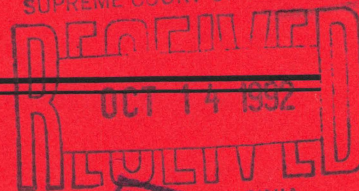
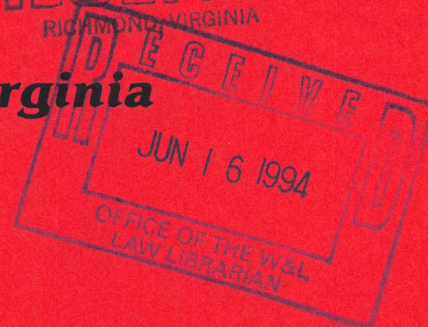


245 VA 135

CLERK
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA



IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 920696

TRISHA QUEEN CARSON, a minor who sues by and
through her mother and next friend,
Patricia C. Meredith,

Appellant,

V.

LINDA F. LEBLANC,

Appellee.

JOINT APPENDIX

Thomas L. Phillips, Jr.
PHILLIPS, PHILLIPS, PHILLIPS
& MORRISON
Irongate at Spring Hill
Route 4, Box 179-P
Rustburg, Virginia 24588
(804) 821-5022

Henry M. Sackett, III
EDMUNDS & WILLIAMS, P.C.
800 Main Street
P.O. Box 958
Lynchburg, Virginia 24505
(804) 846-9000

Counsel for Appellant

Counsel for Appellee

TABLE OF CONTENTS

	<u>Page</u>
1. MOTION FOR JUDGMENT, FILED OCTOBER 31, 1989.	1
2. REQUEST FOR ADMISSIONS OF LINDA F. LeBLANC AND RESPONSES, FILED DECEMBER 26, 1991.	8
3. MOTION FOR SUMMARY JUDGMENT OF LINDA F. LeBLANC, FILED JANUARY 8, 1992.	27
4. TRANSCRIPT OF HEARING (MOTION FOR SUMMARY JUDGMENT) BEFORE THE HONORABLE MOSBY G. PERROW, III ON 1-31-92 .	29
5. FINAL ORDER GRANTING MOTION FOR SUMMARY JUDGMENT, DATED FEBRUARY 26, 1992.	53
6. OPINION LETTER OF THE COURT, DATED FEBRUARY 11, 1992 .	55
7. ASSIGNMENT OF ERROR.	57

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

TRISHA QUEEN CARSON,
a minor who sues by and
through her mother and next
friend, Patricia C. Meredith,

Plaintiff

v.

MOTION FOR JUDGMENT

LINDA F. LEBLANC
3222 Rivermont Avenue
Lynchburg, VA 24503

and

JANE DOE, an unknown motorist
c/o Virginia Farm Bureau Mutual
Insurance Company
c/o Evelyn F. John, its Registered Agent
200 West Grace Street
Richmond, VA 23261,

Defendants

Please also serve:

Virginia Farm Bureau Mutual Insurance Company
c/o Evelyn F. John, its Registered Agent
200 West Grace Street
Richmond, VA 23261

TO THE HONORABLE JUDGES OF SAID COURT:

Comes now plaintiff, by counsel, to move the Circuit Court for the City of Lynchburg, Virginia, for judgment against defendants, jointly and severally, in the sum of ONE MILLION DOLLARS (\$1,000,000.00), with interest from October 8, 1987, by reason of the following facts:

1. Heretofore, to-wit: on the 8th day of October, 1987, at approximately 3:20 p.m., plaintiff was present in the City of Lynchburg, Virginia, in the vicinity of Holy Cross School, which school is situate on Langhorne Road.

2. At the time aforesaid, plaintiff and two other students attempted to cross Langhorne Road from the southernmost side, where Holy Cross School is located, to the northernmost side, where a Seven-Eleven convenience store is located, for the purpose of going to said Seven-Eleven convenience store.

3. At the time and place aforesaid, plaintiff and her two companions crossed the two eastbound lanes of Langhorne Road and paused near the center lines dividing the eastbound from westbound lanes of said highway in order to determine whether traffic conditions in the westbound lanes of Langhorne Road at the point aforesaid were such that they could proceed to cross the westbound lanes of Langhorne Road to reach the parking lot of the aforementioned Seven-Eleven store in reasonable safety.

