

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Appellate Court Provides Guidance in Analyzing Pedestrian Versus Motor Vehicle Accidents

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May 22, 2017

In *Estate of Ava Cameron Taylor, by Amy Taylor, Personal Representative v Darin Lee Coole, et al*, an unpublished opinion per curiam of the Court of Appeals, issued April 13, 2017 (Docket No. 331198), Taylor filed a wrongful death lawsuit against Coole. The accident occurred during a dark, fall morning when Coole was traveling his usual route home from work. He always passed a bus stop that normally had one child waiting for the bus. As Coole drove past the bus stop, noting the usual child waiting for the bus, he struck Taylor, another child “faster than you can blink.” He was looking forward while driving and saw Taylor for the first time when she hit the hood of his car. Taylor was wearing dark clothing, crossing the road in a darkened area, and there was evidence that she was running. Unfortunately, Taylor died from her injuries.

Taylor sued Coole for wrongful death. Following the close of discovery, Coole moved for summary disposition on the basis that Taylor had not exercised reasonable care for her safety and was more than 50% at fault for the accident. The trial granted summary disposition under MCR 2.116(C)(10). Taylor appealed.

SECRET WARDLE NOTES

The Michigan No-Fault Act’s comparative fault provision, MCL 500.3135(2)(b), is a frequently utilized defense in pedestrian versus motor vehicle accidents. The statute provides that “damages shall not be assessed in favor of a party who is more than 50% at fault.” Judges frequently leave the determination of whether a party is comparatively at fault to the jury, as such cases often involve a question of fact. However, in *Taylor v Coole* the Court of Appeals affirmed the trial court’s ruling that a pedestrian was more than 50% at fault for an accident and was unable to pursue a wrongful death lawsuit as a result.

The *Taylor* case is significant as guidance in handling of pedestrian versus motor vehicle cases. The appellate court ruled that the facts of an accident shall be analyzed in their entirety and was unpersuaded that a discrepancy of minor facts precluded a ruling on comparative fault as a matter of law. Ultimately, the Court ruled that Taylor’s case was properly dismissed as she did not utilize a crosswalk, abruptly ran into the roadway, and wore dark clothing while crossing a dimly lit intersection.

To prove negligence, a plaintiff must show that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the plaintiff was injured, and (4) the defendant's breach caused the plaintiff's injury. *Henry v Dow Chemical Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005). Typically, whether a driver was negligent is a question of fact for the jury. *Cole v Barber*, 353 Mich 427, 431; 91 NW2d 848 (1958). However, MCL 500.3135(2)(b) provides that "damages shall not be assessed in favor of a party who is more than 50% at fault." If no reasonable juror could find that the defendant was more at fault for an accident than the decedent, summary disposition is appropriate. *Huggins v Scriptor*, 469 Mich 898, 898-899; 669 NW2d 813 (2003).

Michigan law provides that, "In the absence of evidence to the contrary, a pedestrian killed while walking on a public highway is presumed to have exercised at all times the requisite degree and amount of care for his own safety and preservation." *People v Campbell*, 237 Mich 424, 442; 212 NW 97, 104 (1927). However, a pedestrian who knows that a vehicle is oncoming has a duty to watch the vehicle's progress to avoid being hit." *Heger v Meissner*, 340 Mich 586, 589; 66 NW2d 220 (1954). Courts may consider whether a pedestrian was crossing outside a crosswalk when considering whether the pedestrian was comparatively negligent. *Mason v Wayne Co Bd of Comm'rs*, 447 Mich 130, 136 n 5; 523 NW2d 791 (1994) ("Pedestrians crossing outside of crosswalks face the additional hurdle of comparative negligence.")

In this case, the appellate court noted that both Coole's testimony and the accident reconstruction expert's report established the following facts:

- There was no street light or ambient light at the area that Taylor crossed the road;
- Coole had his headlights on as he was traveling on Lapeer Road;
- Taylor was wearing dark clothing, including a dark sweatshirt, dark pants, and black boots;
- Taylor ran into the roadway; and
- Taylor did not cross within a crosswalk.

Given these facts, the Court of Appeals affirmed the trial court's ruling that Taylor did not exercise reasonable care for her own safety. Comparing Coole's negligence with Taylor's, the Court agreed with the conclusion that there was no genuine issue of material fact regarding whether Taylor was more than 50% at fault for the accident.

Specifically, although Coole was potentially driving too fast, he testified that he took precautions while driving near the bus stop on his way home from work. He traveled the speed limit, knew which children were at the bus stop, and watched out for them. Immediately before the accident, Coole ascertained that the child who was usually at the bus stop was on the sidewalk. He did not have reason to anticipate that another child would be in the road because the child at the bus stop was alone most of the time.

In contrast, the Court of Appeals determined that Taylor would have known that there was an oncoming car because it was dark and Coole was driving with his lights on. Nevertheless, Taylor chose to cross the road anyway in a dark area and while wearing dark clothing. Further, she ran across the main roadway and did not use a crosswalk.

Ultimately, the Court of Appeals ruled that the trial court did not err by granting summary disposition because reasonable minds could not differ that Taylor was more than 50% at fault for the accident.

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