[Cite as *Whittington vs. Abel*, 2004-Ohio-2090.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
RICHARD WHITTINGTON	:	Hon: W. Scott Gwin, P.J.
	:	Hon: William B. Hoffman, J.
Plaintiff-Appellant	:	Hon: John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 03-CA-69
JUDY K. ABEL	:	
	:	
Defendant-Appellee	:	OPINION

CHARACTER OF PROCEEDING:	Civil appeal from the Licking County Court of Common Pleas, Case No. 03-CV-141
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	April 20, 2004
APPEARANCES:	
For Plaintiff-Appellant	For Defendant-Appellee
RICHARD WHITTINGTON PRO SE Box 285 Pembroke, ME 04666	WILLIAM J. CHRISTENSEN 765 S. High Street Columbus, OH 43206

Gwin, P.J.

{¶1} Plaintiff Richard Whittington appeals a summary judgment of the Court of Common Pleas of Licking County, Ohio, entered in favor of defendant Judy K. Abel and dismissing the complaint against her. Appellant assigns five errors to the trial court:

{¶2} "THE COURT FINDS THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND, CONSTRUING THE EVIDENCE IN FAVOR OF THE NON-MOVING PARTY, FINDS THAT DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

{¶3} "THE COURT THEREFORE FINDS DEFENDANT'S MOTION FOR SUMMARY JUDGMENT TO BE WELL TAKEN AND HEREBY GRANTED.

{¶4} "PLAINTIFF'S COMPLAINT IS DISMISSED.

{¶5} "THE COURT HAS CONSIDERED THE EXHIBITS SET FORTH IN DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.

{¶6} "PLAINTIFF HAS FILED A VARIETY OF ITEMS, THE ONLY AFFIDVIT AN ATTESTATION PROPERLY ATTACHED TO ANSWERS TO INTERROGATORIES AND NOT TO AN AFFIDAVIT IN RESPONSE TO A MOTION FOR SUMMARY JUDGMENT."

{¶7} The record indicates on September 3, 2002, the appellant was riding a bicycle on the right hand side of Hudson Avenue, traveling southbound, in Newark, Licking County, Ohio. Hudson Avenue is a one-way street which permits vehicles to travel only in a northerly direction. Appellee had approached Hudson Avenue from State Route 16, and stopped for a traffic light at the intersection. When the light turned green for appellee, she looked for northbound traffic approaching, and did not observe appellant approaching from the wrong direction. Appellant started into the intersection on a green light and struck appellant.

{¶8} The parties filed cross motions for summary judgment and the trial court found the only properly attested affidavit was appellant's answers to interrogatories, and there was no affidavit filed in response to the motion for summary judgment.

{¶9} Appellant's pro se brief lists five errors which he urges the trial court made, all going to the court's judgment entry, and his brief urges appellee acted negligently.

{¶10} All of appellant's assignments of error are interrelated, and challenged the trial court's finding there was no genuine issue as to material fact and its conclusion appellee is entitled to judgment as a matter of law.

{¶11} Civ. R. 56 provides in pertinent part:

{¶12} (C) Motion and proceedings

{¶13} "The motion shall be served at least fourteen days before the time fixed for hearing. The adverse party, prior to the day of hearing, may serve and file opposing affidavits. Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that 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, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. A summary judgment,

interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

{¶14} The rule requires a trial court to enter a summary judgment only if there are no material facts in genuine dispute, and if reasonable minds could not draw different conclusions from the undisputed facts, *Hounshell v. Am. States Ins. Co.* (1981), 67 Ohio St. 2d 427. This court reviews summary judgments de novo, using the same standard which the trial court applied, *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St. 3d 35. A party opposing the motion may submit evidentiary quality materials and may rely on evidentiary materials submitted by the movant if the material supports the non-moving party's argument there is a genuine issue of fact, *AAAA Enterprises, Inc. v. River Place* (1990), 50 Ohio St. 3d 157. Thus, even in the absence of evidence from the non-moving party, the trial court must construe all evidence in favor of the non-moving party, and may not enter summary judgment unless warranted by law.

{¶15} Civ. R. 56 sets forth the various categories of evidence which the trial court may review in deciding the motion for summary judgment.

{¶16} The trial court found although appellant had submitted a variety of documents, many did not rise to the level of evidence. Certain medical records which appellant submitted are certified by the medical records departments which provided them.

{¶17} Our review of the record leads us to conclude the trial court was correct in finding there were no genuine issues of material fact presented herein.

{¶18} Next, this court must determine whether the trial court properly applied Ohio law to undisputed facts. We find appellant concedes appellee had the right of way

in proceeding into the intersection on a green light. It is also conceded by appellant that he was traveling the wrong way on the one-way street. R.C. 4511.55 requires bicycles to obey all traffic rules applicable to vehicles. We find the trial court was correct in concluding appellee was entitled to judgment as a matter of law.

{¶19} Each of appellant's assignments of error is overruled in whole.

{¶20} For the foregoing reasons, the judgment of the Court of Common Pleas of Licking County, Ohio, is affirmed.

Judgment affirmed.

Hoffman and Wise, JJ., concur.

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IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

RICHARD WHITTINGTON Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
JUDY K. ABEL Defendant-Appellee	:	CASE NO. 03-CA-69

{¶21} For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio, is affirmed. Costs to appellant.

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JUDGES