

BOGUSLAW PLONSKI, JADWIGA
WALCZAK, his wife,

Plaintiffs-Respondents,

v.

ALLAN J. AMADOR-HODGSON,
NEW JERSEY TRANSIT CORP.,
A.B.C. COMPANIES (1-100)
(fictitious entities) and JOHN DOES (1-
100) (fictitious names)

Defendants-Appellants.

and

NEW JERSEY TRANSIT CORP. and
ALLAN J. AMADOR-HODGSON,

Third-Party Plaintiffs-Appellants,

v.

ADAM PLONSKI and WHITE
EAGLE INC.,

Third-Party Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002257-24

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION –
MIDDLESEX COUNTY
DOCKET NO. MID-L-5212-21

Sat Below:

Hon. Joseph L. Rea, J.S.C.

Civil Action

**BRIEF OF DEFENDANTS-APPELLANTS NEW JERSEY TRANSIT
CORPORATION AND ALLAN J. AMADOR-HODGSON IN SUPPORT
OF APPEAL**

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PRELIMINARY STATEMENT

The trial court's ruling below reflects a profound and unwarranted shift in the respective roles of the court and jury in adjudicating the issue of liability. Reversal of the trial court's decision is required not only to ameliorate the prejudicial impact of that flawed ruling in this matter, but to reaffirm the jury's primary role in that determination.

This matter arises from a motor vehicle accident on the New Jersey Turnpike, wherein a New Jersey Transit bus struck the rear of a box truck operated by third-party defendant Adam Plonski, and occupied by plaintiff Boguslaw Plonski. The law is clear that the driver of a vehicle that strikes another vehicle from the rear does not automatically bear full responsibility for any ensuing damages. Rather, the jury should be permitted to consider whether the negligence of other actors – including the driver of the lead vehicle – contributed to the accident's occurrence. This is especially true where, as here, the lead vehicle was traveling more than 30 mph below the posted speed limit on a major highway, in clear weather conditions, without its hazard lights engaged, creating a danger that is plainly obvious. Nevertheless, before discovery was even complete, the trial court usurped the factfinder's role, concluding that New Jersey Transit and its bus operator should bear full liability for the accident.

On motion for reconsideration, after the record had been further developed to include expert opinion as to Adam Plonski's role in causing the accident (in accordance with discovery deadlines), the trial court acknowledged that a jury could find that he had been negligent, but still concluded that a jury could not possibly find he was a proximate cause of the accident. Undertaking an extensive factual analysis, which included the court's own speed and distance calculations, the trial court determined that defendants' conduct was an intervening cause of the accident – an issue that is typically reserved for the jury, but also was not raised in any of the motion papers.

The trial court committed clear error in removing the issue of liability from the jury's consideration, a drastic overreach in carrying out the court's limited role in deciding questions of liability as a matter of law. The record unquestionably allows for a jury to reasonably conclude that third-party defendant Adam Plonski, in driving at a speed far below the speed limit and the flow of traffic without warning lights engaged, created a hazard to other motorists on the roadway and was therefore a proximate cause of plaintiff's alleged injuries. The trial court's determination that the bus operator's conduct constituted an intervening cause of the accident is not only flawed, it also improperly usurps the jury's role. For these reasons, the trial court's grant of summary judgment on the issue of liability, and dismissal of

defendants' third-party claims against the other driver, Adam Plonski, should be reversed in all respects.

PROCEDURAL HISTORY

Plaintiff's Complaint against New Jersey Transit Corporation and its bus operator, Allan Amador-Hodgson (collectively, "defendants"), was filed on September 3, 2021 (Da23). An Answer was filed on behalf of defendants on March 9, 2022 (Da38). An Amended Complaint was filed on May 3, 2023 (Da52); defendants' filed an Answer on July 31, 2023 (Da70).

On September 20, 2023, defendants filed a motion for leave to file a third-party complaint, for the purposes of adding Adam Plonski and White Eagle, Inc. as parties (Da215). In response, on September 28, 2023, plaintiffs filed a cross-motion for summary judgment on the issue of liability (Da100). By Order dated October 16, 2023, the court granted defendants' motion, but did not decide plaintiffs' cross-motion. The Third-Party Complaint was filed the following day (Da215). White Eagle Inc. filed an Answer on January 9, 2024 (Da88); on March 7, 2024, Adam Plonski filed an Answer as well, following a vacate of default (Da95).

On April 1, 2024, less than a month later, and before providing any discovery, Adam Plonski filed a cross-motion for summary judgment, essentially joining in plaintiffs' pending motion for summary judgment (Da163). While both motions included requests for oral argument, it was not held on either motion. Rather, by

Orders of June 7, 2024, the Hon. Joseph L. Rea, J.S.C, granted both motions (Da1, Da3). With respect to Adam Plonski's motion, the Court ordered that "100% liability is entered against Defendants/Third Party Plaintiffs NJ Transit and Allan J. Amador-Hodgson" (Da4). Both Orders provide a brief statement of reasons, observing that while the bus operator originally reported that the box truck cut him off, the Drivecam footage reflects that it was a "same lane rear-end hit" (Da2, Da4). The Court cited Dolson v. Anastasia, 55 N.J. 2 (1969), in concluding that "[n]o amount of additional discovery will have any impact on liability." Id. No further statement of reasons was placed on the record.

On June 19, 2024, defendants moved for reconsideration of the Court's Orders of June 7, 2024 (Da167). On June 25, 2024, third-party defendant White Eagle, Inc. filed a cross-motion for summary judgment, arguing that the doctrine of collateral estoppel precluded the claims asserted against it (Da286). On October 17, 2024, as their motion for reconsideration remained pending, defendants supplemented their submission with the expert reports of Adam Cybanski, video forensic examiner, Kevin S. Tully, accident reconstructionist, which had been recently (and timely) served pursuant to the governing case management order (Da228).