4. At the time and place aforesaid, as plaintiff and her companions paused at or near the center lines separating the eastbound from westbound lanes of Langhorne Road as aforesaid, a vehicle being operated by defendant Jane Doe in the left-hand westbound lane of Langhorne Road stopped just east of the point where plaintiff and her companions were waiting for traffic to allow them to cross the westbound lanes of Langhorne Road in safety.

5. When the aforementioned vehicle being operated by Jane Doe came to a stop in the left-hand westbound lane of Langhorne Road, for the purpose of allowing the plaintiff and her companions to cross the street as aforesaid, plaintiff proceeded to attempt to cross the westbound lanes of Langhorne Road to reach the aforementioned Seven-Eleven store.

6. At the time aforesaid, defendant LeBlanc was operating her motor vehicle in a generally westerly direction on and along the left-hand westbound lane of Langhorne Road at a point just east of the point where the vehicle being operated by defendant Jane Doe had stopped in said lane for the purpose of allowing plaintiff and her companions to cross the westbound lanes of Langhorne Road as aforesaid, and was approaching the rear of the aforementioned stopped vehicle.

7. At the time and place aforesaid, defendant Jane Doe was negligent in that she:

(a) operated her motor vehicle in such a manner as to obstruct the smooth flow of traffic on and along the westbound lanes of Langhorne Road at the time and place aforesaid;

(b) operated her motor vehicle in such a way as to obstruct the view which plaintiff and her companions had of traffic approaching their position from the east on and along the westbound lanes of Langhorne Road; and

(c) operated her vehicle in such a manner as to obstruct the view which motorists approaching plaintiff and her companions from the east on and along the westbound lanes of Langhorne Road would have had of plaintiff and her companions as such approaching traffic moved closer to the spot where defendant Jane Doe's vehicle was stopped in the left-hand westbound lane of Langhorne Road.

8. At the time and place aforesaid, defendant LeBlanc was negligent in that she:

(a) exceeded a reasonable speed under circumstances and conditions then and there existing;

(b) failed to maintain a proper lookout;

(c) failed to keep her vehicle under proper control;

(d) changed lanes of travel without first giving a signal of her intention to make such a lane change for the statutorily required distance and without first ascertaining that such a lane change could be made without endangering other persons in the area where a change of lane was contemplated;

(e) failed to yield the right of way to a pedestrian then in the process of attempting to cross Langhorne Road on a path perpendicular to the main traveled portion of Langhorne Road at the point the pedestrian was crossing; and

(f) attempted to pass a motor vehicle proceeding in the same lane and direction as her own without giving an audible signal by sounding her horn.

9. At the time and place aforesaid, as a direct and proximate result of the concurrent negligence of defendants LeBlanc and Doe as aforesaid, as plaintiff attempted to cross the right-hand westbound lane of Langhorne Road to reach the aforementioned Seven-Eleven store, defendant LeBlanc suddenly moved from the left-hand westbound lane of Langhorne Road, which was blocked by the vehicle being operated by defendant Jane Doe which had stopped to allow plaintiff and her companions to cross as aforesaid, to the right-hand westbound lane of Langhorne Road and passed the stopped vehicle on the right as plaintiff attempted to cross the right-hand westbound lane of Langhorne

Road, with the result that defendant LeBlanc's vehicle struck plaintiff as she attempted to cross the said right-hand westbound lane of Langhorne Road at the time and place aforesaid with great force and violence.

10. As a direct and proximate result of the aforementioned automobile-pedestrian collision, directly and proximately caused by the concurrent negligence of defendants LeBlanc and Doe as aforesaid, plaintiff suffered severe and permanent personal injuries.

11. In an effort to be healed and cured of the injuries suffered as aforesaid, plaintiff has incurred substantial medical expense to date and probably will incur additional medical expense in the future.

12. As a direct and proximate result of the injuries suffered as aforesaid, plaintiff's earning capacity has been permanently impaired.

13. As a direct and proximate result of the injuries suffered as aforesaid, plaintiff has been forced to restrict her activities, with a consequent deprivation of a number of the joys and satisfactions of life, and probably will be forced to continue to restrict her activities in the future, with further such consequent deprivation of joys and satisfactions of life.

14. As a direct and proximate result of the aforesaid collision, plaintiff has experienced great mental anguish, emotional distress, embarrassment and humiliation by reason of her physical disfigurement and mental disability and probably

will experience additional such mental anguish, emotional distress, embarrassment and humiliation for the rest of her life.

