

# SUPREME COURT OF PENNSYLVANIA

## Flagiello v. Crilly

409 Pa. 389 (Pa. 1963) · Decided January 8, 1963

### SUMMARY

The Supreme Court of Pennsylvania affirmed a judgment of nonsuit in a negligence action arising from a vehicle striking a child in an alley. The court held that the plaintiffs failed to present evidence establishing the driver's negligence or proximate causation, and that any finding of negligence would have been based on speculation or conjecture.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Pennsylvania                                                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Chief Justice Bell; Justice Musmanno; Justice Cohen; Justice Eagen; Justice O'Brien                                                                                                                                                                                                                     |
| JURISDICTION          | Pennsylvania                                                                                                                                                                                                                                                                                            |
| DECIDED               | January 8, 1963                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Plaintiffs appealed from a judgment of nonsuit entered in an automobile-pedestrian negligence action.                                                                                                                                                                                                   |
| STANDARD OF REVIEW    | A judgment of nonsuit may be entered only in a clear case. The evidence must be viewed in the light most favorable to the plaintiff, with the plaintiff receiving the benefit of all favorable evidence and reasonable inferences; conflicts in the evidence must be resolved in the plaintiff's favor. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Pennsylvania.                                                                                                                                                                                                                                    |
| PARTIES               | Flagiello v. Crilly                                                                                                                                                                                                                                                                                     |

### TOPICS

- negligence
- burden of proof
- evidence
- civil procedure

### PRACTICE AREAS

- tort law
- civil procedure
- evidence

## QUESTIONS PRESENTED

1. Whether the evidence, viewed in the light most favorable to the plaintiffs, established that Crilly was negligent and that her negligence proximately caused the accident.
2. Whether the mere occurrence of a vehicle-pedestrian collision supported an inference or presumption of negligence or permitted application of *res ipsa loquitur*.
3. Whether the plaintiffs' circumstantial evidence was sufficient to submit the negligence claim to the jury rather than sustain a nonsuit.

## HOLDINGS

1. The plaintiffs failed to prove by a fair preponderance of the evidence that Crilly was negligent or that any negligence was the proximate cause of the accident.
2. The mere happening of an accident, including a moving vehicle's collision with a pedestrian, does not establish negligence, raise an inference or presumption of negligence, or make out a *prima facie* negligence case.
3. *Res ipsa loquitur* did not apply, and the jury could not find liability based merely on surmise, guess, speculation, or conjecture.

## KEY QUOTATIONS

*"We have said many times that the jury may not be permitted to reach its verdict merely on the basis of speculation or conjecture, but that there must be evidence upon which logically its conclusion may be based."*  
(409 Pa. at 391)

*"Under these facts and circumstances it is clear that plaintiffs completely failed to prove that defendant was negligent, and any conclusion of negligence would be nothing but a guess."* (409 Pa. at 392)

## FACTUAL BACKGROUND

Joan Catherine Crilly was driving her father's Chevrolet south through a narrow alley behind the Flagiellos' homes on a clear, dry afternoon. Seven-year-old Ronald Flagiello was struck and found lying in the alley, but there were no eyewitnesses to the accident. The evidence did not establish the vehicle's speed, where Ronald was immediately before the accident, how long he was visible to a careful driver, or how much distance Crilly had to stop after Ronald's danger became apparent.

## PROCEDURAL HISTORY

The trial court entered a nonsuit for the defendant after the plaintiffs presented their evidence. The plaintiffs appealed, arguing that the evidence and reasonable inferences supported submission of negligence to the jury. The Supreme Court of Pennsylvania affirmed because the evidence did not establish defendant's negligence or provide a non-speculative basis for finding proximate cause.

## DISPOSITION

affirmed

#### CASES CITED

- Castelli v. Pittsburgh Railways Company, 402 Pa. 135, 165 A.2d 632
- Stimac v. Barkey, 405 Pa. 253, 174 A.2d 868
- Borzik v. Miller, 399 Pa. 293, 159 A.2d 741
- Schofield v. King, 388 Pa. 132, 130 A.2d 93
- Bohner v. Eastern Express, Inc., 405 Pa. 463, 175 A.2d 864
- Gatens v. Vrabel, 393 Pa. 155, 142 A.2d 287
- Ebersole v. Beistline, 368 Pa. 12, 82 A.2d 11
- Hulmes v. Keel, 335 Pa. 117, 6 A.2d 64
- Niziolek v. Wilkes-Barre Railway Corp., 322 Pa. 29, 185 A. 581
- Smith v. Bell Telephone Co., 397 Pa. 134, 153 A.2d 477
- Connor v. Hawk, 387 Pa. 480, 128 A.2d 566