On December 20, 2024, after several adjournments, oral argument on defendants' motion for reconsideration was held before Judge Rea (1T). By Orders and Memorandum of Decision of the same date, the trial court denied the motion for

reconsideration and granted White Eagle's cross-motion for summary judgment (Da5, Da11). While purporting to acknowledge that a rear-end accident does not automatically lead to 100% liability for the rear driver, the court nevertheless concluded "that the evidential record is so one-sided, that the defendants must be deemed 100% liable as a matter of law" (Da8).

The trial court went on to examine each of the elements required to maintain a negligence claim. Notably, the court found that the evidential record allowed for the conclusion that Adam Plonski both owed a duty to plaintiff and breached that duty by traveling less than 35 mph on the New Jersey Turnpike. Id. However, the court found that the record did not allow for the conclusion that Adam Plonski's negligence was a proximate cause of the accident. In this regard, the court ruled that "[b]ased on the dash cam video from the New Jersey Transit bus, this court finds that no reasonable factfinder could conclude that Adam Plonski's driving too slowly makes him at all liable for the accident." Id. Despite the essential role the speed of the box truck played in the accident, the court found that "Adam Plonski driving too slowly, at best, amounts to a remote, trivial, or inconsequential cause" (Da9). The trial court also found that it was not foreseeable that the speed of the box truck would cause an accident. Id. The trial court further concluded that, assuming arguendo that defendants were able to establish a question of fact on any of the foregoing elements, summary judgment would remain appropriate on the basis that the bus

operator's conduct constituted an intervening cause, an argument not raised by any of the parties. Id.

Critically, the trial court repeatedly acknowledged that its ruling was "based solely on the video," effectively disregarding defendants' expert discovery. Id. However, the court went on to conduct its own detailed, factual analysis, calculating the approximate distance the bus traveled in the Drivecam footage. Id.

Finally, as to third-party defendant White Eagle, the court ruled that the finding of 100% liability against defendants necessarily precluded liability against White Eagle (Da10).

On January 9, 2025, defendants filed a motion for leave to file an interlocutory appeal with the Appellate Division, seeking review of the trial's grant of summary judgment to plaintiff and third-party defendants, and the denial of defendants' motion for reconsideration. Plaintiff filed opposition on January 23, 2025. By Order dated January 28, 2025, defendants' motion was denied (Da17).

Thereafter, on February 12, 2025, defendants filed a motion for leave to file an interlocutory appeal with the Supreme Court. On February 25, 2025, third-party defendants Adam Plonski and White Eagle filed opposition to the motion. By Order dated March 28, 2025, the Supreme Court granted defendants' motion and summarily remanded the matter back to the Appellate Division for consideration of defendants' interlocutory appeal (Da19).

STATEMENT OF FACTS

This matter arises from an automobile accident that occurred on March 22, 2020, on the New Jersey Turnpike, involving a New Jersey Transit bus operated by defendant Allan Amador-Hodgson and a box truck operated by third-party defendant Adam Plonski (plaintiffs' son) and owned by third-party defendant White Eagle Inc. (Da7). Plaintiff Boguslaw Plonski claims to have been a passenger of the box truck and to have sustained injuries as a result of the accident (Da54). Plaintiff's wife, Jadwiga Walczak, filed a per quod claim (Da58).

Drivecam footage of the accident reflects that the bus struck the left rear of the box truck, which was proceeding at rate of speed far below the speed limit and flow of traffic, without hazard lights activated, under clear weather and roadway conditions (Da136). During the course of discovery, defendants retained two experts who directly address the two vehicles' respective speeds, and Adam Plonski's contribution to the accident: (1) Adam Cybanski, video forensic examiner (Da228); and (2) Kevin S. Tully, accident reconstructionist (Da242). Based upon his analysis, Mr. Cybanski opines that the box truck operated by Adam Plonski was traveling at a speed of 30 to 33 mph prior to the accident – essentially half of the marked speed limit of 65 mph – while the bus driven by Mr. Amador-Hodgson traveled at a speed of 62 to 65 mph (within the legal speed limit) (Da236). He further opined that the tractor trailer passing the bus to its left, and preventing the operator from taking

evasive action earlier, was traveling at a speed of 73 mph. Id. Taking into consideration Mr. Cybanski’s analysis and other available information, Mr. Tully has opined that the box truck was traveling below the legal minimum speed limit and significantly slower than the flow of traffic, which served to impede the normal and reasonable flow of traffic and created a danger to other motorists (Da278-79).

ARGUMENT

POINT I

STANDARD OF REVIEW

On a motion for summary judgment, “[t]he court's function is not ‘to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.’” Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995)). It is well-established that, when undertaking the appellate review of such a determination, “a trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). Rather, a de novo standard of review applies.

Here, defendants’ appeal centers on the trial court’s determination that the undisputed facts did not allow for the conclusion that third-party defendants may be

liable for plaintiffs' claimed damages. As an inherently legal determination, the trial court's ruling is subject to an de novo review. For the reasons set forth more fully below, it is a determination that requires reversal under any standard of review.

