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

Adrian Acevedo,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 12 L 7855
	)	
Chicago Transit Authority, a municipal corporation,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

A breach of duty and proximate cause are necessary elements to establish negligence in tort. Adrian Acevedo's injury in a Chicago Transit Authority bus does not, by itself, establish a common carrier's breach of duty, while the bus entering an intersection on a yellow light was not the proximate cause of those injuries. In the absence of evidence to establish those two elements, the CTA's summary judgment motion must be granted and the case dismissed with prejudice.

FACTS

On November 16, 2011, CTA employee Winston Junious drove a CTA bus eastbound on West Grand Avenue in Chicago. In-bus video shows Acevedo boarding the bus at North Oak Park Avenue. Acevedo pays his fare and walks to the rear of the bus, ascending the two steps behind the rear exit door. During this time, Junious closes the front entry door and accelerates from the bus stop. In the video, Acevedo is seen standing in the aisle and attempting to remove his backpack before sitting down. Acevedo is not holding onto any handrails.

The video also shows the traffic signal facing Junious turning yellow just before the bus enters the intersection. Shortly thereafter, an eastbound car in the lane immediately to the left of the bus cuts in front of it, making an unlawful right-hand, southbound turn onto North Oak Park Avenue. Junious immediately applies the bus's brakes. The braking of the bus causes Acevedo to fall forward, down the two steps, landing in the aisle near the rear exit door. Acevedo suffered injuries as a result of the fall. Neither Junious nor Acevedo could estimate the bus's speed at the time it braked.

Acevedo filed a one-count complaint against the CTA. The claims that the CTA (or vicariously through Junious) negligently operated, managed, maintained, and controlled the bus, drove it too fast, failed to keep a lookout for other vehicles, failed to operate the bus so that it would not need to brake, and failed to equip the bus with proper brakes. The CTA denied the allegations and asserted various affirmative defenses that Acevedo denied.

ANALYSIS

The CTA brings its motion pursuant to the Code of Civil Procedure. That statute authorizes 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. A defendant moving for summary judgment may disprove a plaintiff's case by introducing affirmative evidence that, if uncontroverted, would entitle the defendant to judgment as a matter of law – the so-called "traditional test" – *Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986) – or may establish that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action – the so-called "*Celotex* test" – *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. To create a genuine issue of material fact and defeat a summary judgment motion, a plaintiff must present enough evidence in response to support each essential element of a cause of action. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004).

A legally recognized cause of action in tort is one that alleges facts, not conclusions, which, if proven, would establish that: (1) the defendant owed the plaintiff a duty; (2) the defendant breached the duty; and (3) the breach proximately caused the plaintiff's injury. *Iseberg v. Gross*, 227 Ill. 2d 78, 86-87 (2007). The CTA does not argue duty, implicitly acknowledging that it owed Acevedo a duty of care. The CTA argues instead that, first, it did not breach its duty to Acevedo and, second, that Junious's braking did not proximately cause Acevedo's injury. Those arguments are addressed seriatim.

Whether a defendant breaches a duty is generally a question of fact for a jury, *Mazin v. Chicago White Sox, Ltd.*, 358 Ill. App. 3d 856, 862 (1st Dist. 2005), *citing Adams v. Northern Ill. Gas Co.*, 211 Ill 2d. 32, 43-44 (2004), but only if there is a genuine issue of material fact, *Espinoza v. Joliet, Elgin & E. Ry.*, 165 Ill. 2d 107, 114 (1995). Here, Acevedo does not contest that a car turned in front of the bus or that Junious immediately applied the brakes. In turn, the CTA does not contest that the bus entered the intersection on a

yellow light. These undisputed key facts are sufficient for this court to determine as a matter of law whether the CTA breached its duty to Acevedo.

The CTA relies on *Malone v. Chicago Trans. Auth.*, 76 Ill. App. 2d 451 (1st Dist. 1966), which presents a remarkably similar fact pattern involving two sisters who fell when a bus driver braked to avoid striking a car that had cut in front of the bus to make an unlawful turn. The court recognized that, "[t]he bus made no contact with the other vehicle, and there is no testimony as to the speed of the bus. This, standing alone, does not make a prima facie case against a [common] carrier." *Id.* at 454, *citing Chicago Union Traction Co. v. Browdy*, 206 Ill. 615, 617-19 (1904); *Chicago City Ry. Co. v. Rood*, 163 Ill. 477 (1896). The court looked to the evidence and found that:

> [t]here is no testimony from which it can be reasonably inferred that the driver failed to exercise due care. "The mere fact that an accident resulting in an injury to a person or in damage to property has occurred does not authorize a presumption or inference that the defendant was negligent."

Id. at 454-55, *quoting Rotche v. Buick Motor Co.*, 358 Ill. 507, 516 (1934). The court concluded that the trial court did not err by directing a verdict for the defendant at the close of all evidence. *Id.* at 455.

