Circuit Court for Baltimore City
Case No. 24-C-15003357

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1598

September Term, 2016

TOINETTE A. ANTOINE

v.

MARYLAND TRANSIT ADMINISTRATION

Eyler, Deborah S.,
Berger,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: October 11, 2017

Toinette Antoine ("Antoine"), the appellant, challenges the decision by the Circuit Court for Baltimore City granting summary judgment in favor of the Maryland Transit Administration ("MTA"), the appellee, in Antoine's negligence case. We shall affirm the judgment.

FACTS AND PROCEEDINGS

The summary judgment record discloses the following.

On August 26, 2013, Antoine was a seated passenger on an MTA bus operating on its Line 48 route in Baltimore City when the bus stopped abruptly to avoid hitting a pedestrian who had stepped into the street in front of it. The sudden stop caused Antoine to jolt forward and strike the bar on the back of the seat in front of her. She injured her neck as a result.

The entire incident was captured on video from multiple angles by the bus's closed-circuit television ("CCTV") system. The CCTV video contains footage taken from the front, side, and interior of the bus, including footage of the driver, John Paul Dowery III ("Dowery"), and of the passengers.

For the most part, the facts are not in dispute and are evident from watching the video. The bus was travelling southbound on York Road toward that road's intersection with Cold Spring Lane. York Road at this location is five lanes wide with sidewalks on each side. There are two lanes for southbound traffic, two lanes for northbound traffic, and a center lane for turning. A bus stop is located just north of Cold Spring Lane, on the west side of York Road next to the outer southbound lane.

The video begins at approximately 2:15 p.m. It is clear and sunny outside. The bus is stopped at a red traffic light at the intersection of York Road and Glenwood Avenue, which is a few blocks north of the Cold Spring Lane intersection. After the light turns green, the bus begins to travel in the inner southbound lane of York Road and stays there. Several cars pass it on the right and it passes a few cars parked to its right.

As the bus approaches the intersection with Cold Spring Lane, it moves into the outer southbound lane (next to the sidewalk). Dowery is focused on the road in front of him and has both hands on the steering wheel. As the bus nears the bus stop, a woman talking on her cell phone suddenly steps off the sidewalk into the street, directly in the path of the bus. She is a few feet in front of the bus. She is not in or near a crosswalk and gives no signal or indication that she is about to walk into the street before doing so. As soon as the woman enters the street, Dowery, whose foot already is easing on the brake, pushs the brake all the way down to avoid hitting her.[1] The bus comes to an abrupt stop, causing the passengers to lunge forward. The video shows some passengers falling out of their seats, including a pregnant woman who later requested an ambulance.

The sudden stop caused Antoine's chest to hit the bar on the seat in front of her, and her neck to jolt backward. She felt a sharp pain in the back of her neck. She did not seek immediate medical attention, but went to the hospital later that day. She was treated

[1] The bus appears to tap the woman, but she jumps away and runs north on the sidewalk, all the while continuing to talk on her cell phone. She was never identified.

with pain medication and physical therapy, but eventually underwent surgery to repair a herniated disk in her neck.

On June 24, 2015, in the Circuit Court for Baltimore City, Antoine sued the MTA, alleging that Dowery, as its agent, had negligently caused her injuries.[2] A little over a year later, on August 8, 2016, the MTA filed a motion for summary judgment. It asserted that there was no dispute of material fact and that the undisputed facts showed that Dowery did not operate the bus negligently and that in any event any negligence on his part did not proximately cause Antoine's injuries.

Antoine filed an opposition, asserting that there was a genuine dispute of material fact concerning Dowery's negligence. Specifically, she argued that there was a dispute as to whether Dowery was driving the bus at an excessive speed before the woman stepped into the street in front of it. In her deposition, Antoine testified that immediately before the sudden stop, the bus felt like it "was going a little bit over the speed limit," which was 30 miles per hour. She did not see the bus's speedometer.

Dowery testified in deposition that he was driving at about 20 miles per hour while on the main stretch of York Road; he began to decelerate as he approached the Cold Spring Lane bus stop; and he was driving no faster than 15 miles per hour when he first saw the woman in the street.

[2] Antoine erroneously named the "Mass Transit Administration" as the defendant in the suit as opposed to "Maryland Transit Administration."

The CCTV system has a channel devoted to tracking the speed of the bus, but that portion of the video was not functioning. The record is not clear as to whether that channel ever works, or whether it simply was not working at the time of the accident. The footage provides some clues about the speed of the bus, but nothing definitive. For example, it shows that the bus was following a car for several blocks and maintained the same distance between itself and the car before approaching the bus stop. As noted, it shows cars passing the bus. It also shows that Dowery had placed his foot on the brake before he steered the bus into the outer southbound lane of York Road to approach the bus stop.

At the hearing on the MTA's motion for summary judgment, the judge considered the arguments of counsel and stated that he had watched the video of the accident. The judge ruled that, assuming the truth of Antoine's "version of events," any alleged excessive speed by Dowery was not the proximate cause of the accident. Rather, the accident was caused solely by the negligence of the unidentified woman who stepped in front of the bus; and the accident would have occurred whether the bus was travelling at an excessive rate of speed or a low rate of speed. On that basis, the court granted the MTA's motion for summary judgment.