POINT II

THE TRIAL COURT IMPROPERLY USURPED THE FACTFINDER'S ROLE IN CONCLUDING THAT DEFENDANTS WERE 100 PERCENT LIABLE FOR PLAINTIFFS' DAMAGES AS A MATTER OF LAW. [Da2, Da7, 1T24]

A. The Trial Court Erred in Deciding the Issue of Proximate Cause as a Matter of Law. [Da2, Da7, 1T24]

While the trial court offered a perfunctory recitation of the summary judgment standard articulated in Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995), its analysis is entirely inconsistent with the guiding principles set forth by the Court. Indeed, the trial court has effectively reversed the Court's directive that evidence be viewed "in the light most favorable to the non-moving party," by affording significant weight to evidence it viewed as contrary to position of the defendants – the nonmovants, while at the same time completely minimizing the import of competent evidence favorable to defendants. Brill, 142 N.J. at 523. In granting summary judgment on the issue of liability, the trial court rested its ruling solely on the Drivacam video and its own interpretation of Dolson v. Anastasia, 55 N.J. 2 (1969). Although the court acknowledged on reconsideration that Dolson does not stand for the proposition that a vehicle that

strikes another vehicle from the rear automatically bears full responsibility for any ensuing damages, its ruling carries the same result.

In Dolson, the Court found that a violation of New Jersey's tailgating statute, N.J.S.A. 39:4-89, was not only evidence of negligence, but constituted negligence, because the statute "incorporates the common law standard into the motor vehicle law." Id. at 10. Significantly, the Court observed that there was no evidence of negligence on the part of the plaintiff, who was operating the other motor vehicle involved in the accident. Id. at 11. Nevertheless, the Court did not reach the issue of whether the plaintiff was entitled to a binding instruction on the issue of liability, which would have removed that issue from the jury's consideration. Id. at 11 n.1.

Courts have subsequently recognized that a motorist does not bear full liability for an accident simply because their conduct violated a motor vehicle law that incorporates a common law standard. See Sexton v. Boyz Farms, Inc., 2011 WL 1362294 at *2 (D.N.J. Apr. 11, 2011) (holding that liability in a rear-end collision depends on the factual circumstances and that "the liability of the driver of the following vehicle may be lessened or eliminated by the contributory negligence of the driver of the lead vehicle") (Da147).¹ In Sexton, the plaintiff

¹ The undersigned is not aware of any unpublished decisions holding to the contrary of the unpublished decisions cited in this brief: Sexton v. Boyz Farms, Inc.,

was the driver of a vehicle that had rear-ended the defendant's vehicle after it abruptly stopped at an intersection. The defendant claimed she came to a stop because it appeared another vehicle was going to disregard a stop sign and cross through the intersection; other evidence indicated the defendant was distracted and applying makeup when she stopped.

The defendant sought summary judgment on the basis of Dolson, asserting that the plaintiff's negligence in rear-ending the defendant's vehicle precluded a finding of negligence against her. Id. at *2. The court denied the motion, observing that "Dolson does not stand for the proposition that the lead vehicle in a rear-end collision may never be found to have breached a duty of reasonable care to the driver of the following vehicle." Id. The court found that a reasonable fact-finder could conclude that the defendant's own inattentiveness was the reason for the abrupt stop and a proximate cause of the plaintiff's injuries. Id. at *3. See also La Mandri v. Carr, 148 N.J. Super. 566, 372 (App. Div. 1977) (observing that New Jersey's tailgating statute "was not intended to apply indiscriminate[ly] to any case where the front of one vehicle come into contact with the rear of another, irrespective of how the collision occurred").

The court's rationale in DiDiego v. Cave, 2008 WL 4279756 (D.N.J. Sept.

2011 WL 1362294 (D.N.J. Apr. 11, 2011); and DiDiego v. Cave, 2008 WL 4279756 (D.N.J. Sept. 12, 2008).

12, 2008) (Da151), is directly on point. DiDiego involved a rear-end collision on a multi-lane highway, with the plaintiff occupying the front vehicle. The plaintiff contended that he was in the far-left lane, stopped at a red light, at the time of the collision. The defendant offered a different version of events, recalling that the plaintiff was traveling in the center lane of moving traffic at 25 mph, where the speed limit was 50 mph. The defendant determined that he was unable to change lanes and attempted to stop, but struck the rear of plaintiff's vehicle while traveling approximately 30 mph (having slowed down from 40-45 mph). At trial, the jury found both parties were negligent and apportioned 60% liability to defendant and 40% liability to plaintiff.

On motion for judgment notwithstanding the verdict and for a new trial, the plaintiff relied on Dolson in arguing that the evidence did not support the jury's allocation of liability against her. The court rejected the plaintiff's argument, noting that "Dolson does not stand for the proposition that any defendant who rear-ends another vehicle is 100% liable for the accident." Id. at *2. The court went on to observe that not only did the jury find that plaintiff shared in responsibility for the accident, the evidence supported that finding. Id. at *3. The court recognized that the jury, in crediting the defendant's account of the plaintiff traveling 25 mph below the posted speed limit, was free to conclude that both the plaintiff and defendant "were negligent in their duties of 'exercising such care as

is reasonable under all the circumstances confronting him/her at the particular time.” Id. at *3.

Here, much like the circumstances presented in DiDiego, and affording defendants every reasonable inference, there exists adequate evidence for a jury to conclude that third-party defendant Adam Plonski’s negligence – in traveling 30 mph on the New Jersey Turnpike – was a proximate cause of plaintiff’s alleged injuries. New Jersey law recognizes that operating a vehicle far below the speed limit can present a hazard to other motorists on the roadway. In this regard, New Jersey’s traffic law provides that “[n]o person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.” N.J.S.A. 39:4-97.1. When a driver’s failure to comply with that statutory duty contributes to the occurrence of an accident, the driver may be answerable in negligence. Finley v. Wiley, 96 N.J. Super. 305, 313 (Law Div. 1967), rev’d on other gds, 103 N.J. Super. 95 (App. Div. 1968). As the court observed in Finley, “Common experience of those who drive on today’s heavily trafficked roads dictates a recognition of the fact that those who drive at inordinately slow speeds do create hazards upon our highways - at least on well-traveled, relatively high-speed roads.” Id. That observation is no less relevant now than when Finley was decided.