15. As a direct and proximate result of the injuries suffered as aforesaid, plaintiff has experienced great physical pain and suffering and great mental anguish to date and probably will experience additional pain, suffering and mental anguish in the future.

16. As a direct and proximate result of the injuries suffered as aforesaid, plaintiff has been rendered more susceptible to disease, including, without limitation, arthritis and post-traumatic epilepsy.

17. Defendant Jane Doe is an unknown motorist and, therefore, is an uninsured motorist as that term is defined by the Code of Virginia, 1950, as amended. At the time of the incident referred to hereinabove, plaintiff was covered by the uninsured motorist provisions of a certain policy or policies of automobile liability insurance previously issued to her mother, P. Q. Meredith, and her stepfather, General William T. Meredith, by Virginia Farm Bureau Mutual Insurance Company, a circumstance which plaintiff believes and affirmatively alleges makes appropriate service of a copy of this Motion for Judgment upon defendant Jane Doe c/o that company.

18. If for any reason defendant LeBlanc should be determined to be an uninsured or underinsured motorist as those terms are defined by the Code of Virginia, 1950, as amended, at the time of the incident referred to hereinabove plaintiff was covered by the uninsured and underinsured motorist provisions of

a certain policy of automobile liability insurance previously issued to her mother, P. Q. Meredith, and her stepfather, General William T. Meredith, by Virginia Farm Bureau Mutual Insurance Company, a circumstance which plaintiff believes and affirmatively alleges makes appropriate service of a copy of this Motion for Judgment upon that company c/o its registered agent for service of process in Virginia.

WHEREFORE, plaintiff, by counsel, moves the Circuit Court for the City of Lynchburg, Virginia, for judgment against defendants, jointly and severally, in the sum of ONE MILLION DOLLARS (\$1,000,000.00), with interest from October 8, 1987.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

TRISHA QUEEN CARSON
a minor who sues by and
through her mother and next
friend, Patricia C. Meredith

By


Of Counsel

Thomas L. Phillips, p.q.
PHILLIPS, PHILLIPS & PHILLIPS
Irongate at Spring Hill
Route 3, Box 179-P
Rustburg, VA 24588

FILED IN CLERK'S OFFICE
31st October 1989
25.00
4.00
100.00
129.00
K. F. Lindsey, Clerk
D. C.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG.

TRISHA QUEEN CARSON, a minor who
sues by and through her mother
and next friend, Patricia Meredith,

Plaintiff,

v.

LINDA F. LEBLANC
and
JANE DOE,

Defendants.

REQUESTS FOR ADMISSION
Case No. 14844

The defendant, Linda F. LeBlanc, by counsel, pursuant to the provisions of Rule 4:11 of the Rules of the Supreme Court of Virginia, hereby requests that the plaintiff admit the following:

1. That the accident out of which this law suit arises occurred on Thursday, October 8, 1987, at approximately 3:20 p.m.

RESPONSE - Admitted

2. That the accident out of which this law suit arises occurred on Langhorne Road in the City of Lynchburg, Virginia, at a point approximately 240 feet west of the intersection of Langhorne Road with Tate Springs Road.

RESPONSE - Admitted

3. That at the point on Langhorne Road where the accident out of which this law suit arises occurred, Langhorne Road proceeds in a general east-west direction and consists of two eastbound lanes divided by a broken white line, two westbound lanes, divided by a broken white line, with the eastbound lanes being separated from the westbound lanes by a double solid yellow line.

RESPONSE - Admitted

4. That at the time of the accident in question, the plaintiff was not crossing at an intersection.

RESPONSE - Admitted

5. That at the time of the accident in question, the plaintiff was not crossing in a marked pedestrian cross-walk.

RESPONSE - Admitted

6. That at the time of the accident in question, the plaintiff was not crossing at a traffic light.

RESPONSE - Admitted

7. That at the time of the accident in question, the plaintiff was not crossing in the lateral prolongation of sidewalk lines.

RESPONSE - Admitted

8. That the plaintiff was born on September 23, 1972, and was 15 years of age at the time of the accident out of which this law suit arises.

RESPONSE - Admitted

9. That at the time of the accident out of which this law suit arises occurred, the plaintiff was a 10th grade student at Lynchburg Christian Academy.

