

behind Plaintiff Jones; and Plaintiff Gianni Henderson was seated to the left of Plaintiff Moore, behind the driver's seat.

3. The Navigator began to 'run hot' and stalled. Fred Jones pulled the Navigator onto the right shoulder of the southbound exit lane leading to the Bannister Road exit ramp. Although Fred Jones pulled the Navigator onto the shoulder of Highway 71, the Navigator partially remained in the southbound exit lane.
4. The southbound exit lane leading to the Bannister Road exit ramp is a single lane on the right side of Highway 71, that is moderately to heavily used. There is a metal guardrail along the right side of the exit lane which runs parallel to the exit lane. There is a culvert to the right of the guardrail.
5. After Fred Jones pulled the Navigator onto the shoulder, he exited the Navigator, opened the vehicle's hood, and began looking underneath it to see if he could determine what was wrong with the vehicle.
6. Fred Jones and Plaintiff Jones called "Kevin" and "Tommy" on the telephone to come assist them. Kevin and Tommy arrived 6-7 minutes after the Navigator was pulled over and joined Fred Jones in looking under the Navigator's hood.
7. Conflicting evidence was presented as to how far the Navigator was onto the exit lane, as well as how close the Navigator's passenger side doors were to the metal guardrail on the right side of the highway.
 - a. Plaintiff Jones testified the Navigator was pulled all the way over to the guardrail and that she could only open the front passenger door one inch. She also testified that the guardrail blocked the bottom half of the passenger side door from opening but not the top half of the door from opening.

b. Plaintiff Henderson testified the Navigator was completely on the shoulder of the road and that none of the vehicle was in traffic. She also testified that she could open the rear passenger side door of the Navigator and that there was a one inch gap between the open Navigator door and the guardrail.

c. Plaintiff Moore testified the Navigator was on the shoulder of the exit lane and that there was approximately two inches of space between the Navigator and the guardrail. She further testified that the passenger side door of the Navigator could only open a little bit and that the passenger side door hit the guardrail when it was opened.

d. Defendant Ronald Bell testified that half of the Navigator was in the exit lane, partially blocking the exit lane.

8. The Court finds the Navigator was partially in the southbound exit lane impeding the flow of traffic.
9. Approximately 15 minutes after Fred Jones pulled the Navigator onto the right shoulder of Highway 71, Defendant Ronald Bell drove his Ford F-150 pick-up truck southbound on Highway 71 in the right hand lane. Defendant's F-150 pick-up truck was standard size with factory installed door mirrors approximately 8 inches wide and 4 ½ inches tall.
10. Defendant merged onto the southbound exit lane toward the Bannister Road exit ramp. Defendant was traveling approximately 35 miles per hour and following approximately three truck lengths behind another pick-up truck.
11. The pick-up truck in front of the Defendant began moving to the left of the exit lane and Defendant believed the pick-up truck was going to continue along Highway 71.
12. Defendant then observed the stalled Navigator in the right exit lane and swerved to the left in an effort to avoid striking the Navigator. When Defendant swerved to the left

Defendant's left front fender struck the right rear bumper of the pick-up truck in front of Defendant. Defendant's passenger side door mirror then struck the mirror on the driver's side door of the Navigator, causing property damage to the Navigator's mirror.

13. Defendant's passenger side door mirror did not break and Defendant's vehicle did not sustain any damage from striking the Navigator or the pick-up truck. The pick-up truck in front of Defendant did suffer a mark on the right rear bumper.

14. Plaintiffs presented conflicting evidence as to where they were located at the time of the accident.

a. Plaintiff Jones testified that she was seated in the passenger seat, looking behind her when she observed Defendant exiting the highway at a high rate of speed. She then instructed all of the passengers to exit the Navigator. She further testified she opened the passenger side door of the Navigator, exited the vehicle, jumped over the guardrail and fell down the culvert.

Plaintiff's Jones testimony of how she exited the vehicle directly contradicts her previous testimony that the Navigator was parked so close to the guardrail that she was only able to open the passenger side door one inch. One inch is not sufficient space for a person to exit a vehicle. Additionally, her testimony that the guardrail only blocked the bottom half of the Navigator's passenger side door from opening and not the top half of the door from opening is confusing and improbable. Plaintiff's testimony regarding the accident is improbable, contradictory, confusing and not credible. Plaintiff Jones testimony also conflicts with the testimony of the other Plaintiffs.

b. Plaintiff Henderson testified that she was six months pregnant at the time of the accident and was seated in the rear seat behind the driver's seat. Plaintiff Henderson also

testified that when Plaintiff Jones instructed them to exit the vehicle, Plaintiff Henderson crawled over the console on the rear seat and she and Plaintiff Moore partially exited the rear passenger door of the Navigator. After the impact of the accident Plaintiff Henderson testified that she fell to the ground and was lying on her side between the Navigator and the guardrail.