When defendants are afforded every reasonable inference, the undisputed facts clearly allow for a jury to conclude that the negligence of third-party defendant Adam Plonski, in driving at a rate of speed far below the speed limit and flow of traffic, and without warning to other motorists, constituted an impediment to “the normal and reasonable movement of traffic,” in violation of N.J.S.A. 39:4-97.1, and was a proximate cause of the accident. Moreover, contrary to the trial court’s findings, it is absolutely foreseeable that a vehicle traveling at half the posted speed limit on the New Jersey Turnpike might play a role in causing an accident. In depriving the jury of the opportunity to even consider the possibility that Adam Plonski’s conduct was a proximate cause of the accident, the trial court improperly intruded upon the jury’s role as factfinder.

The trial court’s error was further compounded by its refusal to afford any consideration to two liability expert reports offered by defendants to bolster the argument that Adam Plonski was a proximate cause of the accident (Da148, Da164). Indeed, the court repeatedly acknowledged that the Drivecam footage was its sole consideration in finding defendants exclusively responsible for the accident (Da8-9). In disregarding the opinions of defendants’ experts, the trial court once again erred in effectively making a determination as to the weight of that evidence – an issue to be resolved by the jury. “It is for the jury to determine the credibility, weight and probative value of the expert’s testimony.” Rubanick

v. Witco Chemical Corp., 242 N.J. Super. 36, 48 (App. Div. 1990), mod. and rem'd, 125 N.J. 421 (1991). See also Espinal v. Arias, 391 N.J. Super. 49, 58 (App. Div. 2007) (“While the trial judge must determine whether the expert’s training and experience are sufficient to permit the expert to state an opinion, it remains the jury’s function to determine the worth of that opinion”); Angel v. Rand Exp. Lines, Inc., 66 N.J. Super. 77, 85-86 (App. Div. 1961) (“the credibility of the expert and the weight to be accorded his testimony rests in the domain of the trier of fact”). In picking and choosing which evidence to afford weight in its analysis, the trial court significantly departed from the principles articulated in Brill.

B. The Trial Court Erred in Deciding That Defendant Amador-Hodgson’s Alleged Negligence Was an Intervening, Superseding Cause of the Accident as a Matter of Law. [Da9, 1T26-27]

The trial court further concluded that, even if proximate cause presented a jury question, the alleged negligence of the bus operator was an intervening cause that precluded liability against Adam Plonski (Da9). In reaching that conclusion, on an issue neither raised nor briefed by the parties, without any accompanying legal analysis, the trial court erred again.

The Court has observed that “[o]ur articulation of the effect of intervening events on questions of causation focuses on whether such events are foreseeable, but that emphasis is essentially a shorthand equivalent for the broader inquiry of whether imposing liability despite the intervening cause is reasonable under all the

circumstances.” Lynch v. Scheininger, 162 N.J. 209, 234-35 (2000) (citing Rappaport Nichols, 31 N.J. 188, 203 (1959)). See also Bandel v. Friedrich, 235 N.J. Super. 384, 390 (App. Div. 1989) (“A tortfeasor is answerable for the consequences of wrongful conduct despite the occurrence of an intervening cause of the harm so long as the intervening cause was foreseeable”). Just as to the issue of proximate causation ordinarily presents a question for the jury, so too does the question of whether an intervening event supersedes a defendant's liability for a negligent act. Lynch v. Scheininger, 162 N.J. at 235.

In stark contrast to the abbreviated analysis offered by the trial court, the Court has identified several factors to be considered in evaluating whether an intervening force is a superseding cause of harm for purposes of tort liability:

- (a) the fact that its intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence;
- (b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;
- (c) the fact that the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation;
- (d) the fact that the operation of the intervening force is due to a third person's act or to his failure to act;
- (e) the fact that the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him;

(f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion.

Lynch, 162 N.J. at 227-28 (quoting Restatement (Second) of Torts § 442 (1965)).

Even a cursory review of these factors reveals that the question of whether Mr. Amador-Hodgson's alleged negligence was a superseding cause of the accident, absolving Adam Plonski of liability, was not suitable for disposition on a motion for summary judgment. A rear-end accident, and the related injuries, is the exact kind of harm one would expect from a vehicle traveling at 30 mph on the New Jersey Turnpike, in a 65-mph speed zone under normal traffic conditions, regardless of Mr. Amador-Hodgson's alleged negligence. Further, there is nothing extraordinary about Mr. Amador-Hodgson's alleged negligence, or its consequences. Moreover, Mr. Amador-Hodgson's alleged negligence is not independent of Adam Plonski's negligence, rather their conduct is necessarily intertwined in bringing about the accident.

The question of whether Mr. Amador-Hodgson's alleged negligence was a superseding cause of the accident clearly presents a question that should have been reserved for the jury. In raising and deciding the issue on its own initiative, without input from the parties, the trial court erred.

C. Defendant's Claims Against Third-Party Defendant White Eagle, Inc. Remain Viable. [Da10, 1T29]

In disposing of the third-party claims against White Eagle, the trial court did not address the substantive merits of those claims, but rather reasoned that since defendants were subject to 100 percent liability, no other party could be found liable (Da10). For the reasons set forth above, the underpinning of that determination is fatally flawed, as the issue of liability as to defendants and third-party defendant Adam Plonski should be reserved for the jury. So too should the issue of liability as to third-party defendant White Eagle.

CONCLUSION

For all the foregoing reasons, the trial court's Orders of June 7, 2024, and December 20, 2024, should be reversed, and defendants' Third-Party Complaint reinstated in its entirety.

