

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

WILLIAM JAMES	:	
Plaintiff-Appellant	:	C.A. CASE NO. 23888
v.	:	T.C. NO. 08CV10974
GREATER DAYTON RTA	:	(Civil appeal from
Defendant-Appellee	:	Common Pleas Court)

OPINION

Rendered on the 23rd day of December, 2010.

WILLIAM JAMES, 803 Danner Avenue, Dayton, Ohio 45408
Plaintiff-Appellant

PATRICK J. DEININGER, Atty. Reg. No. 0077699, 625 Eden Park Drive, Suite 510,
Cincinnati, Ohio 45202
Attorney for Defendant-Appellee

DONOVAN, P.J.

{¶ 1} William A. James, pro se, appeals from a judgment of the Montgomery County Court of Common Pleas, which granted the motion of Greater Dayton RTA for summary judgment. For the following reasons, the trial court’s judgment will be affirmed.

{¶ 2} According to James's deposition testimony, on December 29, 2006, James was riding a Greater Dayton RTA bus from a business on Salem Avenue toward the main bus hub in downtown Dayton in order to catch another bus to get home. While en route, the bus driver approached an intersection in the right turn lane. As the bus was making the right turn, a gray-colored vehicle "pulled out in front of [the bus] over the solid white line." The bus driver "had to make a sudden stop in order to not hit [the rear of] the vehicle." When the bus driver "slammed" the brakes, James was thrown sideways, and he hit a metal partition inside the bus. No collision occurred between the vehicles. The bus driver did not get the license plate number of or from the other vehicle.

{¶ 3} After the bus arrived at the intersection of Main and Third Streets in downtown Dayton, James informed the bus driver that he had hit the left side of his head and his right side was hurt. The bus driver asked if he needed an ambulance. James declined and told the driver that he would take himself to the hospital, if necessary. James transferred to another bus and took it to Miami Valley Hospital.

{¶ 4} On December 10, 2008, James filed a personal injury complaint against Greater Dayton RTA, claiming that he had sustained injuries to his back and hip as a result of "GDRTA's agent's improper operation of a passenger bus." He sought compensatory damages for his unreimbursed medical expenses and his pain and suffering, "exemplary damages," and court costs.

{¶ 5} Greater Dayton RTA filed an answer to James's complaint denying liability. Greater Dayton RTA also raised several affirmative defenses, including that James assumed the risk of his injuries, that his damages were caused by his own actions, and that his

damages were caused by intervening and superseding causes.

{¶ 6} On December 30, 2009, Greater Dayton RTA moved for summary judgment, arguing that the bus driver “was forced to slam on her brakes in order to avoid an accident” and that her actions fell within the doctrine of sudden emergency. Greater Dayton RTA further argued that the bus driver had no duty, under the circumstances, to obtain the license plate number of the unknown driver and, therefore, the bus driver was not negligent in failing to obtain that information. Greater Dayton RTA supported its motion with an excerpt of James’s deposition testimony. James did not oppose Greater Dayton RTA’s summary judgment motion.¹

{¶ 7} On January 29, 2010, the trial court granted Greater Dayton RTA’s motion for summary judgment. The court found that James’s deposition established that there were no genuine issues of fact, that Greater Dayton RTA’s employee did not breach a duty in the operation of the bus, and that the affirmative defense of sudden emergency applied.

{¶ 8} James appeals from the trial court’s judgment.

II

{¶ 9} In his handwritten submission, which we construe to be his appellate brief, James does not provide a statement of his assignments of error or of the issues presented for review, as required by App.R. 16(A)(3) and (4). Instead, he states that he is willing to settle

¹The trial court’s decision refers to a responsive filing by James, stating: “In his responsive filing, Plaintiff does not respond directly to Defendant’s Motion. It appears that Mr. James, while he may have been injured as a result of some circumstances that occurred on the bus on December 29, 2006, cannot or does not equate any injury with any duty Defendant had to him, and does not address the defense of sudden emergency.” We can find no opposition memorandum in the record or on the trial court’s docket.

his personal injury claim for \$50,000 plus an additional \$10,000 annually for ten years so that he can pay his unpaid medical expenses and ambulance services resulting from the accident. For purposes of his appeal, we will interpret his appellate brief as asserting that the trial court erred in granting summary judgment to Greater Dayton RTA.

{¶ 10} We note that, on May 10, 2010, Greater Dayton RTA moved to dismiss this appeal due to James's failure to comply with several appellate rules, particularly App.R. 16. James responded that he wished to continue with his appeal. On June 30, 2010, we denied Greater Dayton RTA's motion and ordered it to "make its best effort to respond to appellant's apparent brief." Greater Dayton RTA's appellate brief argues that the trial court properly granted its motion for summary judgment and reasserts that James's appeal should be dismissed for failure to comply with the appellate rules. Having previously decided to allow the appeal to proceed, we turn to whether the trial court properly granted Greater Dayton RTA's summary judgment motion.

{¶ 11} "Civ. R. 56(C) provides that summary judgment may be granted when the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made." *Cohen v. G/C Contracting Corp.*, Greene App. No. 2006 CA 102, 2007-Ohio-4888, ¶20 (internal citations omitted). An appellate court reviews summary judgments de novo, meaning that we review such judgments independently and without deference to the trial court's

determinations. *Murphy v. McDonald's Restaurants of Ohio*, Clark App. No. 2010 CA 4, 2010-Ohio-4761, ¶12, citing *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588.