Plaintiff Henderson's testimony that the rear passenger door of the Navigator was opened wide enough to permit Plaintiff Moore and her to exit the Navigator simultaneously conflicts with Plaintiff Jones' testimony that the Navigator was only one inch from the guardrail and Plaintiff Moore's testimony that the Navigator was two inches from the guardrail. Her testimony that the Navigator was parked far enough from the guardrail for her to lay on the ground between the guardrail and the Navigator also contradicts the testimony of the other Plaintiffs. Plaintiff Moore's testimony contradicts the testimony of the other Plaintiffs and is not credible.

c. Plaintiff Moore testified that when Plaintiff Jones told them to get out of the Navigator she opened the rear passenger door and fell over the guardrail. She later amended her testimony to state that her body hit the rail and she leaned over the guardrail, but was never outside the guardrail. Plaintiff Moore's testimony contradicts itself and is not credible.

15. Defendant testified that all occupants of the Navigator were standing outside of the Navigator when Defendant's mirror hit the Navigator's mirror. Defendant further testified that he did not observe anyone in the culvert or that anyone appeared disheveled or dirty. He further testified that when he asked the occupants of the Navigator if they were hurt, they all replied that they were not.

16. Each Plaintiff brings a cause of action against Defendant for negligence resulting in physical injury, loss of enjoyment of life, inconvenience, disability, pain and suffering, and mental anguish. Each Plaintiff is seeking a judgment against Defendant not to exceed \$25,000.

17. Plaintiffs did not bring a cause of action for property damage.

Conclusions of Law

As a matter of law, the Court must find that jurisdiction and venue in this case are proper. RSMO §508.010. The parties reside in Jackson County Missouri, and the incident at issue happened in Jackson County Missouri, therefore jurisdiction and venue are proper.

Plaintiff alleges that the Defendant was negligent. A prima facie negligence case must meet all of the following four elements:

(1) a legal duty on the part of the Defendant to use ordinary care to protect the Plaintiff against unreasonable risk of harm; (2) a breach of that duty; (3) a proximate cause between the breach and the resulting injury; and (4) actual damages to the Plaintiffs person or property.

Hays v. Royer, 384 S.W.3d 330, 333 (Mo. Ct. App. 2012).

Motorists have a duty to exercise the highest degree of care when operating a motor vehicle. RSMO §304.012. Therefore, it is undisputed that the Defendant did have a legal duty to exercise the highest degree of care as he was operating his Ford F-150 truck. The Court must now determine if the Defendant breached his duty of care. Plaintiffs contend Defendant breached his duty of care by failing to keep a careful lookout, traveling too fast for the circumstances, failing to maintain proper control of his vehicle, and in colliding with the Jones vehicle.

There is no credible evidence in the record to support a finding that Defendant breached his duty of care by failing to keep a careful lookout, traveling too fast for the circumstances, and failing to maintain proper control of his vehicle. To the contrary, Defendant did observe the Navigator partially in the exit lane and took evasive maneuvers to avoid striking it. Plaintiff Jones testimony that Defendant was speeding is not credible and the Court finds that Defendant utilized evasive maneuvers and took steps to maintain control of his vehicle.

There is also evidence before the Court that the driver's side mirror of the Navigator suffered damage when it was struck by Defendant's passenger side mirror. It should be noted that the mirror was not knocked off of the Navigator, nor were there any scrapes or scratches on the Navigator consistent with a negligent collision. Further, Defendant's side mirror did not break when it struck the Navigator's mirror indicating that the impact was minor and is also consistent with Defendant's testimony that he was not traveling at a high rate of speed. The damage to the Navigator was consistent with Defendant taking evasive steps in an attempt to avoid a collision.

Plaintiffs failed to present credible evidence to support a finding that Defendant breached his duty to Plaintiffs. Moreover, even if the Court did find that Defendant breached his duty to Plaintiffs, Plaintiffs have failed to present any credible and convincing evidence to support a finding that Defendant was the proximate cause of Plaintiff's injuries.

“The practical test of proximate cause is generally considered to be whether the negligence of the defendant is that cause or act of which the injury was the natural and probable consequence. The test is not whether a reasonably prudent person would have foreseen the particular injury but whether, after the occurrences, the injury appears to be the reasonable and probable consequence of the act or omission by the defendant.”

United Missouri Bank, N.A. v. City of Grandview, 105 S.W.3d 890, 896 (Mo. Ct. App. 2003).

Plaintiff Jones' testimony that when she observed Defendant's vehicle she exited the Navigator, jumped the over the guardrail and fell down the culvert is not only improbable and not credible, but also unreasonable. Any injury that may have resulted would be an unreasonable and improbable consequence for the circumstances. Plaintiffs Moore and Henderson's testimony that they were injured when they exited or attempted to exit the vehicle is also not credible, and any injury that may have resulted would be an unreasonable and improbable consequence of the circumstances. The Court finds Plaintiffs have failed to establish that Defendant's actions were the proximate cause of Plaintiffs' injuries.

Plaintiffs have failed to meet their burden of proof regarding their claim of negligence. The Court finds in favor of the Defendant.

Judgment

WHEREFORE, IT IS ORDERED, AJUDGED AND DECREED that the Court finds in favor of Defendant Ronald Bell and against Plaintiffs.

IT IS SO ORDERED.

Date: June 17, 2014


JALILAH OTTO, Judge