Respectfully submitted,

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By: /s Dawn Attwood
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Dated: May 27, 2025

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July 9, 2025

Superior Court of New Jersey
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PO Box 006
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Re: Plonski vs Amador-Hodgson vs White Eagle
Our File No: 336801794668ALHG
Docket No: AM-000241024

Dear Sir/Madam:

Enclosed please find Third Party Defendants' /Respondents' Brief
in connection with the above matter.

A copy of a Certification of Service is enclosed.

Very truly yours,



Lynn Herskovits Goldberg, Esq.

LHG/sw

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO: AM-000241-24

Plaintiffs,

vs.

Allan J. Amador-Hodgson, New Jersey
Transit Corp., ABC Companies (1-100)
fictitious entities and John Does (1-
100) fictitious names, Defendants. and
New Jersey Transit Corp.
and

Civil Action

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX
COUNTY

DOCKET NO: MID-L-5212-21

Allan J. Amador- Hodgson,
Defendants/Third-Party Plaintiffs,

vs.

Adam Plonski and White Eagle Inc.,

SAT BELOW:

Honorable Joseph L. Rea, JSC

Third-Party Defendants.

BRIEF AND APPENDIX ON BEHALF OF THIRD-PARTY
DEFENDANTS-RESPONDENTS

Adam Plonski AND White Eagle Inc

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Of Counsel on the Brief

Dated: July 8, 2025

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PRELIMINARY STATEMENT

Respondents, Adam Plonski and White Eagle submit that the court below was correct in the granting of summary judgment. The proximate cause of this accident was the “rear end hit” to the Plonski vehicle by the New Jersey Transit (“NJT”) bus operator Allan Amador-Hodgson (“Hodgson”). In the 10 seconds before impact Mr. Amador-Hodgson was operating the bus at 62 to 65 mph. He did not look ahead or put his foot on the brake to slow the bus before impact. This is all confirmed on the dash cam video. 1

1. That is at a minimum how much time the NJT driver had to slow down, we do not have a dash cam video before those last 10 seconds.

PROCEDURAL HISTORY

Plaintiff filed this personal injury action on September 3, 2021, in Superior Court Middlesex County against NJT and its bus operator Allan Amador-Hodgson alleging personal injuries as a result of an automobile accident occurring on March 22, 2020. An answer was filed by the “Transit Defendants” on March 9, 2022. An amended complaint was filed on May 3, 2023. On September 20, 2023, the Transit Defendants filed a motion for leave to file a third-party complaint against Adam Plonski and White Eagle, Inc. as third-party defendants. The plaintiff filed a cross motion for summary judgment on liability when the Transit Defendants sought leave to add the third-party defendants. (Da22) By Order dated October 16, 2023, the court granted defendants’ motion to amend the complaint but did not decide plaintiff’s cross motion for Summary Judgment.

On January 9, 2024, third party defendant White Eagle filed an answer to the third-party complaint and on March 7, 2024, Adam Plonski Filed an answer to the third-party Complaint.

On April 1, 2024, defendant Plonski filed a cross motion for summary judgment on liability (Da85) (The White Eagle defendant had not yet moved for summary judgment.) By Orders of June 7, 2024, the Hon. Joseph Rea, J.S.C.

granted both motions. (Da1, Da3). The Court ordered that “100 % liability is entered against Defendants/Third Party Plaintiffs NJ Transit and Allan J. Amador-Hodgson” (Da4). The orders note that the dash cam footage (Da58) reflect that it was a “same lane rear-end hit”. The Court cited Dolson vs. Anastasia, 55 N.J. 2 (1969) in support of its statement of reasons, concluding that “no amount of additional discovery will have any impact on liability”. Id.

On June 19, 2024, the Transit Defendants moved for reconsideration of the Court’s Orders of June 7, 2024. (Da89). On June 25, 2024, third-party defendant White Eagle, Inc., relying on the doctrine of Collateral Estoppel filed a cross-motion for summary judgment (Da208) arguing that the granting of summary judgment to Plonski, the operator of the vehicle, bars the action against the owner.

While the motion for reconsideration remained pending, the Transit Defendants supplemented their submission with the expert reports of Adam Cybanski, a video velocity specialist, and Kevin S. Tully, an accident reconstructionist. It was defendant’s position that even though this was “ a hit in the rear” it was because the third-party defendants were traveling below the speed limit. (Da 150, Da164)

On December 20, 2024, after several adjournments, oral argument on defendants’ motion for reconsideration was held before Judge Rea. By Orders and

Memorandum of Decision, the trial court denied the motion for reconsideration and granted White Eagle's and Plonski's cross-motion for summary judgment. (Da5, Da11). The court concluded "that the evidential record is so one-sided, that the defendants must be deemed 100% liable as a matter of law" (Da8).

The court weighed the evidence presented in the record and provided a rational analysis as to whether the Transit Defendants established a prima facie case of negligence against the third-party defendants. Upon doing so the court found that the record supported the finding that Adam Plonski owed a duty to plaintiff and breached that duty by traveling less than 35 mph on the New Jersey Turnpike however, he found that this was not the proximate cause of the accident—"based on the dash cam video from the New Jersey Transit Bus, this court finds that no reasonable factfinder could conclude that Adam Plonski's driving too slowly makes him at all liable for the accident." Id. (Da9).

As to third-party defendant White Eagle, the court ruled that the finding of 100% liability against defendants precluded liability against White Eagle, the owner of the truck. (Da10).

On January I, 2025, the defendants filed a motion for leave to file an interlocutory appeal with the Appellate Division. Third Party defendants filed

opposition on January 22, 2025, and plaintiff filed opposition on January 23, 2023.