RESPONSE - Admitted

10. That at the time of the accident out of which this law suit arises the weather was clear and the road surface was dry.

RESPONSE - Admitted

11. That shortly before the subject accident occurred, the plaintiff and the other members of the Lynchburg Christian Academy volleyball team had arrived at Holy Cross Regional School.

RESPONSE - Admitted

12. That just before the subject accident occurred the plaintiff and her teammates, Sherri Hall and Karla Jennings, attempted to cross Langhorne Road from south to north.

RESPONSE - Admitted

13. That as the plaintiff attempted to cross Langhorne Road she was not carrying anything in her hands.

RESPONSE - Admitted

14. That the plaintiff's purpose in crossing Langhorne Road was to go to the 7-Eleven Store that was located on the north side of Langhorne Road.

RESPONSE - Admitted

15. That the plaintiff and her two teammates started across Langhorne Road from a point slightly west of the eastern most entrance to Holy Cross Regional School.

RESPONSE - Admitted

16. That the plaintiff and her two teammates crossed the two eastbound lanes of Langhorne Road and stopped approximately on the double solid yellow line dividing the eastbound lanes of Langhorne Road from the westbound lanes of Langhorne Road.

RESPONSE - Admitted

17. When the plaintiff and her two teammates stopped on the double solid yellow line, they were standing side by side, with Sherri Hall standing on the right (west) side, Karla Jennings standing in the middle and the plaintiff standing the left (west) side.

RESPONSE - Admitted

18. That a westbound vehicle, the driver of which has been sued in this action as "Jane Doe", stopped in the left hand

westbound lane approximately 10 feet from the point where the plaintiff was standing.

RESPONSE - Admitted

19. That the "Jane Doe" vehicle did not obstruct the plaintiff's view of westbound traffic in either the left hand westbound lane or the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

20. That the plaintiff remembers starting to cross the left hand westbound lane of Langhorne Road in front of the Jane Doe vehicle, but does not recall completing her crossing of the left hand westbound lane or of being struck by the defendant's vehicle.

RESPONSE - Admitted

21. That the plaintiff looked to her right as she started across the left hand westbound lane of Langhorne Road.

RESPONSE - Admitted

22. When the plaintiff looked to her right, she did not see any approaching traffic at all in the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

23. When the plaintiff looked to her right she saw two vehicles stopped behind the Jane Doe vehicle in the left hand westbound lane of Langhorne Road and one or two other vehicles travelling westbound in the left hand westbound lane of Langhorne Road approximately opposite Doyle's Florist.

RESPONSE - Admitted

24. That the plaintiff never saw the vehicle operated by the defendant LeBlanc before the accident occurred.

RESPONSE - Due to her lack of memory, the plaintiff has insufficient knowledge to admit or deny this request and therefore denies the same

25. That the plaintiff has no memory of seeing the vehicle operated by the defendant LeBlanc before the accident occurred.

RESPONSE - Admitted

26. That the plaintiff did not see any westbound vehicle in the right hand westbound lane of Langhorne Road before the accident occurred.

RESPONSE - Denied. Plaintiff has no memory of the events immediately preceding her being struck and therefore lacks sufficient information to admit or deny the request.

27. That the plaintiff has no memory of seeing any westbound vehicle in the right hand westbound lane of Langhorne Road before the accident occurred.

RESPONSE - Admitted

28. That the accident in which the plaintiff was injured occurred in the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

29. That at the time of the accident in which the plaintiff was injured, the defendant LeBlanc was operating a 1984 Oldsmobile.

RESPONSE - Admitted

30. That at the time of the accident in which the plaintiff was injured, the defendant was operating her vehicle in a westerly direction in the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

31. That the vehicle operated by the defendant LeBlanc was in the right hand westbound lane of Langhorne Road continuously from a point no closer to the accident scene than approximately opposite Doyle's Florist until the accident occurred.

RESPONSE - Denied. According to Officer Paul R. Adams, the LeBlanc vehicle entered the right-hand, westbound lane approximately at the westernmost edge of the Doyle's Florist lot.

32. That the vehicle operated by the defendant LeBlanc was travelling in a westerly direction continuously in the right hand westbound lane of Langhorne Road for a distance of at least 300 feet leading up to the point where the accident occurred.

RESPONSE - Due to her lack of memory, the plaintiff lacks sufficient information to admit or deny this request and therefore denies the same.