Antoine noted this timely appeal. She presents four questions for review, but they actually each are arguments as to why the circuit court erred in granting summary

judgment. We shall discuss them in addressing the overarching question whether the court's ruling was in error.[3]

For the following reasons, we shall affirm the judgment of the circuit court.

DISCUSSION

"We review a circuit court's decision to grant a motion for summary judgment *de novo*." *Prison Health Services., Inc. v. Baltimore Cnty*., 172 Md. App. 1, 8 (2006) (citing *Tyma v. Montgomery Cnty.*, 369 Md. 497, 504 (2002)). "In reviewing a grant of summary judgment under Md. Rule 2–501, we independently review the record to determine whether the parties properly generated a dispute of material fact[.]" *Boland v. Boland*, 423 Md. 296, 366 (2011) (quoting *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 479 (2007)). The existence of a factual dispute, however, "'is not necessarily fatal to a

[3] Antoine frames her questions presented as follows:

> I. Did the trial court err when it concluded that there are no significant and material disputes of fact and granted Appellee's Motion for Summary Judgment[?]
>
> II. Did the trial court err when it did not apply the correct standard of care for common carriers towards their passengers[?]
>
> III. Did the trial court err when it failed to apply a presumption in favor of the Appellant when evaluating the evidence due to spolliation [sic][?]
>
> IV. Did the trial court err when it allowed Appellee to rely upon its adherence to the rules of the road as a complete defense since it was a common carrier[?]

summary judgment motion.'" *Id.* (quoting *Appiah v. Hall*, 416 Md. 533, 546 (2010)). The disputed fact must be material, meaning that it "will somehow affect the outcome of the case." *United Services Auto. Ass'n v. Riley*, 393 Md. 55, 67 (2006).

Although "[w]e review the record in the light most favorable to the non-moving party[,]" *Livesay v. Baltimore Cnty*, 384 Md. 1, 10 (2004), it is incumbent upon the non-moving party to present admissible evidence to show that a genuine dispute of material fact actually exists. *Rite Aid Corp. v. Hagley*, 374 Md. 665, 684 (2003) (citing *Scroggins v. Dahne*, 335 Md. 688, 691 (1994)). "[C]onclusory statements, conjecture, or speculation by the party resisting the motion will not defeat summary judgment[.]" *Benway v. Maryland Port Admin.*, 191 Md. App. 22, 46 (2010) (quoting *Carter v. Aramak Sports and Entm't Scrvs., Inc.*, 153 Md. App. 210, 225 (2003)).

Finally, if we determine that there is no genuine dispute of material fact, we then must decide whether the circuit court's ruling was legally correct. *Prison Health*, 172 Md. App. at 8 (citing *Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 737 (1993)).

Antoine offers several reasons why the circuit court erred by granting summary judgment. She argues that the court erred in concluding there was no genuine dispute of material fact; that the court failed to take into account that the standard of care for common carriers differs from that of others, including that in some situations the Boulevard Rule, otherwise applicable, will not apply to a common carrier; and that the court should have applied a presumption in her favor based on the MTA's spoliation of evidence.

We begin by noting that none of these arguments address the actual ruling of the court, which was that even if Dowery, as the MTA's agent, breached the standard of care, that breach was not a proximate cause of Antoine's injury. We shall address Antoine's arguments nevertheless to explain why they have no bearing on the outcome of this appeal and why the summary judgment ruling was correct.

A cause of action for negligence requires proof of four elements: "'(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.'" *Washington Metro. Area Transit Auth. v. Seymour*, 387 Md. 217, 223 (2005) (quoting *BG&E v. Lane*, 338 Md. 34, 43 (1995)). Causation consists of cause-in-fact, *i.e.,* "whether defendant's conduct actually produced an injury," *Peterson v. Underwood*, 258 Md. 9, 16–17 (1970), and legal causation, *i.e.,* whether the actual harm to plaintiff "falls within a general field of danger that the actor should have anticipated or expected." *Pittway Corp. v. Collins*, 409 Md. 218, 245 (2009) (citing *Stone v. Chicago Title Ins. Co. of Maryland*, 330 Md. 329, 337 (1993)).

Antoine argues that the circuit court erred in granting summary judgment because there was a genuine dispute of material fact about the breach of duty element of negligence, specifically, over whether Dowery was speeding immediately before the accident. It is well-established, however, that "negligence . . . found in the rate of speed at which [the defendant's vehicle] was being driven . . . does not [alone] answer the

question of liability. The negligence must have been the cause of the collision." *Sun Cab Co. v. Faulkner*, 163 Md. 477, 479 (1932). To state it differently, "[e]xceeding the speed limit does not constitute actionable negligence unless it is a proximate cause of injury or damage." *Myers v. Bright*, 327 Md. 395, 405 (1992) (quoting *Alston v. Forsythe*, 226 Md. 121, 130 (1961)). Excessive speed, in turn, is not a proximate cause of an injury if the injury would have happened regardless of the excessive speed. *E.H. Koester Bakery Co. v. Poller*, 187 Md. 324, 332 (1946).

