

CANADA / JUDGMENT

Vu v. Pop

2020 BCSC 703

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 703 Vu v. Pop

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Vu v. Pop,

2020 BCSC 703

Date: 20200506

Docket: M168535

Registry: Vancouver

Between:

Linh My Vu

Plaintiff

And

Marcela Mirela Pop

Defendant

Before: The Honourable Madam Justice Choi

Reasons for Judgment

Counsel for the Plaintiff:

M. Burtini

Counsel for the Defendant:

K. Rotheisler

Place and Date of Trial/Hearing:

Vancouver, B.C.

January 13-17, 2020

March 10, 2020

Place and Date of Judgment:

Vancouver, B.C.

May 6, 2020

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Introduction

- [1] Ms. Vu is a 30-year-old dental assistant who works in North Vancouver. She was involved in a motor vehicle accident on December 17, 2014, on her way to work. She suffered soft tissue injuries and seeks damages as a result. The defendant, Ms. Pop, denies liability for the accident.
- [2] Prior to the accident, Ms. Vu aspired to become a dental hygienist. Due to her injuries, she says she can no longer pursue that occupation. Further, she claims that she is limited by her injuries in pursuing a job as a dental assistant in another office with better pay because the hours and accommodations at her current employer are more flexible than other offices.
- [3] The plaintiff testified, along with the following witnesses: Dr. Chong, the plaintiff's employer; Kim Nguyen, the plaintiff's cousin; and Dylan Kellner, a formal dental assistant who works in human resources at another dental practice in North Vancouver. Additionally, two expert witnesses tendered reports and testified: Dr. De Forge, a physiatrist; and Mr. Paul Pakulak, a functional capacity expert.

[4] Ms. Pop was the only witness called for her case.

[5] The first key issue in this case is whether Ms. Pop is liable for Ms. Vu's injuries.

Review of the Evidence

Ms. Vu's Evidence

- [6] The accident occurred near the intersection of Mountain Highway and Lynn Valley Road in North Vancouver just before 8:00 A.M. Ms. Vu was on her way to work at Dr. Chong's dental office, which is on Ross Road, a short distance from the site of the accident. Ms. Vu testified that she was driving northbound on Mountain Highway in the designated left turning lane to turn left onto Lynn Valley Road, and head southwest towards Ross Road.
- [7] She noticed the defendant Ms. Pop's vehicle opposite her, also on Mountain Highway, planning to turn right onto Lynn Valley Road.
- [8] The agreed statement of facts sets out when northbound traffic on Mountain Highway is subject to an advance green arrow, southbound traffic on Mountain Highway is subject to a red light. This means that Ms. Pop faced a red light.
- [9] Ms. Vu says that when the left turn green arrow was activated, she started her left turn onto Lynn Valley Road. Lynn Valley Road has two lanes heading southwest, the centre lane, and the right (or curb) lane. Ms. Vu testified that she turned left onto Lynn Valley Road into the centre lane, and that she did not turn wide and her vehicle was straightened out at the end of her turn.
- [10] Ms. Vu testified that she stayed in her lane after turning onto Lynn Valley Road and the impact occurred "slightly" in her lane, about three or four metres after the crosswalk. On cross-examination, Ms. Vu viewed a Google Maps aerial photograph of the intersection and surrounding area, and agreed that the accident occurred near the blue icon indicating a bus stop on Lynn Valley Road.
- [11] Ms. Vu said, on cross-examination, that she did not recall her vehicle "scraping" against Ms. Pop's vehicle from the back to the front, but rather the front right side of her vehicle hitting the driver's side of Ms. Pop's vehicle. She stated that she did not recall seeing Ms. Pop's vehicle drive ahead of her before the impact, although she did see Ms. Pop initiating her turn onto Lynn Valley Road.
- [12] Damage was sustained to the passenger side front bumper of Ms. Vu's vehicle and the driver's side door of Ms. Pop's vehicle.
- [13] Ms. Vu says that after the accident occurred, she and Ms. Pop argued in the street. They eventually moved their vehicles to a nearby plaza to exchange information.

- [14] Ms. Vu agrees that, in order to get to her workplace, she would have had to turn right off of Lynn Valley Road onto Ross Road around 10-15 seconds after completing her initial left turn onto Lynn Valley Road. In order to do so, she agrees that she would have to change from the centre lane into the curb lane.

Ms. Pop's Evidence

- [15] Ms. Pop was also on her way to work when the accident occurred. She works for the City of Vancouver. Ms. Pop was travelling south on Mountain Highway and preparing to turn right onto Lynn Valley Road, using the designated right turn lane. She says she was proceeding slowly when she turned into the curb lane (the right lane) on Lynn Valley Road.
- [16] Ms. Pop says that she did not see Ms. Vu before the collision. She became aware of Ms. Vu's vehicle upon impact, when she felt a "strong impact" on the driver's side of her car towards the back. Ms. Pop says that after the accident occurred, she was angry with Ms. Vu because she thought Ms. Vu was at fault, and that Ms. Vu's vehicle was going faster than hers.
- [17] Ms. Pop testified that after she turned onto Lynn Valley Road, she would have had a long distance to travel before her next exit, which she would enter from the curb lane. Therefore, she says there was no reason for her to move to the centre lane on Lynn Valley Road.