33. That the plaintiff has no evidence that the vehicle operated by the defendant LeBlanc was not travelling in a westerly direction continuously in the right hand westbound lane of

Langhorne Road for a distance of at least 300 feet leading up to the point where the accident occurred.

RESPONSE - Admitted

34. That the witness, Sherri Hall, has testified in her deposition that she looked to her right from the point at which she was stopped approximately on the double solid yellow line and saw more than one vehicle approaching in the right hand westbound lane.

RESPONSE - Admitted

35. That the witness, Sherri Hall, has testified in her deposition that after seeing the traffic approaching in the right hand westbound lane of Langhorne Road, she decided to stay where she was and not to attempt to cross further.

RESPONSE - Admitted

36. That the witness, Sherri Hall, has testified in her deposition that one of the vehicles she saw approaching in the right hand westbound lane of Langhorne Road was the vehicle that struck the plaintiff.

RESPONSE - Denied. At page 12, Hall testified she could not say whether one of the cars she saw was the car that hit Trisha, although at page 14 she conceded it must have been one of the cars in the first clump she saw approaching.

37. That at the trial of this case the witness, Sherri Hall, is expected to testify with regard to her lookout essentially as outlined in Requests 34, 35 and 36.

Admitted

38. That the plaintiff has no evidence to contradict the anticipated testimony of the witness Sherri Hall as outlined in Requests 34, 35 and 36.

RESPONSE - Admitted

39. That the witness, Carla Jennings, has testified in her deposition that she looked to her right from the point at which she was stopped approximately on the double solid yellow line and saw traffic approaching in the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

40. That the witness, Carla Jennings, has testified in her deposition that after seeing the traffic approaching in the right hand westbound lane of Langhorne Road, she decided to stay where she was and not to attempt to cross further.

RESPONSE - Admitted

41. That the witness, Carla Jennings, has testified in her deposition that one of the vehicles she saw approaching in the right hand westbound lane of Langhorne Road was the vehicle that struck the plaintiff.

RESPONSE - Admitted

42. That at the trial of this case the witness, Carla Jennings, is expected to testify with regard to her lookout essentially as outlined in Requests 39, 40 and 41.

RESPONSE - Admitted

43. That the plaintiff has no evidence to contradict the anticipated testimony of the witness Carla Jennings as outlined in Requests 39, 40 and 41.

RESPONSE - Admitted

44. That just before the subject accident occurred the plaintiff attempted to run across the right hand westbound lane of Langhorne Road.

RESPONSE - Due to her lack of memory, the plaintiff lacks sufficient information to admit or deny this request, and therefore denies the same.

45. That the plaintiff has no evidence to contradict the testimony of other witnesses that she attempted to run across the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

46. That the point of initial impact between the plaintiff's body and the vehicle operated by the defendant LeBlanc was on the left front fender of the LeBlanc vehicle.

RESPONSE - Admitted

47. That the plaintiff has no evidence that any portion of the front of the defendant's vehicle struck the plaintiff.

RESPONSE - Admitted

48. That at the time the plaintiff attempted to cross the right hand westbound lane of Langhorne Road the vehicle operated by the defendant LeBlanc was travelling in a westerly direction in the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

49. That the plaintiff has no evidence to contradict the testimony of the defendant that her vehicle was travelling in a westerly direction in the right hand westbound lane of Langhorne Road at the time the plaintiff attempted to cross that lane of travel.

RESPONSE - Admitted

50. That at the time the plaintiff attempted to cross the right hand westbound lane of Langhorne Road the vehicle operated by the witness, Paul Adams, was travelling in a westerly direction in the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

51. That the plaintiff has no evidence to contradict the testimony of the witness, Paul Adams, that at the time the plaintiff attempted to cross the right hand westbound lane of Langhorne Road, the vehicle he was driving was travelling in a westerly direction in the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

52. That at the time the plaintiff attempted to cross the right hand westbound lane of Langhorne Road the vehicle

operated by the witness, William Siegel, was travelling in a westerly direction in the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

53. That the plaintiff has no evidence to contradict the testimony of the witness, William Siegel, that at the time the plaintiff attempted to cross the right hand westbound lane of Langhorne Road, the vehicle he was driving was travelling in a westerly direction in the right hand westbound lane of Langhorne Road.