The result here can be no different. First, the bus and the car did not collide, and neither Junious nor Acevedo could estimate the bus's speed at the time it braked. Second, Junious's decision to enter the intersection on a yellow light does not, by itself, establish a lack of reasonable care. The Illinois Vehicle Code does not prohibit traffic from entering an intersection on a yellow light. 625 ILCS 5/11-306(b)(1) & 11-306(c)(1) ("vehicular traffic facing a steady circular red signal alone shall stop . . . and shall remain standing until an indication to proceed is shown").[1] As a factual matter, there is no evidence that Junious saw the phantom car before he accelerated the bus from the bus stop or that there was any need to brake the bus before the car cut in front to make its unlawful turn. Indeed, the only reasonable inference from the facts is that Junious would have acted without due care only if he had failed to brake the bus and allowed the bus and car to collide. Given that evidence and the holding in *Malone*, there can be no presumption or inference of the CTA's breach of a duty as a matter of law just because Acevedo sustained injuries.

Even if the CTA did breach its duty to Acevedo, the CTA was not negligent because Junious's braking of the bus did not proximately cause Acevedo's injury. Proximate cause contains two elements: (1) cause in fact;

[1] The CTA failed to provide the proper ellipsis, but to no substantive effect.

and (2) legal cause. *Krywin v. Chicago Trans. Auth.*, 238 Ill. 2d 215, 225-26 (2010). Cause in fact requires that the defendant's conduct be a material and substantial factor in bringing about the plaintiff's injury, or that, in the absence of the defendant's conduct, the injury would not have occurred. *Id.* at 226. If a plaintiff's injury results from a third person's independent conduct, the issue is whether that intervening cause is a type that a reasonable person would see as a likely result of the complained-of conduct. *See Young v. Bryco Arms*, 213 Ill. 2d 433, 449 (2004). In other words, if the plaintiff's injury resulted from a third person's independent conduct, not the defendant's negligence, then the defendant's negligence is only a condition and not a proximate cause of the injury. *Thompson v. County of Cook*, 154 Ill. 2d 374, 383 (1993); *In re Estate of Elfayer*, 325 Ill. App. 3d 1076, 1083-84 (1st Dist. 2001); *Ball v. Waldo Twnshp.*, 207 Ill. App. 3d 968, 973 (4th Dist. 1990). As to the second element, legal cause is present if the injury is of the type that a reasonable person would see as a likely result of his or her conduct. *First Springfield Bk. & Trust v. Galman*, 188 Ill. 2d 252, 257-58 (1999); *Simmons v. Garces*, 198 Ill. 2d 541, 558 (2002); *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004).

As to cause in fact, it is often useful to analyze the chain of events in reverse chronological order. The end result of the events at issue is that Acevedo fell into the aisle, an event that both parties agree occurred only after Junious applied the bus's brakes. As to the middle link, it is uncontested that Junious did not apply the brakes because the light turned yellow. Rather, Junious admits that he had planned to enter the intersection on the yellow light. The braking of the bus and entering the intersection on the yellow light were, therefore, merely conditions and not the cause of Acevedo's fall. The only remaining conclusion is that the first link, and thus the cause in fact, is the phantom car cutting in front of the bus to make an unlawful right turn. Based solely on that action, Junious braked the bus.

Without cause in fact, the existence of legal cause is unimportant since both elements are necessary to establish proximate cause. Here, however, the CTA gets the argument wrong. The CTA argues that it was not foreseeable that the phantom car would cut in front of the bus. The act of a third person is, however, not part of the legal cause assessment. Rather, the issue is whether it was reasonably foreseeable that Acevedo would be injured as the result of Junious's emergency braking. *First Springfield*, 188 Ill. 2d at 257-58 (determining whether the *injury* was the type that a reasonable person would see as a likely result of the first party's conduct). If such a dangerous move were not foreseeable, there would be no need to make it unlawful. 625 ILCS 5/11-801(c) ("a motor vehicle . . . shall pass to the left of the bus at a safe distance and shall not turn to the right in front of the bus at that intersection"). Yet it is equally foreseeable that a bus driver will use due

care to avoid a collision under that circumstance. As one court noted, "[h]e too must keep a proper lookout, observe due care in approaching and crossing intersections and drive as a prudent person would to avoid a collision when danger is discovered. . . ." *See Haight v. Aldridge Elec. Co.*, 215 Ill. App. 3d 353, 364 (2d Dist. 1991), *quoting Salo v. Singhurse*, 181 Ill. App. 3d 641, 643 (5th Dist. 1989). Even if it is assumed that Junious acted reasonably by braking the bus to avoid colliding with the phantom car, it is still foreseeable that his reasonable act would result in Acevedo's fall and injury.

In sum, the CTA did not breach its duty to Acevedo as a matter of law. Even if it did, Junious's emergency braking was not the cause in fact of Acevedo's injuries and, therefore, proximate cause is absent. For those reasons,

IT IS ORDERED THAT:

1. The CTA's summary judgment motion is granted;
2. This case is dismissed with prejudice; and
3. The 21 March 2014 case management conference at 11:00 a.m.is stricken.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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