

ORIGINAL

IN THE COURT OF COMMON PLEAS, ENTERED & FILED  
OF LEBANON COUNTY, PENNSYLVANIA PROTHONOTARY OFFICE  
LEBANON, PA

CIVIL DIVISION

2025 JAN 28 P 3:02

ZIAIRE LEGER,

Plaintiff,

v.

Docket No.: 2022-0-0231

GREGORY L. MARTIN, ZIMMERMAN

MULCH PRODUCTS, LCC, ANDY

ZIMMERMAN a/k/a ANDREW

ZIMMERMAN and BETHEL

TOWNSHIP,

Defendants.

ORDER OF COURT

AND NOW, this 28<sup>th</sup> day of January 2025, after careful consideration of the record, Defendants', Gregory L. Martin, Zimmerman Mulch Products, LLC, and Andrew Zimmerman, Motion for Summary Judgment is **DENIED**. Partial Judgment is **GRANTED** as to Plaintiff's claim for Punitive Damages, and those claims are **DISMISSED** accordingly.

The parties shall provide this court with their position regarding the question to bifurcate or severe the issues of liability and damages.

BY THE COURT:

 , J.  
CHARLES T. JONES, JR.

cc: Wade D. Manley, Esquire // 301 Market Street, P.O. Box 109 Lemoyne, PA 17034 - Mailed  
Whitney S. Graham, Esquire // The Commons at Valley Forge, Suite 7, P.O. Box 987, - Mailed  
Valley Forge, PA 19482

Pursuant to Pa. R. Civil P. 236  
All parties are hereby notified  
this date: 01/30/2025 SB  
Prothonotary, Lebanon PA

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TOWNSHIP,

Defendants.

**APPEARANCES:**

Wade D. Manley, Esquire

For Defendants, Gregory L. Martin,  
Zimmerman Mulch Products, LLC,  
and Andrew Zimmerman

Whitney S. Graham, Esquire

For Plaintiff

**OPINION BY JONES, JR., J.:**

Before this Court is the Motion for Summary Judgment and in the alternative, Motion for Partial Summary Judgment to Dismiss Plaintiff's Claim for Punitive Damages filed by Defendants, Gregory L. Martin, Zimmerman Mulch Products, LLC, and Andrew Zimmerman (collectively "Business Defendants").

**FACTUAL AND PROCEDURAL HISTORY**

The relevant factual and procedural history is as follows. This case involves a motor vehicle collision which occurred on December 1, 2020, at the intersection of Shirksville Road and Pennsylvania Route 343 in Lebanon County, Pennsylvania. Ziaire Leger ("Plaintiff") was a passenger in a car driven by Cynthia Nguyen traveling westbound on Shirksville Road and was attempting to turn left onto State

Route 343. A stop sign controlled the traffic in the lane of travel in which the vehicle driven by Nguyen was traveling. Nguyen failed to stop at the stop sign pulling out into the subject intersection and was struck by a Zimmerman Mulch Products tractor trailer operated by Defendant Gregory L. Martin. The tractor trailer driven by Defendant Martin was traveling North on PA-Route 343. Defendant Martin's lane of travel was not controlled by a traffic control sign and he had the right-of-way traveling northbound. As a result of the accident, Plaintiff suffered severe injuries.

On October 30, 2023, Business Defendants filed an Answer to the Second Amended Complaint and New Matter. On November 13, 2023, Plaintiff filed a response to the New Matter from Business Defendants. After multiple deadline extensions, Bethel Township filed a Motion for Summary Judgment and Brief in Support on August 26, 2024. Also on August 26, 2024, Business Defendants filed a Motion for Summary Judgment and in the alternative, Motion for Partial Summary Judgment to Dismiss Plaintiff's Claim for Punitive Damages and a Brief in support.