RESPONSE - Admitted

54. That there was nothing to have prevented the plaintiff from making the same observation of traffic approaching in the right hand westbound lane of Langhorne Road that was made by the witnesses, Sherri Hall and Carla Jennings.

RESPONSE - Denied. The plaintiff's angle of view was different, and her view was blocked by Hall and Jennings.

55. That the transcript of the deposition of Trisha Queen Carson taken on November 12, 1990, is a true and accurate transcription of the testimony given by Trisha Queen Carson in her deposition.

RESPONSE - Admitted

56. That on the facts relating to the liability issue in this case, the testimony of the plaintiff at the trial of this case will be substantially the same as that contained in her deposition taken on November 12, 1990.

RESPONSE - Admitted

57. That the transcript of the deposition of Carla Jennings taken on November 30, 1990, is a true and accurate

transcription of the testimony given by Carla Jennings in her deposition.

RESPONSE - Admitted

58. That the plaintiff has no reason to believe that the testimony of Carla Jennings at the trial of this case will be substantially different from that contained in her deposition taken on November 30, 1990.

RESPONSE - Admitted

59. That the plaintiff has no reason to believe that the testimony of Sherri Hall at the trial of this case will be substantially different from that contained in her deposition taken on November 30, 1990.

RESPONSE - Admitted

60. That the plaintiff has no reason to believe that the testimony of Paul Adams at the trial of this case will be substantially different from that contained in his deposition taken on November 30, 1990.

RESPONSE - Admitted

61. That the plaintiff has no reason to believe that the testimony of William L. Siegel at the trial of this case will be substantially different from that contained in his deposition taken on November 30, 1990.

RESPONSE - Admitted

62. That the plaintiff has no reason to believe that the testimony of Judith Siegel at the trial of this case will be substantially different from that contained in her deposition taken on November 30, 1990.

RESPONSE - Admitted

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG.

TRISHA QUEEN CARSON, a minor who
sues by and through her mother
and next friend, Patricia Meredith,

Plaintiff,

v.

LINDA F. LEBLANC
and
JANE DOE,

Defendants.

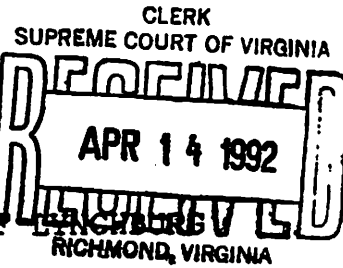
MOTION FOR SUMMARY JUDGMENT
Case No. 14844

The defendant, Linda F. LeBlanc, by counsel, pursuant to the provisions of Rule 3:18 of the Rules of the Supreme Court of Virginia, hereby moves this Court for the entry of Summary Judgment in her favor and in support thereof states the following:

1. The plaintiff has responded to defendant's requests for admission, a copy of which responses is filed with this Motion for Summary Judgment.

2. There are no material facts genuinely in dispute with regard to the question whether the plaintiff was guilty of contributory negligence.

920696



1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG
3 -----
4

5 TRISHA QUEEN CARSON, a minor, who
6 sues by and through her mother and
7 next friend, Patricia O. Meridith,

8 Plaintiff,

9 v.

10 LINDA F. LEBLANC

11 and

12 JANE DOE,

13 Defendants.
14 -----
15
16
17
18
19
20

21 THE HONORABLE MOSBY G. PERROW, III, ESQUIRE
22 (Motion for Summary Judgment)

23 Lynchburg, Virginia
24 January 31, 1992

25 FILED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG, VIRGINIA
26 3-19-92 S. J. H. M.

27 BY _____ J. W. _____ Dep. Clerk
28 * * * * *

29 BRENDIA B. ALGER
Court Reporter
P. O. Box 956
Lynchburg, Virginia 24505

(804) 929-4312

1 **APPEARANCES:**

2
3 THOMAS L. PHILLIPS, JR., ESQUIRE
4 THOMAS L. PHILLIPS, SR., ESQUIRE
5 Irongate at Spring Hill
6 Rustburg, Virginia 24588
7 Representing the Plaintiff

8
9 HENRY M. SACKETT, III, ESQUIRE
10 800 Main Street, Suite 400
11 Lynchburg, Virginia 24504
12 Representing the Defendant (Leblanc)

13
14 JOHN T. COOK, ESQUIRE
15 2306 Atherholt Road
16 Lynchburg, Virginia 24501
17 Representing the Defendant (Doe)
18
19
20
21
22
23
24
25

1 MR. SACKETT: Do you have any objection to using
2 the accident scene diagram to illustrate?

3 MR. PHILLIPS, JR.: I think it would be helpful
4 to illustrate.

5 MR. SACKETT: I do, too. I don't know whether
6 you've got a clean one or not. This one is a deposition
7 exhibit. You don't have any problem with that?