By Order dated January 28, 2025, defendants' motion was denied. (Da17)

Thereafter, defendants filed a motion for leave to file an interlocutory appeal with the Supreme Court. On February 25, 2025, third party defendants Adam Plonski and White Eagle filed opposition to the motion. By Order dated March 28, 2025, the Supreme Court granted defendants' motion and remanded the matter back to the Appellate Division for consideration of the defendants' interlocutory appeal on the granting of summary judgment.

The NJ Transit dash cam video, referred to in this brief is Da58.

COUNTER STATEMENT OF FACTS

This matter arises from a routine “rear end hit” bus vs. automobile accident that occurred on the New Jersey Turnpike on March 22, 2020. Plaintiff was a passenger in a box truck operated by third-party defendant, Adam Plonski. The accident occurred near milepost 93.70 in Woodbridge while in the right lane for commercial vehicles. (Da29) At the said time and place a New Jersey Transit bus operated by defendant Allan Amador- Hodgson on behalf of defendant NJT rear ended the box truck.

The dash cam video documents the negligent actions of defendant Hodgson leading up to the accident. (Da 58). Judge Rea scrutinized the dash cam and relied upon the same in the memorandum decision dated December 20, 2024. (Da7-Da10a). The video shows that defendant Hodgson was operating his bus at 62 to 65 mph when he failed to put on the brake to slow the bus immediately before impact. The Transit defendants rely upon the velocity expert report of Mr. Cybanski in support of the theory that the third-party defendant was traveling at a speed of 30-33 mph (Da152). Judge Rea took Judicial notice of N.J.A.C. 19:9-1.2e, the minimum lawful speed on the turnpike of 35 mph. (D8a). Assuming arguendo that the velocity expert is correct, the scenario presented by the Transit defendants was that third party defendant, Plonski, was traveling at the *de minimus*

2-5 mph below the lawful speed on the New Jersey Turnpike in those 10 seconds leading up to the accident.

Despite the submissions of two liability experts who opined that driver Plonski was travelling below the lawful speed limit of approximately 2-5 mph, the court found that Mr. Polonski was not the proximate cause of the accident.

Judge Rea issued a thoughtful memorandum decision holding, at Da8,

“This court, notwithstanding the recent interposition of defendants’ two expert reports finds that the evidential record is so one-sided, that the defendant must be deemed 100% liable as a matter of law. See, eg, Brill vs. Guardian Life Insurance Co. 142 NJ 520 (1995).

Contrary to the argument presented by defendant New Jersey Transit, Judge Rea did not decide this case based on Dolson vs. Anastasia, 55 N.J. 2 (1969).

Judge Rea agreed that a rear end hit does not automatically mean that the rearward vehicle is 100% liable, however, it is evidence of negligence. Rather, Judge Rea applied a proximate cause analysis to determine whether the defendants, according to the record presented before the court, can prove by a preponderance of the evidence, a prima facie case of negligence against the third-party defendants. To establish a prima facie case of negligence, a plaintiff (third party plaintiff) must establish the following elements: (1) duty of care, (2) breach of that duty, (3) proximate cause. Filipowicz v. Diletto , 350 N.J. Super. 552, 558 (App.Div. 2002).

Judge Rea found that the third-party defendant owed a duty of care to others on the New Jersey Turnpike. For purposes of the motion the Court accepted the opinion that Plonski was traveling at 30-33 mph and that to do so would be a breach of duty. Despite these two elements, the court found that NJT failed to establish the third element, proximate cause, concluding again that, “Based on the dash cam video from the new Jersey Transit bus, this court finds that no reasonable factfinder could conclude that Adam Plonski’s driving too slowly makes him at all liable for this accident.” (Da9)

The court also addressed New Jersey Transit’s argument that the jury should be permitted to consider whether the negligence of other actors—including the driver of the lead vehicle —contributed to the accident, in other words, comparative negligence of the lead vehicle.

The court considered the argument presented by third-party plaintiff New Jersey Transit and conducted an analysis based on the Jury Charge that would apply in this case: Model Jury Charge 6.12: Proximate Cause---Where There Is Claim That Concurrent Causes of Harm Were Present. (Da8)

Judge Rea explained that Model Jury Charge 6.12 requires the application of the “substantial factor” test for causation and explained what not substantial-i.e. a is

cause, which is remote, trivial or inconsequential is not a substantial factor. Again, based on the dash cam video, commencing 10 seconds before the accident the court found that Adam Plonski's driving "too slowly", at best, amounts to a remote, trivial or inconsequential cause.

Judge Rea rejected the Transit Defendants' argument that Mr. Plonski's actions contributed to the accident. The court asked whether it would be foreseeable by Mr. Plonski that Mr. Amador-Hodgson would not be able to avoid the accident if the box truck was traveling at 33-30 mph. Again, based solely on the video and based on the calculations presented by the video velocity expert, the court found the answer to be negative. Based on the video and dash cam the court found the intervening cause to be the actions of the NJT bus driver Mr. Amador-Hodgson, who per the dash cam video was operating his bus at 62 to 65 mph and failed to put on the brake to slow the bus immediately before impact.

LEGAL ARGUMENT

POINT I

**THE GRANTING OF SUMMARY JUDGMENT BY
THE TRIAL COURT WAS PROPER
AND SHOULD NOT BE OVERTURNED**

Pursuant to R. 4:46-2(c), summary judgment shall be rendered if the evidence and proofs show that there is no genuine issue as to any material fact challenged, and that the moving party is entitled to judgment as a matter of law. See, Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 529 (1995).

The material facts documented by the dash cam video support the finding of summary judgment in favor of the third-party defendants. The plaintiff's vehicle was hit in the rear because the driver failed to slow down. He was looking in his side view mirror while approaching the Plonski/White Eagle vehicle.

