

OHIO COURT OF APPEALS, TWELFTH APPELLATE DISTRICT, BUTLER
COUNTY

McCloy v. Allen

2022-Ohio-1704 (Ohio Ct. App. 2022) · No. CA2021-09-110 · Decided May 23, 2022

SUMMARY

The Ohio Twelfth District Court of Appeals affirmed summary judgment for Dennis Wayne Allen and Jones Bros. Towing & Trucking, Inc. in Rebecca Anne McCloy's negligence and negligence per se action arising from a traffic accident. The court held that McCloy failed to present specific evidence creating a genuine issue of material fact concerning the defendants' alleged statutory violations, breach of duty, or causation.

CASE DETAILS

COURT	Ohio Court of Appeals, Twelfth Appellate District, Butler County
WRITING FOR THE COURT	S. Powell, J.; Piper, P.J.; Hendrickson, J.
JURISDICTION	Ohio
DECIDED	May 23, 2022
DOCKET	CA2021-09-110
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Butler County Court of Common Pleas's grant of summary judgment to defendants on negligence and negligence per se claims arising from a traffic accident.
STANDARD OF REVIEW	De novo review applies to a trial court's summary-judgment decision. Summary judgment is proper when there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and the evidence permits only a conclusion adverse to the nonmoving party.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Rebecca Anne McCloy v. Dennis Wayne Allen, Jones Bros. Towing & Trucking, Inc.

TOPICS

- summary judgment
- negligence
- standard of review
- civil procedure
- appellate procedure

PRACTICE AREAS

Torts

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in granting summary judgment on McCloy's negligence claims.
2. Whether the trial court erred in granting summary judgment on McCloy's negligence per se claims based on alleged violations of R.C. 4511.22(A), 4511.66(A), and 4511.33(A)(1).
3. Whether McCloy presented specific Civ.R. 56 evidence demonstrating a genuine issue of material fact concerning breach, statutory violations, or proximate cause.

HOLDINGS

1. Summary judgment was properly granted because the defendants met their initial burden and McCloy failed to present specific evidence beyond the allegations in her pleadings showing a genuine issue of material fact regarding duty, breach, or proximate cause.
2. To avoid summary judgment on a negligence claim, a plaintiff must show that the defendant owed a duty of care, breached that duty, and proximately caused the plaintiff's injury.
3. Summary judgment was properly granted on the negligence per se claims because McCloy presented no Civ.R. 56 evidence establishing a statutory violation or proximate causation under R.C. 4511.22(A), 4511.66(A), or 4511.33(A)(1).

KEY QUOTATIONS

"This court reviews a trial court's summary judgment decision under a de novo standard." (¶ 8)

"Pursuant to that rule, a court may grant summary judgment only when (1) there is no genuine issue of any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) the evidence submitted can only lead reasonable minds to a conclusion that is adverse to the nonmoving party." (¶ 9)

"Therefore, because McCloy did not set forth any specific facts owing to the existence of a genuine triable issue beyond the mere allegations set forth in her pleadings, and because summary judgment is proper if the nonmoving party fails to set forth such facts, the trial court did not err by granting summary judgment in favor of Allen and Jones Bros. on McCloy's negligence and negligence per se claims." (¶ 13)

FACTUAL BACKGROUND

McCloy and Allen were involved in a collision while traveling northbound on Interstate 75 in Butler County, Ohio. McCloy was driving a Toyota Yaris at approximately 70.8 miles per hour, while Allen was driving a Peterbilt truck and trailer owned by Jones Bros. McCloy did not remember the accident and admitted that she had consumed several alcoholic beverages and was under the influence when she drove. The defendants presented evidence that debris damaged the truck's brake line, causing the brakes to lock, and that Allen activated his signals and was safely merging toward the left shoulder when McCloy's vehicle struck the rear of the truck.

PROCEDURAL HISTORY

McCloy sued Allen and Jones Bros. for negligence and negligence per se. The defendants moved for summary judgment, asserting that the evidence showed Allen did not breach a duty or cause the accident. The trial court granted the motion in its entirety, and McCloy appealed. The Ohio Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Faith Lawley, LLC v. McKay, 2021-Ohio-2156, ¶ 26
- Deutsche Bank Natl. Trust Co. v. Sexton, 2010-Ohio-4802, ¶ 7
- Nationwide Agribusiness Ins. Co. v. Heidler, 2019-Ohio-4311, ¶ 71
- Morris v. Dobbins Nursing Home, 2011-Ohio-3014, ¶ 14
- Franchas Holdings, LLC v. Dameron, 2016-Ohio-878, ¶ 16
- Roberts v. RMB Ents., Inc., 197 Ohio App. 3d 435, 2011-Ohio-6223, ¶ 6 (12th Dist.)
- State ex rel. Becker v. Faris, 2021-Ohio-1127, ¶ 14
- Spitzer v. Frisch's Restaurants, Inc., 2021-Ohio-1913, ¶ 6
- BAC Home Loans Servicing, L.P. v. Kolenich, 194 Ohio App. 3d 777, 2011-Ohio-3345, ¶ 17 (12th Dist.)
- Drew v. Weather Stop Roofing Co., L.L.C., 2020-Ohio-2771, ¶ 10
- Hillstreet Fund III, L.P. v. Bloom, 2010-Ohio-2961, ¶ 9
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)
- Touhey v. Ed's Tree & Turf, LLC, 194 Ohio App. 3d 800, 2011-Ohio-3432, ¶ 7 (12th Dist.)
- Smedley v. Discount Drug Mart, Inc., 190 Ohio App. 3d 684, 2010-Ohio-5665, ¶ 11 (12th Dist.)
- Oliphant v. AWP, Inc., 2020-Ohio-229, ¶ 31
- Taylor v. Atrium Med. Ctr., 2019-Ohio-447, ¶ 10
- Puhl v. U.S. Bank, N.A., 2015-Ohio-2083, ¶ 13
- Assured Admin., LLC v. Young, 2019-Ohio-3953, ¶ 14
- Vanderbilt v. Pier 27, L.L.C., 2013-Ohio-5205, ¶ 8
- Arnett v. Mong, 2016-Ohio-2893, ¶ 8
- Packman v. Barton, 2009-Ohio-5282, ¶ 12
- Allstate Ins. Co. v. Henry, 2007-Ohio-2556, ¶ 10
- Morgan v. Mamone, 2006-Ohio-6944, ¶ 19
- Shroades v. Rental Homes, Inc., 68 Ohio St. 2d 20, 25 (1981)
- Swader v. Paramount Property Mgt., 2012-Ohio-1477, ¶ 22
- Capella v. Historic Developers, L.L.C., 2018-Ohio-546, ¶ 43

