

Supreme Court

No. 2003-217-Appeal.
(PC 02-1435)

David Torres :

v. :

Lawrence Bertman et al. :

ORDER

In this negligence action, the plaintiff, David Torres, appeals from the Superior Court grant of summary judgment in favor of the defendant, Lawrence Bertman. The case came before the Supreme Court for oral argument on January 27, 2004, pursuant to an order directing the parties to show cause why this appeal should not be summarily decided. After hearing the arguments of counsel and examining the memoranda submitted by the parties, we are of the opinion that cause has not been shown and that the issues raised by this appeal should be summarily decided.

On July 20, 2001, at approximately 11:00 a.m., plaintiff was injured after the garbage truck on whose back landing he had been standing, swerved to avoid an oncoming vehicle in Johnston, Rhode Island. Neither the plaintiff nor the truck's occupants were able to describe the offending vehicle or identify its operator, who immediately left the scene without stopping.

Three days later, on July 23, 2001, a resident of the Johnston neighborhood where plaintiff had been working reported to the police that on the day of the accident, while he "was walking horses behind [his] residence[,]" he observed "a green wagon type vehicle traveling at a high rate of speed" along the street. Although he saw neither the driver nor the accident, he

believed that it was possible that the accident had been caused by the driver of that vehicle, a white female whom he frequently had seen speeding around the area in the past in a green Subaru Outback bearing the Rhode Island license plate number RB-249. A subsequent investigation revealed that the registration in question actually was assigned to a tan-colored Toyota Camry Sedan owned by defendant and customarily driven by his wife.

The plaintiff then filed suit against defendant. Thereafter, defendant filed a motion for summary judgment, asserting that there was no reasonable basis to implicate him or his vehicle in the accident. In support of his argument, he contended that his Toyota Camry could not have been involved in the 11:00 a.m. accident in Johnston because his wife parked the car at 9:00 a.m. that morning at a bridge club in Warwick, where it remained until 2:30 p.m. in the afternoon. The hearing justice granted the motion, finding that the record did not support even a reasonable inference to link defendant to the accident. The plaintiff appeals.

“It is well settled that this Court reviews the granting of a summary judgment motion on a de novo basis.” Hudson v. City of Providence, 830 A.2d 1105, 1106 (R.I. 2003) (per curiam) (quoting M & B Realty, Inc. v. Duval, 767 A.2d 60, 63 (R.I. 2001)). “The party who opposes summary judgment bears the burden of proving the existence of a disputed material issue of fact and, in so doing, has an affirmative duty to produce specific evidence demonstrating that summary judgment should be denied.” Hudson v. City of Providence, 830 A.2d at 1106 (citing Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996)).

Our de novo review reveals that plaintiff failed to produce one scintilla of evidence to even suggest that there existed a genuine issue of material fact warranting the denial of defendant’s motion for summary judgment. Indeed, the hearing justice would have been remiss had she not granted the motion as presented.

Accordingly, the judgment is affirmed and the papers in this case are remanded to the Superior Court.

Entered as an Order of this Court this 19th day of February, 2004.

S/S _____
Clerk