The video shows the actions of the driver for approximately 10 seconds preceding the collision. Mr. Amador-Hodgson began looking in his left rear-view mirror while closing in on the distance between himself and the box truck but failed to apply the brake to slow the bus. He did not take his foot off the

accelerator instead he continued at the steady speed of 62-65 mph resulting in the collision.

Dolson v. Anastasia, 55 N.J. 2, 10 (1969), is the seminal case when analyzing a rear end hit and applicable to the case at bar. In Dolson, supra the Court noted, “It is elementary that a following car in the same lane of traffic is obligated to maintain a reasonably safe distance behind the car ahead, having due regard to the speed of the preceding vehicle and the traffic upon the condition of the highway. Stackenwalt v. Washburn, 42 N.J. 15, 30 (1964). Failure to do so resulting in a collision is negligence.

In Paiva v. Pfeiffer, 229 N.J. Super. 276, 280 (App. Div. 1988), the Appellate Division observed “It is well settled law in this State that the motor vehicle statutes establish standards of conduct for motorists on our highways, and, under usual circumstances, the violation of a motor vehicle vehicle’s statute is evidence of negligence.” N.J.S.A. 39:4-89 states in the pertinent part that, “The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of the preceding vehicle and the traffic upon, and condition of, the highway.” Here the totality of the evidence leads to the inevitable conclusion that the court below was correct in granting summary

judgment because he was guilty of negligence. Mr. Amador Hodgson was not paying attention when he rear ended plaintiff's vehicle.

Next, Judge Rea correctly reached his decision in granting summary judgement in favor of the third-party defendant **only after** applying the general principles of negligence to the third-party defendant's conduct and a proximate cause analysis. Upon doing so he found that yes, Mr. Plonski owed a duty of care to others on the New Jersey Turnpike and accepted the expert Cybanski calculation that Plonski was traveling at 30-33 mph as a breach of that duty however found that NJT failed to establish the third element, proximate cause, finding again that, "Based on the dash cam video from the New Jersey Transit bus, this court finds that no reasonable factfinder could conclude that Adam Plonski's driving too slowly makes him at all liable for this accident."

Judge Rea supported his finding with the calculations presented by Defendant NJT's expert and the dash cam video produced by NJT. In the decision Judge Rea stated,

Beyond dispute is that, as per the dash cam video, Mr. Amador-Hodgson had approximately 10 seconds to react and slow down. How far did the bus travel at that interval? The answer is about 924 feet. (1.05 per minute). (Da9)

Judge Rea also asked, would it be foreseeable to Mr. Plonski that his action would result in an accident. The Judge found the element of foreseeability to be missing. The Judge found that no reasonable fact finder could find that the bus driver could not avoid this accident.

Again, foreseeability dovetails with N.J.S.A. 34:4-89: “which provides that ‘(t)he driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of the preceding vehicle and the traffic upon, and condition of, the highway.

The court in Jones v. Bennett, 306 N.J. 476, 485 (App. Div. 1998) affirmed Dolson, supra. and stated that “(e)ven if they stopped in front of him, Dolson....covers that. You’re supposed to maintain a safe following distance so that even if someone does do a sudden stop, you’re able to avoid them...” It would not be foreseeable to the third-party defendant that a driver would be traveling at 62-62 mph and not slowing down while attempting to change lanes.

POINT II

THE COURT BELOW
CORRECTLY SEARCHED THE RECORD AND WEIGHED ALL
ARGUMENTS AS REQUIRED BY N.J.S.A. 4:46-2

As required by the Brill vs. Guardian Life Insurance Company of America, 142 N.J. 520, 528-529 (1995), the Court below searched the record in order to make a determination as to whether there exists a “genuine issue” of material fact precluding summary judgment. The court considered whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party—and found none. See, Brill, at 142 N.J. 540.

Judge Rea supported his finding with the calculations presented by Defendant NJT’s expert and the dash cam video produced by NJT, the relevant case law and application of the laws of negligence.

The material facts are that Mr. Amador-Hodgson’s actions in looking at his side view mirror, continuing at 60-63 miles per hour during those 10 seconds and

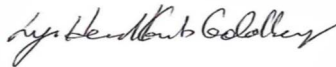
failing to take his foot off the accelerator, was the proximate cause of the accident.

It would also not be foreseeable to reasonable fact finders to find that the bus driver could not avoid this accident.

CONCLUSION

Based upon the record below, Judge Rea's findings of fact, legal opinion and respondents' brief, it is respectfully submitted that the orders of June 7, 2024, and December 20, 2024, finding no liability on the part of the third-party defendants be affirmed.

Law Office of Debra Hart

A handwritten signature in cursive script, appearing to read "Lynn HersHKovits Goldberg".

By: Lynn HersHKovits Goldberg, Esq.

BOGUSLAW PLONSKI, JADWIGA
WALCZAK, his wife,

Plaintiffs-Respondents,

v.

ALLAN J. AMADOR-HODGSON,
NEW JERSEY TRANSIT CORP.,
A.B.C. COMPANIES (1-100)
(fictitious entities) and JOHN DOES (1-
100) (fictitious names)

Defendants-Appellants.

and

NEW JERSEY TRANSIT CORP. and
ALLAN J. AMADOR-HODGSON,

Third-Party Plaintiffs-Appellants,

v.

ADAM PLONSKI and WHITE
EAGLE INC.,

Third-Party Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002257-24T2

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
MIDDLESEX COUNTY
DOCKET NO. MID-L-5212-21

Sat Below:

Hon. Joseph L. Rea, J.S.C.

