[Cite as *Markel Ins. Co. of Canada v. Ali*, 2009-Ohio-6116.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MARKEL INSURANCE COMPANY OF CANADA

Plaintiff-Appellant

-vs-

ABDIDAHIR ALI

Defendant-Appellee

JUDGES:
Hon. Sheila G. Farmer, P. J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 09 CAE 06 0058

O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Case No. 08 CVH 07 1031
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	November 13, 2009

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellee

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Wise, J.

{¶1} This is an appeal by Plaintiff-Appellant Markel Insurance Company of Canada from the May 22, 2009, Judgment Entry of the Delaware County Common Pleas Court granting summary judgment in favor of Defendant-Appellee Abdidahir Ali.

STATEMENT OF THE FACTS AND CASE

{¶2} The relevant facts are as follows:

{¶3} On November 29, 2004, Defendant-Appellee, Abdidahir Ali, was involved in a car accident with a vehicle owned by Distribution Distrimax, Inc., and operated by Serge LeClerc. Appellee Ali was exiting a private parking lot for the "Flying J" truck stop and entering U.S. Route 36 in Berkshire Township in Delaware County, Ohio when the 1999 Freightliner he was operating struck the 2003 Freightliner Columbia owned by Distribution Distrimax, Inc.

{¶4} At the time of the accident, Plaintiff-Appellant, Markel Insurance Company of Canada, was the insurer, assignee, and subrogee of Distribution Distrimax, Inc.

{¶5} Markel was required to pay on behalf of Distribution Distrimax, Inc. the sums of $8,975.13 for damages sustained to the vehicle and $3,400.00 for towing expenses: Markel thereby became subrogated to the amount of $12,375.13.

{¶6} Markel alleges that Defendant Ali negligently operated the 1999 Freightliner and caused damage to Distribution Distrimax, Inc.'s 2003 Freightliner Columbia.

{¶7} On July 25, 2008, Markel filed a complaint in this Court asserting a subrogation claim against Defendant Ali.

{¶8} On March 9, 2009, Appellant Ali filed a motion for summary judgment, submitting an affidavit in support of same.

{¶9} By Judgment Entry filed May 22, 2009, the trial court granted Defendant-Appellee Ali's Motion for Summary Judgment.

{¶10} Appellant Markel Insurance Company of Canada now appeals, assigning the following error for review:

ASSIGNMENT OF ERROR

{¶11} "I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT-APPELLEE WHEN THE RECORD PRESENTS GENUINE ISSUES OF MATERIAL FACT THAT DEMAND RESOLUTION BY THE TRIER OF FACT."

{¶12} Initially, we note that Appellant has failed to comply with App.R. 16 and Loc.R. 9 which require a Statement of the Facts with appropriate references to the record.

{¶13} Notwithstanding the omissions in Appellant's brief, in the interests of justice and finality, we elect to review the issues raised in Appellant's appeal

I.

{¶14} In its sole assignment of error Appellant argues that the trial court erred in granting Appellee's motion for summary judgment. We disagree.

"Summary Judgment Standard"

{¶15} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court.

Smiddy v. The Wedding Party, Inc. (1987), 30 Ohio St.3d 35, 36. Civ.R. 56(C) provides, in pertinent part:

{¶16} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, 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. * * * A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, 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, such party being entitled to have the evidence or stipulation construed most strongly in his favor."

{¶17} Pursuant to the above rule, a trial court may not enter a summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 1997-Ohio-259, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107.

{¶18} It is based upon this standard that we review Appellant's assignments of error.

{¶19} Upon review, we find that Appellee Ali filed an affidavit wherein he set forth how the accident happened. In said affidavit, Appellee stated that on the day in question, he was exiting the parking lot at the Flying J truck stop, that he was in the right turn lane, and that he came to a stop at the red traffic light. He stated that he waited at the traffic light with his right turn signal on until the traffic light turned green, at which time he attempted to make a right turn onto U.S. Route 36. He further stated that he did not see Mr. LeClerc, who had driven along the right edge of the road next to his tractor trailer in an attempt to also make a right turn. He stated that as a result of the actions of Mr. LeClerc, the left front side of Mr. LeClerc's trailer and the rear right side of Appellee Ali's trailer collided. Appellee Ali also stated that his driving on that day complied with the applicable standard of care and that such was not the direct or proximate cause of the accident. Further, Appellee stated that Mr. LeClerc's driving fell below the applicable standard of care and that his driving was the direct and proximate cause of the accident. (Ali Affidavit, Defendant's Motion for Summary Judgment).

{¶20} Once Appellee filed his motion for summary judgment supported by his affidavit as set forth above, the burden shifted to Appellant to demonstrate that a genuine issue of material fact existed. Appellant was therefore required to set forth the specific facts demonstrating such genuine issues of material fact through written stipulations, affidavits, transcripts, depositions, interrogatories and/or written admissions. Civ.R.56.

{¶21} In the instant case, Plaintiff-Appellant, in support of its memorandum contra, submitted photographs of the accident scene along with an affidavit of Trooper Nguyen with the Ohio State Highway Patrol testifying to the authenticity of the photographs. Appellant submits that the photographs show that Appellee Ali negligently operated his trailer by attempting to make a right hand turn from the left hand turn lane at the exit of the Flying J parking lot.

{¶22} Upon review, we find that Plaintiff-Appellant failed to put forth sufficient evidence to contradict Defendant-Appellee's affidavit. We do not find that the photographs satisfied the evidentiary requirements pursuant to Civ.R. 56. As stated by the trial court, such photographs only depict the scene of the accident after it happened. No evidence was presented by Plaintiff-Appellant as to how the accident happened. The trial court further found that rather than create an issue of material fact, the position of the tractor-trailers in the photographs tended to support Appellee's position.

{¶23} Appellant's sole assignment of error is overruled.

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

By: Wise, J.

Farmer, P. J., and

Delaney, J., concur.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ PATRICIA A. DELANEY_____

JUDGES

JWW/d 1027

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MARKEL INSURANCE COMPANY OF CANADA	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
ABDIDAHIR ALI	:	
Defendant-Appellee	:	Case No. 09 CAE 06 0058

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Delaware County, Ohio, is affirmed.

Costs assessed to Appellant.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ PATRICIA A. DELANEY_____

JUDGES