IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	:	APPEAL NO. C-060666 TRIAL NO. A-0503039
	:	*JUDGMENT ENTRY.*
Plaintiff-Appellee,	:	
vs.	:	
MAHLON J. LUND,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

On July 11, 2003, defendant-appellant Mahlon J. Lund was driving a Ford Ranger pick-up truck in the far right lane of southbound I-71 past the Dana Avenue entrance ramp. Plaintiff-appellee State Farm Mutual Automobile Insurance Company's ("State Farm") insured, Toshua McMillan, was driving her Dodge Neon in the lane immediately to Lund's left. Lund stated that an unidentified car had attempted to merge onto the expressway from Dana Avenue. Lund said that he had slowed down and then had sped up in an attempt to let the car merge, but the unidentified car had continued to travel at the same speed as Lund's truck. Lund stated that he had

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

activated his turn signal and had moved into the lane to his left, where he struck McMillan's vehicle. Lund said that he had not seen McMillan's car before he hit it.

State Farm filed a subrogation action to recover the amount it paid to McMillan for damages arising from the accident caused by Lund. By agreement of the parties, the only issue for trial was Lund's liability for negligence. After all the evidence had been presented and the parties had rested, the trial court indicated that it would "grant a directed verdict here, whether anybody asks for it or not." After the court indicated that a directed verdict would be granted, State Farm's counsel stated, "For the record, I do move for that directed verdict." The trial court journalized an entry granting the directed verdict for State Farm. Lund appeals.

The first assignment of error, which alleges that the trial court erred in directing a verdict in favor of State Farm because the court did not have the authority to sua sponte grant a directed verdict, is overruled. State Farm's counsel made a motion for a directed verdict, albeit after the trial court had indicted that it would grant one. Further, the trial court had the authority to sua sponte grant a directed verdict.[2]

The second assignment of error alleges that the trial court erred in directing a verdict in favor of State Farm on the evidence.

A directed verdict may be granted when the trial court determines that reasonable minds could come to but one conclusion.[3] "A motion for directed verdict * * * does not present factual issues, but a question of law, even though in deciding such a

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[2] See *Fiske v. U.S. Health Corp. of Southern Ohio*, 4th Dist. No. 04CA2942, 2005-Ohio-1295; *Steubenville v. Schmidt*, 7th Dist. No. 01 JE 13, 2002-Ohio-6894; *Miller v. Miller & Miller Accountants, Inc.* (Mar. 7, 2000), 5th Dist. No. 99CA18-2; *Graham v. Cedar Point, Inc.* (1997), 124 Ohio App.3d 730, 707 N.E.2d 554; *Palker v. Huntington National Bank* (Apr. 17, 1997), 8th Dist. No. 70975; *Gibbons v. Price* (1986), 33 Ohio App.3d 4, 514 N.E.2d 127.
[3] See *Groob v. Keybank*, 108 Ohio St.3d 348, 2006-Ohio-1189, 843 N.E.2d 1170.

motion, it is necessary to review and consider the evidence."[4] Because a question of law is presented, a de novo standard of review is applied in reviewing a directed verdict.[5]

The evidence showed that McMillan had been proceeding lawfully in her lane of traffic when Lund changed lanes and struck her car. Lund testified that there had been no emergency and that he had had options other than cutting into McMillan's lane in response to the unidentified car attempting to enter the expressway. Lund's excuse was that he did not see McMillan's car. Lund argues that a jury question was created by his statement during direct examination that he had felt the impact after he had returned to his lane of travel. We disagree. Lund testified that he had changed lanes and had struck McMillan's car because he did not see it. It is clear from a review of all the evidence that Lund failed to ensure that he could change lanes safely. We hold that the record supports the trial court's conclusion that reasonable minds could only find in favor of State Farm and against Lund. The second assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., HENDON and **WINKLER, JJ.**

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on July 25, 2007
per order of the Court _____.
Presiding Judge

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[4] See *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 95 Ohio St.3d 512, 2002-Ohio-2842, 769 N.E.2d 835, citing *O'Day v. Webb* (1972), 29 Ohio St.2d 215, 280 N.E.2d 896, paragraph three of the syllabus.

[5] See *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 76 Ohio St.3d 521, 1996-Ohio-298, 668 N.E.2d 889; *Cleveland Constr., Inc. v. Cincinnati*, 169 Ohio App.3d 627, 2006-Ohio-6452, 864 N.E.2d 116.