Civil Action

**REPLY BRIEF OF DEFENDANTS-APPELLANTS NEW JERSEY
TRANSIT CORPORATION AND ALLAN J. AMADOR-HODGSON IN
FURTHER SUPPORT OF APPEAL**

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PRELIMINARY STATEMENT

In focusing almost exclusively on the alleged conduct of the NJ Transit bus operator, Allan J. Amador-Hodgson, rather than that of third-party defendant Adam Plonski, respondents' opposition brief does not squarely address the central issue on appeal: did the trial court err in finding third-party defendants were not negligent at all as a matter of law. Contrary to third-party defendants' apparent position, proof of Mr. Amador-Hodgson's alleged negligence does not equate to an absence of negligence on the part of Adam Plonski. As set forth in defendants' merit brief, when defendants are afforded every reasonable inference, it is clear that the trial court erred in removing that issue of third-party defendants' negligence from the jury's consideration.

ARGUMENT

THIRD-PARTY DEFENDANTS' OPPOSITION FAILS TO ALLAY THE CLEAR ERROR IN THE TRIAL COURT'S DECISION.

In opposing defendants' appeal, third-party defendants largely restate the trial court's decision without meaningful consideration of the arguments and caselaw cited by defendants. As third-party defendants' efforts to bolster the trial court's rulings fall short, reversal of the underlying decisions is warranted, allowing the jury to consider third-party defendants' role in bringing about the subject accident.

A. Evidence That Defendant Amador-Hodgson Was Negligent Does Not Require the Conclusion That Third-Party Defendants Were Free of Negligence.

In opposition to defendants' appeal, third-party defendants center their argument on Dolson v. Anastasia, 55 N.J. 2 (1969), and the conduct of defendant Amador-Hodgson. However, as discussed in defendants' merit brief, and as the case law following Dolson reflects, a jury is permitted to consider how the negligence of the operator of the lead vehicle contributed to a rear-end accident. Here, defendants' expert, Kevin Tully, provided a thorough opinion regarding how Adam Plonski – in operating his vehicle more than 30 mph below the posted speed limit under normal conditions, without flashers or braked lights illuminated – defied the reasonable expectations of other motorists, impairing Mr. Amador-Hodgson's perception of how quickly he was closing in on the box truck (Da195-Da199).

Neither the trial court nor third-party defendants squarely address that opinion. Instead, the trial court substituted its own analysis of the accident data, ignoring the “looming type” characteristic of the accident analyzed by Mr. Tully. As Mr. Tully’s report reflects, the trial court’s rudimentary calculation of the distance and time that the box truck was visible oversimplifies the issue. Id. Defendants were entitled to have the jury consider Mr. Tully’s analysis in weighing the issue of liability.

Moreover, none of the cases cited by plaintiff support the proposition that the question of liability should be taken away from the jury simply because an accident involves a rear-end collision. In Paiva v. Pfeiffer, 229 N.J. Super. 276, 279 (App. Div. 1988), the issue was not before the Appellate Division. It was addressed in Finley v. Wiley, 103 N.J. Super. 95 (App. Div. 1968), a case relied upon in Paiva. In Finley, the plaintiff’s vehicle was traveling approximately 10 mph on a roadway where the speed limit was 40 mph, when it was struck from behind by the defendant’s truck. Id. at 97-98. At trial, the jury entered a no cause against the defendant. While the Appellate Division reversed that determination, it nevertheless found that “the evidence bearing on [the plaintiff’s] alleged contributory negligence, though scant, was sufficient to justify the trial court’s submission of that issue to the jury.” Id. at 103. Likewise, in Jones v. Bennett, 306 N.J. Super. 476 (App Div. 1998), a case cited by third-party defendants, the jury was permitted to consider

whether the driver of a disabled vehicle occupied by the plaintiffs was negligent and whether that negligence was a proximate cause of the accident. Id. at 482.

As the foregoing makes clear, even in rear-end accidents, the jury is generally entitled to consider whether the driver of the lead vehicle played a culpable role in bringing about the accident. Here, where there is competent expert evidence supporting the conclusion that Adam Plonski's negligence contributed to the accident, the existence of such a jury question is apparent. In needlessly removing the question of liability from the jury's consideration, the trial court erred.

B. Third-Party Defendants Ignore the Trial Court's Error in Its Intervening Cause Analysis.

Third-party defendants do not address whether it was appropriate for the trial court to make a determination sua sponte that Mr. Amador-Hodgson's alleged conduct was an intervening cause of the accident. Nor do they attempt to defend the trial court's conclusion on the merits, ignoring the factors set forth in Lynch v. Scheininger, 162 N.J. 209 (2000). With good reason – as discussed in defendants' merits brief, the trial court did not apply the factors required to determine whether something is an intervening cause. Moreover, when those factors are applied, it is apparent that Mr. Amador-Hodgson's alleged conduct did not constitute an intervening cause.

As previously discussed, the question of whether an intervening event supersedes a party's liability for a negligent act ordinarily presents a question for

the jury. Lynch v. Scheininger, 162 N.J. at 235. Third-party defendants have failed to identity any compelling reason for a deviation from that general rule. The foreseeability that driving at a speed of 30 mph on the New Jersey Turnpike, under normal conditions, might contribute to a rear-end accident is obvious to any person who has traversed that roadway. The trial court erred in nevertheless concluding that defendants could not establish Adam Plonski's driving was a proximate cause of the accident as a matter of law.

CONCLUSION

For all the foregoing reasons, as well as those set forth in defendants' merits brief, the trial court's Orders of June 7, 2024, and December 20, 2024, should be reversed, and defendants' Third-Party Complaint reinstated in its entirety.

Respectfully submitted,

ATTWOOD CORLETT LLC

*Attorneys for Defendants/Third-Party
Plaintiffs New Jersey Transit Corp. and
Allan J. Amador-Hodgson*

Dated: August 4, 2025

By: /s Dawn Attwood
DAWN ATTWOOD