Legal Framework

- [18] The plaintiff, Ms. Vu, has the burden of proving Ms. Pop's negligence on a balance of probabilities: *Marcena v. Thomson*, 2019 BCSC 1287 at para. 35.
- [19] The court set out the common-law duties of motorists in *Stewart v. Dueck*, 2012 BCSC 1729 at paras. 38-41:
- [38] The authorities establish that all motorists have an overarching common law duty to exercise what constitutes, in all the circumstances, reasonable and due care. All motorists have a general duty to keep a proper look-out and to take reasonable precautions in response to apparent potential hazards: *Hmaied v. Wilkinson*, 2010 BCSC 1074 at para. 23.
- [39] It is a well-settled proposition that drivers in this province are entitled to assume, within reason, that the other users of the roads in British Columbia will obey the law: *Mills v. Siefred*, 2010 BCCA 404 at para. 26.
- [40] The Court's task is to determine whether each of the parties in an accident met their common law duties of care. The analysis of the standard of care, which is relevant to the particular circumstances, is informed by both the reasonableness of the parties' actions and by the rules of the road; *Salaam v. Abramovic*, 2010 BCCA 212 at para. 21; *Kilian v. Valentin*, 2012 BCSC 1434 at para. 28.
- [41] While these general propositions are endorsed by the authorities, ultimately, the determination of liability turns on the particular facts of each case.

[20] Ms. Vu argues that the court's task is to determine whether "Ms. Pop failed to exercise the standard of care required by a reasonably careful driver in the circumstances". She relies on the following sections of the Motor Vehicle Act, R.S.B.C. 1996, c. 318:

129 (1) Subject to subsection (2), when a red light alone is exhibited at an intersection by a traffic control signal, the driver of a vehicle approaching the intersection and facing the red light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, and subject to the provisions of subsection (3), must not cause the vehicle to proceed until a traffic control signal instructs the driver that he or she is permitted to do so.

(3) Despite subsection (1), and except when a right turn permitted by this subsection is prohibited by a sign at an intersection, the driver of a vehicle facing the red light, and which in obedience to it is stopped as closely as practicable to a marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, as closely as practicable to the intersection, may cause the vehicle to make a right turn, but the driver must yield the right of way to all pedestrians and vehicles lawfully proceeding as directed by the signal at the intersection.

130 (1) When a green arrow is exhibited at an intersection by a traffic control signal,

(a) the driver of a vehicle facing the green arrow may cause it to enter the intersection and to make only the movement indicated by the green arrow, but must yield the right of way to pedestrians lawfully in the intersection or in an adjacent crosswalk and to other vehicles lawfully in the intersection,

151 A driver who is driving a vehicle on a laned roadway

(a) must not drive it from one lane to another when a broken line only exists between the lanes, unless the driver has ascertained that movement can be made with safety and will in no way affect the travel of another vehicle,

165 (1) If the driver of a vehicle intends to turn it to the right at an intersection, the driver must cause it to approach the intersection and then make the turn as close as practicable to the right hand curb or edge of the roadway.

(3) When the driver of a vehicle intends to turn the vehicle left at an intersection where traffic is restricted to one direction on one or more of the highways, the driver must cause the vehicle to approach the intersection in the extreme left hand lane available to traffic moving in the direction of travel of the vehicle, and after entering the intersection turn the vehicle to the left so as to leave the intersection as nearly as practicable in the left hand lane available to traffic moving in the direction of travel of the vehicle on the highway being entered.

[21] Ms. Pop cites *Nerval v. Khehra*, 2012 BCCA 436 and *Le v. Point*, 2015 BCCA 134 for the duties owed by the driver of a left-turning vehicle, including the obligation of a left-turning vehicle not to turn into the curb lane rather than the centre lane.

Analysis

Credibility

- [22] Counsel for Ms. Pop argues that Ms. Vu was not a credible witness, specifically that the evidence she gave on examination for discovery was inconsistent with her evidence at trial.
- [23] I disagree. I find that, overall, Ms. Vu was a credible witness who attempted to be forthright with the court. On re-direct, Ms. Vu admitted that she had been mistaken in her examination for discovery answers and that she was not attempting to mislead. I accept Ms. Vu's explanation for her inconsistent testimony.