On September 23, 2024, Plaintiff filed separate Responses to both Defendants' Motions. On October 17, 2024, Plaintiff filed Briefs in Support of their Responses to both Motions for Summary Judgment. On October 24, 2024, Bethel Township filed a Reply to Plaintiff's Response to their Motion for Summary Judgment. On November 1, 2024, Business Defendants filed a Reply Brief to Plaintiff's Response to their Motion for Summary Judgment. Oral Arguments for both Motions were heard on November 1, 2024. On November 11, 2024, Plaintiff filed a Sur Reply to Bethel Township's Motion for Summary Judgment. The matter is now ripe for disposition.

### **STANDARD OF REVIEW**

Summary judgment is appropriate only where there is no genuine issue of material fact and the record, viewed in the light most favorable to the non-moving party, is clear that the moving party is entitled to judgment as a matter of law. *Jones*

*v. Southeastern Pennsylvania Transit Auth.*, 772 A.2d 435, 438 (Pa. 2001). If a Plaintiff is unable to satisfy an element of his cause of action by adducing sufficient evidence to demonstrate that a jury could return a verdict favorable to Plaintiff, then the Defendant is entitled to entry of judgment as a matter of law. *Papas v. UNUM Life Ins. Co. of Am.*, 856 A.2d 183, 187 (Pa. Super. 2004); *Rauch v. Mike-Meyer*, 783 A.2d 815, 821 (Pa. Super. 2001). In reviewing a motion for summary judgment, a court must resolve any doubts as to the existence of a genuine issue of material fact against the moving party. *Jones v. Southeastern Pennsylvania Transit Auth.* at 438. The reviewing court's function is to determine whether there is an issue of fact to be tried, rather than to decide on the issues of fact. *McFadden v. American Oil Co.*, 257 A.2d 283, 286 (1969). A material fact is one that affects the outcome of the case based on the nature of the claim. *Windber Area Auth. v. Rullo*, 387 A.2d 967 (Pa. Cmwlth. 1978).

## **DISCUSSION**

Business Defendants argue that the evidentiary record lacks a genuine issue of material fact to support Plaintiff's claims that the Business Defendants were negligent, grossly negligent, or reckless. In the alternative, Business Defendants argue even if the Court finds that the Business Defendants' conduct was a proximate cause and a superseding cause did not break the chain of causation, Plaintiff has failed to show Business Defendants' conduct supports a claim for punitive damages.

### **I. There are genuine issues of material fact.**

Business Defendants argue that the record lacked evidence to support a finding that the Business Defendants were the proximate cause of Plaintiff's injuries. Business Defendants argue that the record showed the Trooper's testimony and the dashcam proved that Defendant, Gregory Martin, was driving safely on PA State Route 343 when the Ford operated by Nguyen failed to stop at a stop sign and drove directly into Defendant Martin's lane of travel. Additionally, Defendants argue that

the Trooper's testimony and Plaintiff's accident reconstructionist, Justin Schorr, support that there was nothing Defendant Martin could have done to avoid the collision. Business Defendants contended that the Ford pulling out directly in front of Defendant Martin's tractor trailer is so highly extraordinary that it is impossible for the Court to find that Defendants' actions could have brought about Plaintiff's harm. For that reason, Business Defendants argue that any conduct Plaintiff attached to Business Defendants is so remote that they cannot be held legally responsible for the harm Plaintiff suffered.

Business Defendants also argue that even if the Court determines Business Defendants were the proximate cause of Plaintiff's injuries, Nguyen's conduct was a superseding cause of the accident. Business Defendants further contended that Nguyen's conduct was independent of any situation created by the Business Defendants. For those reasons, Business Defendants concluded that Nguyen's conduct of disregarding a stop sign and entering the direct lane of travel of a tractor trailer was extraordinary and a superseding cause of the accident and therefore Business Defendants cannot be found liable.

