

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

SCOTT R. BALL	:	APPEAL NO. C-080988
and	:	TRIAL NO. A-0709495
JULIE BALL,	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs-Appellants,	:	
vs.	:	
NANCY R. JOHANNIGMAN,	:	
Defendant,	:	
and	:	
WALTER BUNKER,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Raising a single assignment of error, plaintiffs-appellants Scott R. Ball and his wife, Julie Ball, (“the Balls”) appeal from the trial court’s entry of summary judgment in favor of defendant-appellee Walter Bunker. The Balls had sought damages for severe injuries Scott Ball had sustained when a car driven by defendant Nancy R. Johannigman struck Ball while he was serving as a motorcycle escort for a funeral procession. The Balls

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

claimed that Bunker, who was driving a vehicle in the procession, was partially responsible for the accident because Bunker had signaled Johannigman that it was safe to proceed onto Observatory Avenue, where she struck Ball's motorcycle. We affirm the trial court's judgment.

The funeral procession was heading west on Observatory Avenue. While the procession was stopped, Ball traveled west in the oncoming, or eastbound lane of traffic, to regain his position at the head of the procession. At the same time, Johannigman attempted to turn from a side street, across the procession, and onto eastbound Observatory Avenue. Bunker allegedly waved Johannigman to proceed onto Observatory in front of his vehicle. But at that moment Ball entered the intersection, proceeding west in the eastbound lane. Ball's motorcycle struck the front of Johannigman's vehicle.

Bunker moved for summary judgment on the Balls' claims, asserting that he had not been negligent and that there was no evidence that Johannigman had relied on his signal as a message that the way was clear for her to proceed into the eastbound lane of Observatory Avenue. The trial court granted Bunker's motion, and the Balls' appeal followed.<sup>2</sup>

Summary judgment is proper when (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence viewed most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.<sup>3</sup>

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<sup>2</sup> Johannigman was dismissed from the lawsuit after the entry of summary judgment for Bunker.

<sup>3</sup> See Civ.R. 56(C); see, also, *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264.

The substantive law governing the Balls' claims identified the factual disputes that were potentially material and thus could have precluded summary judgment.<sup>4</sup> As the trial court noted in its well-reasoned written decision, in Ohio there are two views on the liability of a signaling driver. In *Brys v. Trumbull Cement Products*, the Eleventh Appellate District summarized these views.<sup>5</sup> It noted that the minority view, adopted by the Sixth Appellate District in *Duval v. Mears*,<sup>6</sup> "is that a 'signaling' driver's actions are merely yielding the right-of-way to the turning driver. Therefore, the signaling driver's liability terminates when the turning driver enters another lane."<sup>7</sup> Under this view "the signaler is not responsible for any accidents that might occur when the crossing motorist enters into a different lane."<sup>8</sup>

The majority view, adopted by the Second and Eleventh Appellate Districts, holds "that the signaling driver, in certain circumstances, may be liable under the theory that his gratuitous act equaled an assumption of a duty. The signaling driver only assumes the duty if his signal is reasonably viewed as an 'all clear' indication to the turning driver."<sup>9</sup> Thus, "[s]ummary judgment may be appropriate for the signaling driver if facts do not support an inference that the turning driver actually relied on the signal in proceeding outside the signaler's lane."<sup>10</sup>

When, as here, the party moving for summary judgment discharges its initial burden to identify the absence of genuine issues of material fact on an essential element of the nonmoving party's claims, the nonmoving party then has a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth

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<sup>4</sup> See *Gross v. Western-Southern Life Ins. Co.* (1993), 85 Ohio App.3d 662, 666-667, 621 N.E.2d 412, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 247-248, 106 S.Ct. 2505.

<sup>5</sup> 11th Dist. No. 2005-T-0057, 2006-Ohio-4941.

<sup>6</sup> See (1991), 77 Ohio App.3d 270, 602 N.E.2d 265.

<sup>7</sup> *Brys v. Trumbull Cement Prod.* at ¶32.

<sup>8</sup> *Isaacs v. Larkin Elec. Co.* (Sept. 4, 1998), 2nd Dist. No. 16948.

<sup>9</sup> *Brys v. Trumbull Cement Prod.* at ¶32, citing *Isaacs v. Larkin Elec. Co.*

<sup>10</sup> *Isaacs v. Larkin Elec. Co.* (citation omitted).

“specific facts,” by the means listed in Civ.R. 56(C) and 56(E), showing that triable issues of fact exist.<sup>11</sup>

Here, under either view, Bunker was entitled to summary judgment. Under the minority view, Bunker had no duty of care toward the Balls. Under the majority view, the Balls could escape summary judgment only if there was a genuine issue of material fact concerning whether Johannigman had actually relied on Bunker’s signal in proceeding into the eastbound lane. But in her deposition testimony, Johannigman stated that, prior to turning onto Observatory Avenue, she looked to her right, saw no oncoming, eastbound traffic, and assumed that it was safe to make a left turn. She stated that she had made her own decision to turn and that she had not interpreted Bunker’s signal as an indication that the way was clear to turn onto Observatory Avenue.

Because the Balls failed to establish under the majority view, that Johannigman had actually relied on Bunker’s signal, an essential element of their claims, summary judgment was properly entered against them. The 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.

**HENDON, P.J., CUNNINGHAM and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on September 23, 2009  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>11</sup> See *Dresher v. Burt*, 75 Ohio St.3d at 293, 1996-Ohio-107, 662 N.E.2d 264.