Liability

- [24] The parties' theories of the case differ. Ms. Vu argues that Ms. Pop either drifted into or deliberately entered the centre lane from the curb lane after making her right turn. Ms. Pop says that Ms. Vu either made a wide left turn, accidentally or deliberately, and entered the curb lane.
- [25] I find that the accident occurred outside of the intersection of Mountain Highway and Lynn Valley Road. This is not in dispute. Ms. Vu agrees on cross-examination that the accident took place near the bus stop on Lynn Valley Road, west of the intersection. Both parties said the accident occurred after their respective vehicles straightened out past their respective turns in their respective lanes.
- [26] Based on the aerial photograph in evidence, the blue icon indicating the bus stop on Lynn Valley Road is some distance away from the intersection. Looking at the cars parked nearby, I find that the bus stop is approximately five car lengths away from the intersection.
- [27] Ms. Vu argues that she had the advance green arrow, thereby rendering her the dominant driver and Ms. Pop the servient driver. Ms. Pop also argues that the duties of a left-turning driver were relevant. Given my finding that the accident did not occur in the intersection, the analysis respecting the dominant and servient driver in respect to turning in intersections does not apply in this case.
- [28] The collision occurred approximately five car lengths away from the intersection. In order for the parties to collide, one party must have entered the lane of the other. Ms. Vu testified that she stayed in her lane and that Ms. Pop came into her lane. Ms. Pop had no specific recollection whether the collision occurred in the curb lane or the centre lane, but she testified that she had no reason to move her vehicle into the centre lane because she would have to exit off of Lynn Valley Road some time later from the curb lane.

- [29] Neither party tendered an accident reconstruction report, and no photographs were taken at the collision site. The parties moved their vehicles into a plaza parking lot nearby, since their vehicles were impeding traffic. There are no witnesses to the collision, other than the parties. Therefore, the court is left with the evidence of the parties and the photographs.
- [30] The material damage photographs show damage to the passenger side front bumper on Ms. Vu's vehicle. The bumper is scraped and damaged on the front of the vehicle under the passenger side headlights and to the front of the passenger side front wheel. The photographs show that the bumper is slightly detached on the part closest to the passenger side front wheel.
- [31] The damage to Ms. Pop's vehicle is on the driver's side front and back doors. A large dent can be seen beneath the rear view mirror on the driver's side. Below that dent are some smaller dents and scrapes near the bottom of the driver's side door. There are dents and scrapes all along the bottom half of the driver's side doors, including in front of the rear wheel on the driver's side .
- [32] For the reasons that follow, I find that Ms. Vu has not discharged her burden to establish liability.
- [33] First, the photographs in evidence are more consistent with Ms. Vu's vehicle moving from the centre lane into the curb lane, rather than Ms. Pop's vehicle moving from the curb lane into the centre lane.
- [34] The photographs show that Ms. Vu's vehicle sustained damage to the passenger side front bumper, while Ms. Pop's vehicle was scraped along the driver's side and dented on the driver's side front door. This damage is consistent with Ms. Vu entering the curb lane, slightly behind Ms. Pop's vehicle, and Ms. Vu's front bumper hitting Ms. Pop's driver's side front door.
- [35] For the damage to be consistent with Ms. Pop entering the centre lane, Ms. Pop's vehicle would have had to be farther ahead of Ms. Vu's vehicle in the curb lane and turning more sharply into the centre lane, cutting off Ms. Vu. The red light at the intersection required Ms. Pop to come to a stop before she turned right from Mountain Highway onto Lynn Valley Road. Given the short distance between the intersection and the collision site, and the angle of the intersection, I find that Ms. Pop did not accelerate to speed past Ms. Vu's vehicle and enter the centre lane.
- [36] I accept that I must be cautious in making inferences based on photographs of the vehicle damage: *Matharu v. Gill*, 2016 BCSC 624 at para. 13. However, my inferences based on the photographs are also consistent with the evidence of the intended destinations of both parties.
- [37] Second, both Ms. Vu and Ms. Pop were travelling to work at the time of the accident. To get to her workplace, Ms. Vu would have had to turn right onto Ross Road about ten seconds after she turned left from Mountain Highway onto Lynn Valley Road. Ms. Vu, therefore,

needed to switch into the curb lane fairly quickly to make her right turn onto Ross Road. To get to her workplace, Ms. Pop testified that she would turn right off of Lynn Valley Road some distance away from the intersection. There was no evidence that Ms. Pop would have needed to enter the centre lane for any reason. Therefore, Ms. Vu moving into the curb lane, rather than Ms. Pop moving into the centre lane, is more consistent with both parties' routes to work.

[38] While I generally find Ms. Vu to be a credible witness, given the other evidence in this case, I do not accept her testimony that she stayed in the centre lane. The evidence, as a whole, is more consistent with Ms. Vu entering the curb lane and the accident occurring in the curb lane. Therefore, I find that Ms. Pop did not enter the centre lane on Lynn Valley Road, but rather stayed lawfully in the curb lane and met her standard of care.

[39] I conclude that Ms. Vu has failed to prove on a balance of probabilities that Ms. Pop was negligent, and therefore she has failed to establish that Ms. Pop is liable to her.

Conclusion

[40] Accordingly, I dismiss the action.

"Choi J."

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