufficient time, after his vehicle was struck from behind, to brake or turn in order to avoid colliding with the plaintiff's vehicle, the trial court concluded that there was "no genuine factual controversy that the defendant never violated [General Statutes] § 14-236 nor that an ordinarily prudent driver in the defendant's situation lacked sufficient time to brake or turn after being rear-ended to escape colliding with the plaintiff's vehicle." The trial court, therefore, rendered summary judgment for the defendant with respect to the plaintiff's allegations that the defendant negligently failed to turn or brake to avoid the collision, failed to keep a proper

lookout and failed to keep his vehicle in his own lane of travel. The plaintiff did not challenge the summary judgment rendered with respect to these allegations on appeal. *Sic* v. *Nunan*, supra, 128 Conn. App. 694 n.2. Thus, the only remaining allegations of negligence at issue concern the direction in which the defendant's vehicle and its wheels were pointing at the time it was struck by Thoma's vehicle.

[5] In dissent, Judge Alvord agreed with the trial court and concluded that the defendant owed no duty to the plaintiff because the plaintiff failed to meet both the foreseeability prong and the public policy prong of the test for the duty of care set forth in *Mazurek* v. *Great American Ins. Co.*, 284 Conn. 16, 29, 930 A.2d 682 (2007). See *Sic* v. *Nunan*, supra, 128 Conn. App. 702 (*Alvord*, *J.*, dissenting).

[6] The plaintiff asserts that the accident would not have occurred but for the defendant's conduct in turning his wheels in preparation for making his turn. The plaintiff's attempt to minimize the significance of Thoma's collision with the defendant as the direct cause of the accident, however, is unpersuasive. It is undisputed that the presence of the defendant's vehicle in the plaintiff's lane of travel was solely the result of the fact that Thoma's vehicle had struck the defendant's vehicle from behind and propelled it into the path of the plaintiff's vehicle. Therefore, the rear-end collision with Thoma was the direct and dominant cause of this accident.

[7] We also note that the trial court specifically concluded that there was no genuine issue of material fact regarding whether the defendant had been keeping a proper lookout for traffic approaching him from behind at the time of the accident, and rendered summary judgment in favor of the defendant on that claim. See footnote 4 of this opinion. To the extent that the plaintiff argues, before this court, that the defendant had a duty to keep a lookout for the potential that other drivers would be acting unlawfully behind him; see, e.g., *Pinto* v. *Spigner*, 163 Conn. 191, 195, 302 A.2d 266 (1972) (motorist "is required to keep a reasonable lookout for any persons and traffic he is likely to encounter, and he is chargeable with notice of dangers of whose existence he could become aware by a reasonable exercise of his faculties" [internal quotation marks omitted]); and failed to do so, because the plaintiff did not challenge the trial court's determination in that regard on appeal to the Appellate Court, that argument has been abandoned, and we do not consider it in this certified appeal. See, e.g., *State* v. *Saucier*, 283 Conn. 207, 223, 926 A.2d 633 (2007) ("a claim that has been abandoned during the initial appeal to the Appellate Court cannot subsequently be resurrected by the taking of a certified appeal to this court" [internal quotation marks omitted]).

[8] The plaintiff's arguments that rear-end collisions are regular, and even frequent, occurrences, and that all drivers should be required to anticipate and guard against the consequences of such accidents at all times, are meritless, as they are clearly contrary to our well established rule that all drivers are entitled to presume that other motorists will be driving lawfully. Furthermore, the plaintiff adduced no factual evidence regarding the frequency with which rear-end collisions occur, or with respect to what percentage of drivers are likely to be involved in rear-end collisions throughout their tenure as Connecticut drivers. Needless to say, however, rear-end collisions clearly happen far less frequently than instances in which drivers lawfully stop at intersections, planning to make left turns. Therefore, it simply is not reasonably foreseeable that lawfully stopping at an intersection and awaiting a break in traffic in order to make a left turn safely—regardless of the direction in which the vehicle's wheels are pointing—would result in injuries to any oncoming drivers. Indeed, had the defendant's vehicle not been struck by Thoma's vehicle, the plaintiff would have driven past the defendant's vehicle without incident.

[9] We further note that the plaintiff did not allege or establish that the defendant did anything to increase the risk that he would be struck from behind, such as failing to keep his brake lights in proper repair or stopping to make the turn without using his turn signal.

[10] As Judge Alvord aptly noted in her dissenting opinion: "Query if the defendant had stopped to make the left turn and a motorcycle, also waiting to make a left turn, had been in front of him. Would the defendant then have had the duty to turn his wheels to the left to avoid hitting the motorcycle when he was rear-ended, or would the defendant have had the duty to keep his wheels straight to avoid hitting the plaintiff's vehicle in oncoming traffic? To whom would the defendant have owed the duty of care? Does the duty to one driver supersede the duty to the other?" *Sic* v. *Nunan*, supra, 128 Conn. App. 699 n.1.

The defendant also notes, and we agree, that further additional and poten-

tially conflicting duties would arise in situations where pedestrians, cyclists and other motorists are nearby. To whom would a driver owe a duty of care, and in what direction should a driver be required to position his wheels, if there was a pedestrian in the crosswalk in front of him, oncoming traffic in the opposite travel lane, and traffic passing him on the right in the shoulder of his own travel lane? A policy determination of the appropriate action under various driving circumstances is better suited to the authorities that have the duty and the expertise to balance the relative expectations of those who utilize Connecticut roads—the department of motor vehicles and the legislature—rather than this court.

[11] Decisions from other jurisdictions also support our conclusion that there is no public policy justification for the imposition of a duty under the circumstances of the present case. Indeed, various courts in New Jersey and New York have concluded that no legal duty exists under circumstances similar to those in the present case. See, e.g., *Lipski* v. *Vanselous*, United States District Court, District of New Jersey, Docket No. 04-6009 (D.N.J. January 18, 2006) (no duty to oncoming drivers to anticipate rear-end collision or to keep wheels turned straight to avoid being pushed into oncoming traffic if rear-ended); *Stretch* v. *Tedesco*, 263 App. Div. 2d 538, 539, 693 N.Y.S.2d 203 (1999) (same); *Piotrowski* v. *Nye*, 262 App. Div. 2d 991, 992, 692 N.Y.S.2d 270 (1999) (same); *Fiscella* v. *Gibbs*, 261 App. Div. 2d 572, 573, 690 N.Y.S.2d 713 (1999) (same); *Ross* v. *Szoke*, 196 Misc. 2d 588, 589, 763 N.Y.S.2d 389 (2003) (same). Furthermore, we are not persuaded by the plaintiff's arguments that this court need not follow the opinions of courts in other jurisdictions, and that the dissenting opinion in *Piotrowski*, which opined that it "defies common experience" to conclude that it is not foreseeable that a lawfully stopped vehicle might be struck from behind; *Piotrowski* v. *Nye*, supra, 992 (Balio, J., dissenting); is more persuasive than the numerous other New York cases in which the courts have concluded that there is no such duty to anticipate being struck from behind. Decisions of other jurisdictions are one factor that this court typically considers when determining whether public policy supports the imposition of a duty; see *Monk* v. *Temple George Associates, LLC*, 273 Conn. 108, 118, 869 A.2d 179 (2005); and we agree with the numerous courts in New Jersey and New York that there is no duty for a driver to keep the wheels of his vehicle straight at an intersection while he awaits an opportunity to turn.