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KEANE, LEVI & JENSON

472 Fourth Street

Gaston, Colombia

February 27, 2024

Matter of Panko v. Dahir

Memorandum of Points and Authorities for Summary Judgement

Summary Judgement Requirements

In general when asking the court for a summary judgement you need the following elements in the pleading:

1. **No genuine issue of material fact (See argument below)**
2. **The evidence must be viewed in light most favorable to nonmoving party. Also, summary judgement is not granted if the facts that are considered not material would not change the outcome of the litigation.**

The case at hand has multiple depositions that are summarized due to their relevance below.

Summary of Depositions

John Dahir was driving his semi- tractor on November 4, 2022. This is an undisputed issue of fact. John Dahir pulled over because he saw a van in a ditch on the side of the road. Mr. Dahir turned on his brake lights (which is corroborated by the testimony of Rebecca Higgins). After Mr. Dahir turned on his break lights, he had a conversation with Tram asking if he was okay to which Mr. Tram responded he was. (Mr. Tram also corroborates that he spoke to Dahir in his Affidavit) Mr. Dahir was then hit by Mr. Panko's car, because Mr. Panko did not break (Mr. Panko admits to this). By the time Mr. Dahir realized he was hit, he did not call 911 for help although he originally intended to.

ARGUMENTS

I. Argument that there is no issue of Material fact based on the depositions

In this case, the facts indicate that on November 4, 2022 Mr. Dahir pulled over Eastbound behind Mr. Tram's van because Mr. Tram's van was in a ditch. This can be inferred given the testimony of Mr. Dahir and Ms. Higgins who was a present witness to the scene who identifies Mr. Dahir's truck being pulled over eastbound behind the van. Mr. Dahir turned on his break lights to warn other drivers of his presence, given it was foggy, Ms. Higgins also confirms this in her deposition, she was able to see the lights of Mr. Dahir's semi and she then pulled over. Mr. Panko, Mr. Dahir, and Mr. Tram, and Ms. Higgins all confirm that when the accident happened Mr. Tram was speaking to Mr. Dahir in his passenger window. Mr. Panko, Ms. Higgins and Mr. Dahir all confirm in their depositions that when Mr. Panko hit Mr. Dahir it was because he did not break. Ms. Higgins adds that she tried to warn him about hitting Mr. Dahir with her own lights. As such, there is no genuine issue of material fact here.

II. LEGAL AUTHORITY

A. Statutes

Columbia's Good Samaritan Act GSA 34-40 Gratuitously rendered emergency care Section 1. states that:

(a) this section does not apply to any services rendered by a health care provider to a patient in a health care facility

(b) A person who comes upon the scene of an emergency or accident or is summoned to the scene of an emergency or accident and in good faith gratuitously renders emergency care, at the scene of the emergency or accident is immune from civil liability for any personal injury that results from: 1. any act or omission by the person rendering the emergency care or 2. any act or failure to act to provide or arrange for further medical treatment or care for the injured person except for the acts or omissions amounting to gross negligence.

B. Application of Columbia's Good samaritan Act

Normally in civil cases, witnesses do not have the duty to interfere or render aid. However, in this case, Mr. Dahir pulled over because he intended to render emergency care, to Mr. Tram. His actions show he did what he reasonably could to help Mr. Tram. Mr. Dahir pulled over, and put his brake lights on his semi. He asked Mr. Tram if he was okay and then when Mr. Tram asked him to call 911, Mr. Dahir was hit in the back by Mr. Panko. This all happened in seconds there was no way Mr. Dahir could have called 911 when Mr. Panko rear ended him in about 30 second time frame. The argument is Mr. Dahir action by trying to help Mr. Tram, demonstrate he acted under the Columbia Good Samaritan Act and as such Mr. Panko is prohibited from bringing this suit. Ms. Higgins story corroborates the story of Mr. Dahir, that he was just trying to help Mr. Tram and render emergency aid.

III. Case Law

Chung v. Delva

In Chung v. Delva, the Chungs were originally hit by Hopida, when they were stopped. As they were stopped a semi tractor driven by Delva stopped to the scene and the passenger asked if everything was okay. As the tractor began to leave it slid backwards and hit the Chungs.

The original court had ruled that there was no genuine issue of material fact because Mr. Delva was entitled to immunity under the Columbia Good Samaritan Act. However the Columbia Supreme court of reversed and established that a summary judgement is granted if after viewing evidence in light most favorable to the nonmoving party, there are no genuine issues of material fact. (Chung v. Delva Columbia Supreme Court (2001))

The court further added that emergency care is any actions which the aider reasonably believed they were required to prevent death or serious permanent injury or reasonably believed that they would benefit the injured or ill person depending on the aiders perception of the severity of the injury or illness, and the total emergency of the situation.

The Columbia Supreme court ruled that Delva had to establish in order to prevail on the Good samaritan argument that 1. They rendered actions they believed would prevent death or serious injury or 2. that the actions delva took were actions he reasonably believed would benefit an injured or ill person.

IV. Application of Chung v. Delva

Chung v. Delva can be distinguished from our case, because in this case, there is no one to corroborate Mr. Chung and Mr. Delva's stories. In our case, Ms. Higgins is a third party witness to the accident who has nothing to gain from her statement, nor does she have any motive to benefit either party. Chung v. Delva is applicable in the sence that it establishes that the actions of the samaritan have to actually demonstrate he intended to render aid. Although Mr. Panko might argue that Mr. Dahir talking to Mr. Tram is not enough to demonstrate intent to render aid to prevent death or injury. This was is enough to change the fact Mr. Dahir stated on record he intended to call 911, but he could not because he was immediately hit by Mr. Panko before he could call 911 and Ms. Higgins was there to corroborate the story.

V. Application of Miller v. Jones

In Miller v. Jones, the Columbia Court of Appeals established that in order to establish gross negligence the party has to establish ordinary negligence and that the party then acted with utter unconcern for others or with such reckless disregard for the rights of others that a conscious indifference to consequence is implied in law.

Miller v. Jones is not applicable to our case because the whole case is based on gross negligence, and that is not a matter that is being asserted by Mr. Panko. However, in our case, Mr. Panko was the one who hit Mr. Dahir while he was trying to render aid, Mr. Dahir admitted in

his deposition he had the vehicle behind the van because there was no where else he could park, and he did not want to risk hitting the van already in the ditch.

Attorney for Defendant John Dahir

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