Our case law is replete with examples demonstrating this principle. *See Myers*, 327 Md. at 403–10 (speed of plaintiff's vehicle did not contribute to collision because collision was unavoidable when defendant's vehicle suddenly cut across plaintiff's lane); *Traish v. Hasan*, 245 Md. 489, 494 (1967) ("question of speed [wa]s actually immaterial" when intruding vehicle abruptly cut off defendant's vehicle thereby "creating an emergency situation which . . . required [defendant] to come to a sudden stop in order to prevent a collision with the intruder."); *Jones v. Baltimore Transit Co.*, 211 Md. 423 (1956) (speed of bus did not cause passengers inside to fall because "the bus would have been required to make a sudden stop at any normal speed[.]"); *E.H. Koester Bakery*, 187 Md. 332 (speed of street car did not cause accident when truck unforeseeably entered the street car's tracks because collision would have occurred even if the defendant was travelling at a reasonable speed); *Sun Cab Co.*, 163 Md. 477 (speed of Sun taxi cab did not cause collision with Yellow taxi cab when the Yellow taxi cab entered the

intersection without having the right of way because the Yellow taxi cab created an unavoidable accident).

In the case at bar, the court explained that it was granting summary judgment based on the causation element of negligence alone. It assumed, for purposes of assessing the summary judgment motion, that there was no genuine dispute of material fact on the element of breach of the standard of care, *i.e.*, that Dowery was driving a few miles per hour over the speed limit, as Antoine had testified, and that in doing so he was breaching the duty of care the MTA, as a common carrier, owed to Antoine, as a passenger. With that assumption, the court concluded that the facts were legally insufficient to prove the causation element of a cause of action for negligence, because the accident would have occurred regardless of the bus's speed.

The video of the accident confirms the court's conclusion. As Dowery pulls into the outer southbound lane of York Road, a woman talking on her cell phone steps off the sidewalk and into the street no more than a few feet in front of the bus. Dowery had no warning that the woman would enter his path and no reasonable option but to immediately hit the brakes with full force to avoid striking her. It is evident from the video that in order to avoid striking the woman, Dowery would have had to apply the brakes with full force even if the bus had been travelling at a lower speed. As the Court of Appeals explained in *Jones*, a claim that excessive speed prior to a sudden stop contributed to a person's injury without some sort of proof is a matter of speculation and conjecture:

> [T]he bus would have been required to make a sudden stop at any normal speed, and we think it can be only speculation that the greater speed of the bus, assuming that there was such speed, intensified the results and the injury that followed the sudden stop materially beyond what they would have been if the stop had been from a slower speed

211 Md. at 429. The Court likewise opined in *E.H. Koester Bakery*, 187 Md. at 332, that, "[w]hether a lesser injury would have resulted from an emergency stop at 30 miles per hour, than from an emergency stop at 40 miles per hour, is a matter of pure speculation." *See also Comm'r of Motor Vehicles v. Baltimore & Annapolis R. Co.*, 257 Md. 529, 534–35 (1970) ("[r]easonable minds would not disagree that a driver who is confronted with the sudden appearance of a[pedestrian] directly in front of him acts as a reasonably prudent man by stopping as quickly as possible").

The speed of the bus is not a material fact because it does not make a difference in the outcome here. The proximate cause of Antoine's injury was not the speed of the bus; it was the negligence of the woman who stepped in the street directly in front of the bus. Accordingly, on the undisputed material facts, Antoine could not prove all the elements of negligence, and the circuit court correctly granted summary judgment.

Antoine's remaining arguments lack merit because they also would not have any effect on the outcome of the case. To be sure, the MTA, as a common carrier, owes its passengers a heightened duty of care. *See Washington Metro.*, 387 Md. at 223 ("A common carrier owes its passengers something *more* than an ordinary duty of care during transport.") (emphasis in original). The heightened standard of care is irrelevant because summary judgment was granted (properly) on the ground of causation. Likewise,

Antoine's argument about the Boulevard Rule is of no consequence. The Boulevard Rule has no application here, but even if it did, it is a rule that pertains to the standard of care, not to causation. *See Washington Metro.*, 387 Md. at 227 (The Boulevard Rule "'give[s] preference to drivers on the highways when they encounter other drivers attempting to enter or cross through highways.'" (quoting *Myers*, 327 Md. at 398, n. 1)).

Finally, Antoine's spoliation argument lacks merit. She asserts that because the channel that was supposed to track the bus's speed was not working in the CCTV video, the circuit court should have presumed that the bus was travelling at an excessive speed. First, there is nothing in the record to suggest that the MTA destroyed any information from the speed channel on the CCTV footage, so a spoliation presumption would not apply. Second, and most important, the court *did* presume that the bus was approaching the bus stop at an excessive speed. It nevertheless ruled, correctly, that the evidence on the summary judgment record could not prove that the speed of the bus was a proximate cause of Antoine's injury.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.