On the other hand, Plaintiff argues that the record reflects clear evidence that the conduct of Business Defendants was a proximate cause of Plaintiff's injuries. Plaintiff contends that the result of the collision caused by Defendant Martin was foreseeable by Defendant Zimmerman and Defendant Zimmerman Mulch Products because they negligently hired him, failed to properly train and supervise him, and failed to obtain proper driver documentation in accordance with the Federal Motor Carrier Safety regulations. Plaintiff further argues that its expert report discusses the negligence and unlawful operation of the tractor trailer by Defendant Martin and, but for his conduct, the collision could have been avoided entirely or would have occurred with less impact.

Additionally, Plaintiff argues that there are questions regarding Defendant Martin's conduct such as whether he exceeded the speed limit, took his eyes off the road, or ignored/failed to observe an intersection ahead warning sign. Plaintiff argues that a vehicle pulling through an intersection and/or failing to stop at a stop sign is not a highly extraordinary event. Plaintiff also contends that there is an issue of fact regarding whether Defendant Martin was properly trained, as well as properly trained to anticipate hazards in the roadway. Furthermore, Plaintiff argues that Nguyen's conduct was not a superseding cause that broke the chain of proximate cause between Business Defendants' conduct and Plaintiff's injuries for the same reasons set forth above.

In order to establish a claim for negligence, a plaintiff must prove the following elements: "(1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) a causal relationship between the breach and the resulting injury suffered by the plaintiff; and (4) actual loss suffered by the plaintiff." *Reeves v. Middletown Athletic Ass'n*, 866 A.2d 1115, 1126 (Pa. Super. 2004) (citing *Burman v. Golay & Co., Inc.*, 420 Pa.Super. 209, 616 A.2d 657 (1992)). The Plaintiff also bears the burden to demonstrate that the Defendant caused the harm alleged in the Complaint. Under Pennsylvania law, a plaintiff must establish that the defendant's action was a substantial factor in bringing about the harm incurred. *Mahon v. W.C.A.B. (Expert Window Cleaning and State Workers' Insurance Fund)*, 835 A.2d 420, 428 (Pa. Cmwlth. 2003) (citing *Simith v. Philadelphia Transportation Co.*, 202 Pa.Super. 278, 195 A.2d 168, 170 (1963)). "Two or more causes may contribute to and thus be the legal or proximate cause of an injury. To determine if an intervening force is a superseding cause, 'the test is whether the intervening conduct was so extraordinary as not to have been reasonably foreseeable.'" *Feeney v. Disston Manor Personal Care Home, Inc.*, 849 A.2d 590, 595 (Pa. Super. 2004) (quoting *Powell v. Drumheller*, 539 Pa. 484, 653 A.2d 619,

623 (1995)). “In determining whether a factual cause is a legal cause, the jury must consider many elements, including intervening natural events, the passage of time, intervening actors, and the conduct of the injured party.” *Van Buskirk v. Carey Canadian Mines, Ltd.*, 760 F.2d 481, 494 (3d Cir. 1985). It is important to note that determining causation is an issue for the jury to decide, unless the evidence is such that reasonable people cannot disagree. *Kirschner v. K & L Gates LLP*, 46 A.3d 737, 754 (Pa. Super. 2012) (citing *Curran v. Stradley, Ronon, Stevens & Young*, 361 Pa.Super. 17, 521 A.2d 451, 455 (1987)).

In considering all the arguments from the parties, this Court finds that there are disputed issues of fact regarding causation. In particular, the parties dispute whether the Business Defendants’ conduct was a substantial factor in bringing about the specific harm incurred by Plaintiff. The parties dispute the foreseeability of the accident and whether the accident could have been avoided or at least the harm mitigated but for the Defendants’ alleged negligent conduct. The parties also dispute whether Defendant Martin was driving in excess of the speed limit or if his eyes were off the road, which are clear questions of fact for the jury. Additionally, there is a question of negligence pertaining to Defendants Zimmerman Mulch Products, LLC and Andrew Zimmerman regarding the hiring, training, and supervision of Defendant Martin. For the reasons set forth above, the Court finds there are questions of fact in this case that must be resolved by a jury. Therefore, summary judgment is not appropriate.

