

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Antonio Zamora,)	
)	
Plaintiff,)	
)	
v.)	No. 19 L 12424
)	
Isaac Fabiyi and ABM Industry Groups, LLC,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Summary judgment is appropriate if the moving party’s right to relief is clear and free from doubt. In this case, conflicting testimony reveals questions of material fact as to whether the defendant breached his duty of care or proximately caused the plaintiff’s injuries. Given those unresolved questions, the plaintiff’s motion for partial summary judgment on the issue of negligence must be denied.

Facts

On June 28, 2018, Antonio Zamora and Isaac Fabiyi were driving eastbound on Chicago Avenue. Antonio and Isaac both came to a complete stop at a red traffic signal at the West Chicago Avenue and North LaSalle Street intersection. As some point thereafter, Fabiyi’s vehicle rear-ended Zamora’s vehicle. At the time, Fabiyi was driving a bus for ABM Industry Groups, LLC (“ABM”).

On November 12, 2019, Zamora filed his three-count complaint against Fabiyi and ABM.¹ Count one is pleaded in negligence and claims Fabiyi: (1) improperly traveled at a high rate of speed; (2) failed to reduce speed and brake with sufficient force to avoid an accident; (3) failed to maintain a proper lookout, maintain a safe following distance, and yield right-of-way; and (4) failed to maintain his vehicle with brakes in good working order. Count two is pleaded in negligence against ABM while count three is brought against ABM under agency theory.

¹ ABM Industries Incorporated was incorrectly sued. ABM Industry Groups, LLC (“ABM”) is the proper defendant.

The case proceeded to discovery during which both Zamora and Fabiyi were deposed. The parties sharply dispute the events surrounding the crash as evident in this comparison of their testimony.

Zamora's Testimony	Fabiya's Testimony
<p>Zamora testified that after the light at the intersection turned green, he began to move through the intersection and was hit while his vehicle was in the intersection. Zamora further testified that he was halfway through the intersection when he felt the impact.</p>	<p>Fabiya testified that after the light turned green, the vehicle in front began to proceed through the intersection. Fabiyi testified he saw Zamora's brake lights turn off, and expected him to proceed through the intersection. As a result, Fabiyi took his own foot off of the brake. Fabiyi testified Zamora's car did not move, and Fabiyi rolled into the back bumper of Zamora's vehicle. Fabiyi testified Zamora's vehicle was stationary and in the same spot that he had originally seen it.</p>

On November 10, 2021, Zamora filed a motion for partial summary judgment. The parties fully briefed the motion.

Analysis

Zamora brings his motion for partial summary judgment pursuant to the Code of Civil Procedure. The code authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002).

To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a

reasonable person might draw different inferences from the undisputed facts. *Id.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. See *First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

Zamora's central argument is that the evidence in the record conclusively demonstrates Fabiyi's negligence. "To recover on a negligence claim, the plaintiff must establish the existence of a duty owed by the defendant, a breach of that duty, and an injury proximately resulting from that breach." *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (1st Dist. 2001) (citing *Miller v. National Ass'n of Realtors*, 271 Ill. App. 3d 653, 656 (1st Dist. 1994)). The Illinois Supreme Court has repeatedly and consistently pointed out "it is 'axiomatic' that every person owes to all others a duty to exercise ordinary care to guard against injury which naturally flows as a reasonably probable and foreseeable consequence of his act." *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 291-92 (2007) (quoting and citing cases).

Zamora argues that Fabiyi owed Zamora a duty of care and breached his duty by failing to maintain a proper lookout, failing to avoid the incident by stopping, swerving, or reducing his speed, and by failing to maintain a proper distance behind his vehicle. Despite Zamora's assertions, however, the circumstances of this accident do not lead to a decisive conclusion that Fabiyi proximately caused Zamora's injuries. This is not surprising because, as a legal matter, a rear-end collision does not automatically establish the liability of the rear vehicle's driver. *Thomas v. Northington*, 134 Ill. App. 3d 141, 145 (1985). "In a rear-end collision automobile accident case, it is the responsibility of the trier of fact to determine whether the rear driver was acting reasonably under the circumstances or that the accident was unavoidable." *Kapsouris v. Rivera*, 319 Ill. App. 3d 844, 854 (2d Dist. 2001); see *Casey v. Pohlman*, 198 Ill. App. 3d 503, 508 (5th Dist. 1990).

Zamora urges this court to apply *Zaeh v. Huenke*, 70 Ill. App. 3d 39 (2d Dist. 1979), to the facts of this case. In *Zaeh*, the court found the defendant negligent because he rear ended the plaintiff's vehicle after failing to check to see if the plaintiff's vehicle had moved. *Zaeh* is, however, more complicated than that. In *Zaeh*, the defendant rear ended the plaintiff's car after the plaintiff had stopped at an intersection and waited to turn left with her left turn signal activated. *Id.* at 40. The defendant admitted he drove forward without first looking to see if the plaintiff's vehicle had cleared the intersection. *Id.* The court noted the defendant had no right to assume the plaintiff's vehicle had moved and then strike the plaintiff's car. *Id.* at 41. The court also found irrelevant whether the plaintiff's left-turn signal was on or whether the impact occurred at or in the intersection. *Id.* Importantly,

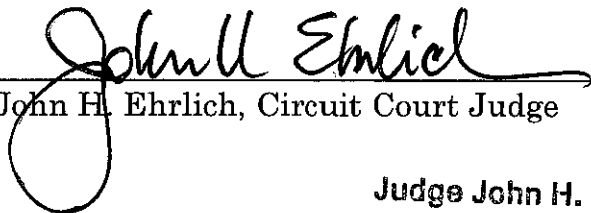
the *Zaeh* court had already determined the defendant's negligence and was assessing whether the plaintiff was contributorily negligent. *Id.* The court held "[p]laintiff had no duty here to get out of defendant's path so that he could drive ahead without looking as he appears to argue." *Id.* at 41.

Zaeh is distinguishable here because Fabiyi did not testify he failed to look to see whether Zamora's vehicle had moved. Rather, Fabiyi testified he saw Zamora's brake lights go off, leading Fabiyi to believe Zamora was going to move into the intersection. Fabiyi moved forward because he assumed Zamora was going to move forward. Zamora and Fabiyi also disagree as to other facts surrounding the accident. For example, Zamora testified Fabiyi struck Zamora's vehicle in the intersection and Zamora felt the impact when he was halfway through the intersection. In contrast, Fabiyi testified he struck the rear of Zamora's car before proceeding into the intersection and that Zamora's car did not move. Such a difference in testimony raises unanswered questions as to whether Zamora's car moved at all and whether, if it did, Fabiyi had sufficient time to brake before striking Zamora's car. The difference in testimony also raises the question of the witnesses' credibility. It is not this court's role to judge the evidence when credibility is at issue because credibility is strictly a question for a jury to decide. *Maple v. Gustafson*, 151 Ill. 2d 445, 452-53 (1992) ("it is the province of the jury to . . . pass upon the credibility of the witnesses, and to decide what weight should be given to the witnesses' testimony"). Given these unresolved questions of material fact, summary judgment as to negligence is not warranted.

Conclusion

For the reasons presented above, it is ordered that:

The plaintiff's motion for partial summary judgment as to negligence is denied.


John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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