



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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COUNTY OF FAIRFAX

CITY OF FAIRFAX

January 31, 2024

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Re: Matilde Martinez v. John Claire Ayala, CL 2023-12495

Dear Mr. Miller and Mr. Risheq:

This matter is before the court on Defendant's Demurrer, which was initially heard by the court on December 15, 2023.1 Defendant demurred to the Complaint on the ground that Code § 46.2-804(2)2 and Code § 46.2-8613 do not support a negligence per se claim because they merely reiterate

1 On demurrer, the court "accept[s] as true all factual allegations expressly pleaded in the complaint and interpret[s] those allegations in the light most favorable to the plaintiff." Coward v. Wellmont Health System, 295 Va. 351, 358 (2018).

2 "Whenever any roadway has been divided into clearly marked lanes for traffic, drivers of vehicles shall obey the following: . . . 2. A vehicle shall be driven as nearly as is practicable entirely within a single lane and shall not be moved from that lane until the driver has ascertained that such movement can be made safely"

3 "A person shall be guilty of reckless driving who exceeds a reasonable speed under the circumstances and traffic conditions existing at the time, regardless of any posted speed limit."

the common law standard of care for breach of duty. At the hearing, the court asked the parties to submit additional briefs on that issue within 14 days. Defendant submitted an additional brief on January 3, 2024; Plaintiff did not submit an additional brief.

After careful review of the parties' memoranda, the court OVERRULES the Demurrer in part and SUSTAINS it in part for the reasons set forth below.

ANALYSIS

The Complaint alleges, in paragraph 14, that it was "Defendant's duty to obey statutes enacted for public safety, including but not limited to VA Code § 46.2-804 . . . and VA Code § 46.2-861" In paragraph 15, the Complaint alleges that "Defendant violated these two (2) statutes which proximately caused the auto collision and resulted in the injuries to the Plaintiff."

To determine whether a negligence *per se* claim is properly "predicated on a statutory violation":

requires a showing that [i] the tortfeasor had a duty of care to the plaintiff, [ii] the standard of care for that duty was set by statute, [iii] the tortfeasor engaged in acts that violated the standard of care set out in the statute, [iv] the statute was enacted for public health and safety reasons, [v] the plaintiff was a member of the class protected by the statute, [vi] the injury was of the sort intended to be covered by the statute, and [vii] the violation of the statute was a proximate cause of the injury. (citations omitted).

Parker v. Carilion Clinic, 296 Va. 319, 346 (2018).⁴

Moreover, "negligence is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such person would not have done under existing circumstances." *Moore v. Virginia Transit Co.*, 188 Va. 493, 498 (1948).

Accordingly, if a statute sets a standard of care which does not rest on "a reasonable and prudent person" standard, then a negligence *per se* claim is properly "predicated on a statutory violation"

⁴ The Court went on to note:

Pragmatically speaking, "[t]he effect of the doctrine of 'negligence *per se*,' when applicable, is that it establishes the second element of common-law negligence – breach of duty – by reference to a statutory standard rather than the common-law 'ordinary prudent person' standard." (citation omitted).

Id. at 346-347.

In the case at bar, Defendant argues that neither Code § 46.2-804 nor Code § 46.2-861 supports a negligence *per se* cause of action because "they simply borrow the common law reasonable person standard." *Def. Mem.* (1/3/24) at 2.

The court agrees with Defendant with regard to Code § 46.2-861, but not as to Code § 46.2-804.

In Code § 46.2-861, the standard of care is reasonableness, i.e., whether a speed is reasonable "under the circumstances and traffic conditions" Thus, Code § 46.2-861 is really nothing more than a reworded statement of common law negligence.

In Code § 46.2-804, by contrast, the standard of care is set by the statute without any reference to reasonableness, i.e., a vehicle shall be driven "as nearly as is practicable entirely within a single lane" and shall not be moved from that lane "until the driver has ascertained that such movement can be made safely" Neither of those duties is a question reasonableness.

CONCLUSION

As Code § 46.2-861 is nothing more than a reworded statement of common law negligence, Defendant's Demurrer is SUSTAINED as to Code § 46.2-861. As to Code § 46.2-804, because the standard of care is set by the statute without any reference to reasonableness, Defendant's Demurrer is OVERRULED.

An appropriate order will enter.

Sincerely yours,

A large black rectangular redaction box covers the signature of the judge.

Richard E. Gardiner
Judge

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

MATILDE MARTINEZ)	
)	
Plaintiff)	
)	
v.)	CL 2023-12495
)	
JOHN CLAURE AYALA)	
)	
Defendant)	

ORDER

THIS MATTER came before the court on Defendant's Demurrer to Plaintiff's *Complaint*.

THE COURT, having considered the arguments of the parties and for the reasons set forth in the court's letter opinion of today's date, hereby SUSTAINS the Demurrer in part and OVERRULES the Demurrer in part.

ENTERED this 31st day of January, 2024.



Richard E. Gardiner
Judge

**ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS
WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE
SUPREME COURT OF VIRGINIA**

Copies to:

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Counsel for Defendant

Waleed Risheq
Counsel for Plaintiff