II. The record fails to show that Defendants’ conduct supports a claim for punitive damages.

Business Defendants contend that even if the Court finds that Defendants’ conduct contributed to the harm suffered by Plaintiff, the Court should grant partial judgment to dismiss Plaintiff’s claim for punitive damages. Business Defendants argue that Plaintiff’s expert, Mr. Schorr, offered an expert report in which he

concludes that “the hazard which led to the collision was created by the movements of the Ford directly into the path of the approaching tractor-trailer.” Furthermore, Business Defendants argue that Mr. Schorr’s report failed to state that Defendant Martin operated the tractor trailer in a reckless or outrageous manner or that he acted in reckless disregard for others.

Plaintiff’s second expert, Michael O’Dell, merely states that the Business Defendants’ conduct was a factual cause of the accident but fails to show the conduct met the necessary elements of proximal cause. Additionally, Business Defendants argue that Plaintiff’s expert report by Mr. O’Dell also fails to address the conduct of Ms. Nguyen. Business Defendants also note that Plaintiff only argues that Defendant Martin was at most distracted and driving carelessly. Conversely, Plaintiff argues that its claim for punitive damages is supported by the record and that Defendant Martin’s inattentiveness at the wheel showed a reckless indifference to the safety of others.

Punitive damages may not be awarded for ordinary negligence or gross negligence. *Slappo v. J's Dev. Assocs., Inc.*, 791 A.2d 409, 417 (Pa. Super. 2002) (citing *Hutchison v. Luddy*, 763 A.2d 826, 837 (Pa. Super.2000)). It is well settled that punitive damages will lie only in cases of outrageous behavior, where defendant's egregious conduct shows either an evil motive or reckless indifference to the rights of others. Punitive damages are appropriate when an individual's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct. *Bannar v. Miller*, 701 A.2d 232, 242 (Pa. Super.1997) (citations omitted), appeal denied, 555 Pa. 706, 723 A.2d 1024 (1998). “Reckless indifference to the interests of others”, or as it is sometimes referred to, “wanton misconduct”, means that “the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would



follow.” *Evans v. Philadelphia Transportation Company*, 418 Pa. 567, 574, 212 A.2d 440, 443 (1965). Mere negligence is not enough to further a claim of willful or wanton conduct. “Negligence consists of inattention or inadvertence, whereas wantonness exists where the danger to the plaintiff, though realized, is so recklessly disregarded that, even though there may be no actual intent, there is at least a willingness to inflict injury, a conscious indifference to the perpetration of the wrong.” *Kasanovich v. George*, 348 Pa. 199, 203, 34 A.2d 523, 525 (1943).

From the review of the record, this Court concludes that there is no evidence to substantiate that the Business Defendants acted in a manner sufficient to warrant a claim for punitive damages. Furthermore, even if the Plaintiff could demonstrate that Defendant Martin glanced downward or was distracted while driving, the Court determines that such conduct would not meet the threshold of outrageous and reckless behavior required for punitive damages. The Court also considers that the evidence consistently supports the uncontested fact that the vehicle Plaintiff was in emerged directly in front of Defendant Martin's tractor-trailer. While certain aspects regarding Defendant Martin's conduct are reserved for a jury to determine, as previously stated, the Court finds that the Plaintiff has not sufficiently pled the facts necessary to support their claim for punitive damages. Therefore, this Court dismisses the Plaintiff's claims for punitive damages.

## **CONCLUSION**

After careful consideration of the record and for all the aforementioned reasons, Defendants', Gregory L. Martin, Zimmerman Mulch Products, LLC, and Andrew Zimmerman, Motion for Summary Judgment is denied. Partial Judgment is granted and the claims for punitive damages are dismissed. A concomitant order will be entered consistent with the foregoing.