{¶ 12} The party moving for summary judgment (in this case, Greater Dayton RTA) bears the initial burden of showing that no genuine issue of material fact exists for trial. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-93, 1996-Ohio-107. Once the moving party satisfies its burden, the nonmoving party (i.e., James) may not rest upon the mere allegations of his pleadings. *Id.*; Civ.R. 56(E). Rather, the burden then shifts to the non-moving party to respond, with affidavits or as otherwise permitted by Civ.R. 56, setting forth specific facts which show that there is a genuine issue of material fact for trial. *Id.* Throughout, the evidence must be construed in favor of the non-moving party. *Id.*

{¶ 13} James alleged in his complaint that he was injured as a proximate result of Greater Dayton RTA's bus driver's improper operation of a passenger bus.

To establish negligence, a plaintiff "must show the existence of a duty, the breach of the duty, and injury resulting proximately therefrom." *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. In general, a driver's duty of care is set forth in the traffic safety statutes found in R.C. Chapter 4511. See, also, *Smiddy v. Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 38 (noting that genuine issues of material fact existed as to whether commercial van driver was negligent apart from the safety statutes).

{¶ 14} Under the sudden emergency doctrine, a driver may be relieved of liability for injuries caused by a failure to comply with safety statutes if the

emergency is one over which the driver had no control and was not of his making. *Spalding v. Waxler* (1965), 2 Ohio St.2d 1, 5; *Zehe v. Falkner* (1971), 26 Ohio St.2d 258, 263; *In re Yohe*, Putnam App. No. 12-09-02, 2009-Ohio-5659, ¶7. In order to invoke the sudden emergency doctrine, Greater Dayton RTA was required to show: “(1) compliance with a specific safety statute was rendered impossible, (2) by a sudden emergency, (3) that arose without the fault of the party asserting the excuse, (4) because of circumstances over which the party asserting the excuse had no control, and (5) the party asserting the excuse exercised such care as a reasonably prudent person would have under the circumstances.” *Steffy v. Blevins*, Franklin App. No. 02AP-1278, 2003-Ohio-6443, ¶27, citing *Bush v. Harvey Transfer Co.* (1946), 146 Ohio St. 657, 664-665. The burden of proving that a sudden emergency existed is on the defendant. *Id.*; *Spalding*, 2 Ohio St.2d at 7.

{¶ 15} In this case, James’s own deposition testimony, upon which Greater Dayton RTA based its summary judgment motion, established that the Greater Dayton RTA’s bus driver did not act negligently when she stopped the bus suddenly and, even if such conduct did constitute a breach of her duty of care, her actions were excused under the sudden emergency doctrine. James testified that another driver in a gray car “pulled out in front of her [the bus driver] over the solid white line, which is illegal, she had to make a sudden stop in order to not hit the vehicle.” James explained that the bus “didn’t hit the back of the car. If she [the bus driver] had hit it, it wouldn’t have been her fault because the guy went over ***.” Upon further questioning, James testified as follows:

{¶ 16} “Q. So really the bus driver had to stop?

{¶ 17} “A. She had no other option but to stop, but she didn’t realize that when she stopped, I got hurt in the process.

{¶ 18} “Q. Okay.

{¶ 19} “A. I’m just saying from my point of view.

{¶ 20} “Q. I’ll get to that in just a second. I just want to cover all the aspects of the accident and then I’d like [to] talk about your injuries after that. So she really had no option, she had to stop the bus?

{¶ 21} “A. No more than you and I. If we were driving and someone crossed over a solid white line in front of you, the first instinct would be to hit the brakes so you don’t run into the back of them even though they did something illegal.

{¶ 22} “Q. Sure.

{¶ 23} “A. That’s what she did, she slammed on the brakes. But when she did, it was so powerful that it threw me sideways. ****”

{¶ 24} James further discussed his claim, stating: “I’m not basing my case on RTA on something they did wrong. *** [W]hat really upset me was the fact that she didn’t get a license plate number of the vehicle that pulled in front of her that she barely missed.”

{¶ 25} In light of James’s uncontroverted testimony, the record reflects that no genuine issue of material fact exists, that the bus driver did not breach a duty of care when she slammed her brakes to avoid an accident, and that the bus driver’s actions were in response to a “sudden emergency” created by the driver of the gray vehicle, which improperly pulled in front of the bus. Accordingly, the trial court did

not err in granting summary judgment to Greater Dayton RTA on James's claim based on the bus driver's operation of the passenger bus.

{¶ 26} Although James complained of the bus driver's failure to obtain the license plate number of the gray vehicle, James did not include a claim based on that conduct in his complaint. We note, parenthetically, however, that even if such a claim had been raised, James's deposition testimony established that Greater Dayton RTA would have been entitled to summary judgment on that claim, as well. Assuming, for the sake of argument, that the bus driver had a duty to obtain the car's license plate number in the case of an accident or injuries to passengers, James testified that no collision occurred between the RTA bus and the car. And, although the bus driver may have had an opportunity to view the car's license plate after she stopped the bus, James repeatedly testified that the bus driver apparently was not aware that he had been injured by her sudden braking and he did not inform her of his injuries until he was exiting the bus at Main and Third Streets in downtown Dayton. Accordingly, based on the record, there is no evidence that Greater Dayton RTA's bus driver breached any duty to James when she failed to obtain the license plate number.

{¶ 27} James's assignment of error is overruled.

III

{¶ 28} The trial court's judgment will be affirmed.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

William James
Patrick J. Deininger
Hon. Mary Katherine Huffman