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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-002161-MR

MARONIAKA CORNETT

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT III, JUDGE
ACTION NO. 08-CI-00230

BRICE BAKER; AMERICAN
FIRE AND CASUALTY COMPANY;
AND LESLIE, KNOTT, LETCHER
AND PERRY COMMUNITY
ACTION COUNCIL, INC.

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, DIXON AND STUMBO, JUDGES.

STUMBO, JUDGE: Maroniaka Cornett appeals from an order granting summary judgment to Brice Baker, American Fire and Casualty Company, and Leslie, Knott, Letcher and Perry Community Action Council, Inc. Cornett argues that summary

judgment was inappropriate as there were genuine issues of material fact. We find the trial court correctly granted summary judgment and affirm.

This action arose out of an automobile accident which occurred on January 13, 2008, in Letcher County, Kentucky. Cornett was driving her vehicle travelling west on Highway 931. Baker was driving his vehicle east on the same road. As the two vehicles approached each other, Cornett fell asleep at the wheel and crossed the center line of the road. As Baker saw Cornett's vehicle cross the center line, he hit his brakes and veered to the right side of the road in an attempt to avoid the collision, but Cornett's vehicle struck his.

Cornett filed suit alleging personal injuries as a result of the accident. She claimed that Baker could have done more to avoid the collision. Specifically, she states that there was a driveway Baker could have turned left into to avoid the collision and there was a flat space he could have turned right into to avoid the collision. Baker testified that at the point of impact, he had pulled his vehicle as far right as he could and came to a complete stop. He testified that the front of the truck was off the blacktop, as were the back wheels on the right or passenger side. He further stated that he had already passed the driveway and the flat space when the collision occurred. In Cornett's deposition, she stated she could not dispute this because she was asleep at the time of the accident.

All three defendants moved for summary judgment alleging that Cornett was the sole cause of the accident. The trial court granted the motion and this appeal followed.

The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03
“The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, Ky., 807 S.W.2d 476, 480 (1991). Summary “judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances.” *Steelvest*, 807 S.W.2d at 480, citing *Paintsville Hospital Co. v. Rose*, Ky., 683 S.W.2d 255 (1985). Consequently, summary judgment must be granted “[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor” *Huddleston v. Hughes*, Ky. App., 843 S.W.2d 901, 903 (1992).

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996).

We find that summary judgment was warranted in this case. There is no evidence that Baker did anything to cause the collision and Cornett freely admits that she fell asleep at the wheel. Cornett speculates that Baker could have done more to avoid the collision, but all of the evidence points to the fact that he did all he could. Mere speculation is not sufficient to survive a motion for summary judgment. *O’Bryan v. Cave*, 202 S.W.3d 585 (Ky. 2006).

Kentucky courts have held that “where one is placed in a position of peril by another he is not held to strict accounting for the means he uses to escape.” *Sellers v. Cayce Mill Supply Co.*, 349 S.W.2d 677, 679 (Ky. 1961). Baker did all he reasonably could to avoid this accident. He applied his brakes and moved as far right as he could. There is no evidence he could have taken any other action.

Based on the above, we affirm the order of the trial court.

ALL CONCUR.

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