[Cite as *Liu v. Ohio State Univ.*, 2014-Ohio-5904.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

YANG LIU, et al.

Plaintiffs

V.

THE OHIO STATE UNIVERSITY

Defendant

Case No. 2014-00611-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiffs, Yang Liu and Xingyan Kuang, filed a complaint against defendant, The Ohio State University, in which they claimed, due to defendant's negligence, their vehicle sustained damage. Plaintiffs asserted, on July 23, 2013, while driving through the parking lot of their apartment complex; a maintenance vehicle driven by defendant's employee, Trevor W. Napier, backed into their vehicle. Plaintiffs contended Mr. Napier was traveling "at a high, dangerous and excessive speed" and he "fail[ed] to observe with due care and keep proper lookout for incoming [sic] car."

{¶2} Plaintiffs seek $1,641.17 in damages to repair their vehicle and $75.00 in compensation for "small claim fee, parking and printing."[1] Plaintiffs described mental anguish caused by the accident due to the fact Ms. Xingyan Kuang was

[1] This court finds no basis for reimbursement of the filing fee plaintiffs paid in another court. Printing and parking is also not reimbursable in a claim of this type. See *Lamb v. Chillicothe Corr. Inst.* Ct. of Cl. No. 2004-01788-AD, 2004-Ohio-1841, citing *Hamman v. Witherstine*, 20 Ohio Misc. 77, 252 N.E.2d 196 (1969). Plaintiff also provided no evidence substantiating these expenditures.

approximately three months pregnant at the time of the incident. They included medical bills related to visits after the accident. However, they do not seek reimbursement for the medical bills or the mental anguish.

{¶3} Defendant filed an investigation report in which it denied liability based on the contention plaintiff, Yang Liu, was driving "left of center" at the time of the incident. Defendant asserted, Mr. Liu informed the investigating police officer, Officer Griggs, he was looking for a parking space. However, the accident occurred while Mr. Liu's vehicle was traveling "on the wrong side of the drive aisle." Defendant explained, "[a] driver backing a vehicle out of a parking space on the north side of Trumbull Court would expect another vehicle traveling legally on the north side of the drive aisle of Trumbull Court to be approaching from the east, not the west."

{¶4} Plaintiffs filed a response to defendant's investigation report in which they refuted defendant's version of the facts. In particular, plaintiffs asserted Officer Griggs did not ask any questions about the collision, except to see Mr. Liu's driver's license and proof of insurance. Plaintiffs contended they were driving on the correct side to reach their parking spot, which is assigned. Therefore, they had no reason to look for a parking space. Plaintiffs indicated they witnessed Mr. Napier on his cell phone at the time of the incident. Plaintiffs contended Mr. Napier informed them the accident was his fault and the defendant university would repair the vehicle. Plaintiffs asserted defendant offered to pay for 50% of damages, however, they did not find this a reasonable reimbursement.

CONCLUSIONS OF LAW

{¶5} Defendant did not deny Mr. Napier is an employee acting in the scope of his employment, nor did they deny he did in fact back into plaintiffs' vehicle, as he stated, "I was backing out and did not see car." Therefore, the only defense proffered is that of contributory negligence on the part of plaintiffs. Contributory

negligence is an affirmative defense for which defendant bears the burden of proof, by a preponderance of the evidence. *Valencic v. The Akron & Barberton Belt Rd. Co.*, 133 Ohio St. 287, 289, 13 N.E.2d 240 (1938). Here, contributory negligence means "any want of ordinary care on the part of the person injured, which combined and concurred with the defendant's negligence and contributed to the injury as a proximate cause thereof, and as an element without which the injury would not have occurred." *Brinkmoeller v. Wilson*, 41 Ohio St. 2d 223, 226, 325 N.E.2d 233 (1975). Contributory negligence generally involves "some fault or departure from the standard of conduct of the reasonable man ***." *Self v. American Legion Post No.* 389, 29 Ohio App. 2d 189, 193, 279 N.E.2d 889 (4th Dist. 1972).

{¶6} Defendant, in the instant claim, has been unable to show plaintiff drove in a negligent manner to such a great extent as to completely mitigate its own negligence. While the accident report indicates plaintiff drove "left of center," there are no measurements from which this court can determine the unreasonableness of driving in that manner, nor was plaintiff issued a citation. Photographs provided by plaintiff show there are no lines in the center of this parking lot nor signage designating specific lanes of traffic. Cars are parked parallel to each other on opposite sides of the parking lot. It is not unreasonable, based on the photographs, for this court to infer that a driver must, at times, drive on the "wrong" side of the parking lot in order to enter a particular parking space. As shown by the photographs, there are also several locations in this parking lot where the traveling space between "lanes" is substantially limited by cul-de-sacs. This accident occurred in one of these areas of reduced driving surface. Even so, plaintiff has not provided a sufficient evidence from which the court can infer their vehicle was reasonably on the "wrong" side of the aisle, i.e. the location of their assigned parking spot. This court finds exhibits 5-1 and 5-2 show plaintiffs

vehicle to be near the center of the parking lot, but to the left of center (closer to the parking spaces where the maintenance vehicle was parked).

{¶7} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St. 2d 230, 227 N.E. 2d 212 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill*, 176 Ohio St. 61, 197 N.E. 2d 548 (1964). This court is persuaded by plaintiffs' testimony that Mr. Napier was on his cell phone at the time of the incident, and was so inattentive to his driving that he did not see their vehicle, nor did he hear Ms. Kuang shout out. This court is also persuaded by plaintiffs' testimony that Mr. Napier admitted fault immediately after the accident and ensured them Defendant would repair their vehicle.

{¶8} This court finds defendant's agent, Mr. Napier, had a duty to be aware of his surroundings and the presence of other vehicles before backing out. This court also finds the accident would likely not have occurred had plaintiff been driving on the other side of the parking lot. As plaintiff has failed to provide a reasonable explanation for traveling in this area, this court find plaintiffs' conduct contributed to 10% of the accident.

{¶9} R.C. 2315.33 provides:

> "The contributory fault of a person does not bar the person as plaintiff from recovering damages that have directly and proximately resulted from the tortious conduct of one or more other persons, if the contributory fault of the plaintiff was not greater than the combined tortious conduct of all other persons from whom the plaintiff seeks recovery in this action * * *. The court shall diminish any compensatory damages recoverable by the plaintiff by an amount that is proportionately equal to the percentage of tortious conduct of the plaintiff * * *."

{¶10} According to R.C. 2315.19(B), when contributory negligence is asserted as an affirmative defense in a negligence claim, the court shall make findings of fact to determine the proportion of negligence attributable by each party. Accordingly, judgment is hereby rendered in favor of plaintiff in the amount of $1,548.00 plus $25.00 for the filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc. 2d 19, 587 N.E. 2d 990 (Ct. of Cl. No. 1990).

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

YANG LIU, et al.

Plaintiff

v.

THE OHIO STATE UNIVERSITY

Defendant

Case No. 2014-00611-AD

Clerk Mark H. Reed

ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of

plaintiff in the amount of $1,573.00. Court costs are assessed against defendant.

MARK H. REED
Clerk

Entry cc:

Yang Liu
612 Stark Street
Columbus, Ohio 43210

Xingyan Kuang
612 Stark Street
Columbus, Ohio 43210

Melissa E. Mayhan
Counsel for Public Safety
1590 N. High Street, Suite 500
Columbus, Ohio 43201

DJM/tad
Filed 10/24/14
Sent to S.C. Reporter 9/14/15