8 MR. PHILLIPS, JR.: No.

9 MR. SACKETT: The accident is right here,
10 roughly (indicating).

11 THE COURT: I've read your Request for
12 Admissions and your briefs.

13 MR. SACKETT: Your Honor, I'll go through the
14 facts briefly if that'll, I mean if you --

15 THE COURT: I just read them last night. Mr.
16 Sackett, I feel like I'm familiar with the facts, but you
17 can highlight anything you feel --

18 MR. SACKETT: I will. I think maybe it'll help
19 just to show you on this diagram. I know you're very
20 familiar with the area, but the place where this accident
21 happened was right across from Holy Cross School and these
22 girls, the three girls, were crossing approximately at
23 this point (indicating), just on the western edge of the
24 eastern most entrance or exit from Holy Cross, with the
25 intent of going across the road, which at that point would

1 be directly onto the Jefferson Savings lot, and then going
2 down to the 7-Eleven, which is the adjoining commercial
3 establishment, to make a purchase.

4 The defendant, Leblanc, and this is just by way
5 of background, it's not part of the evidence that's before
6 you for the motion, but she had come from the Photo USA
7 place, which is further west on Langhorne Road, and was
8 proceeding west on Langhorne Road in the right-hand
9 westbound lane and I think the evidence is that she was in
10 that lane for at least 300 ft. and --

11 THE COURT: About where Doyle's is?

12 MR. SACKETT: Yeah, Doyle's, and that scales out
13 on this diagram to be over 100 yards from where the
14 accident occurred. The three girls crossed to the center
15 double-solid line and stopped. Jane Doe, which is a
16 vehicle westbound in the left-hand westbound lane, stops
17 when they get to this point, stops in the left-hand
18 westbound lane. The three girls look; two of them see the
19 westbound traffic, which at that point LeBlanc is No. 1,
20 Adams is No. 2 and Siegel is No. 3. The three vehicles
21 are in that order. Adams is a plain clothes Lynchburg
22 Police officer. Siegel is the trainer at E. C. Glass High
23 School and had his wife in the car with them. Leblanc has
24 a child or children in the car with her.

25 They are westbound in the right-hand westbound

1 lane and it's admitted that that's where they were at the
2 time the plaintiff attempted to cross the right-hand
3 westbound lane. The three girls stopped right here
4 (indicating) side by side, one, two, three and the
5 plaintiff is the western most of the three. The other two
6 girls are to her right. The girls look; two of them see
7 the approaching Leblanc and other vehicles; the plaintiff
8 does not. She admits that the Jane Doe vehicle didn't
9 obstruct her vision. She does not admit that the other
10 two girls didn't obstruct her vision. These two girls,
11 the two girls to her right, saw the approaching traffic;
12 she did not.

13 She has no memory, and admits she has no memory
14 of ever seeing it. She admits that as she started across
15 the left-hand westbound lane, she looked and didn't see
16 anything, Leblanc, Adams, Siegel or anything else, in the
17 right-hand westbound lane, which was obviously there. She
18 continues on and actually runs into the left front side,
19 left front fender of the Leblanc vehicle, from which I
20 think it's clear that vehicle was almost on top of her
21 when she entered the right-hand westbound lane. It was so
22 close that she never got an opportunity to get in front of
23 it. She actually struck the side of the Leblanc vehicle
24 and actually ran into the vehicle.

25 So what we submit is the case here is that the

1 plaintiff either looked and failed to see what had to be
2 there or she didn't look. She either had a clear view and
3 should have seen what the other two girls saw, or if her
4 view was in anyway obstructed by the two girls or anything
5 else, she should not have attempted to enter or cross that
6 right-hand westbound lane until she could see whether it
7 was clear, because it obviously was not. She didn't see
8 what the other two girls saw, which was there to be seen.

9 We've cited three cases, three or four cases, in
10 our brief that are not by any means all-inclusive other
11 than opinions of the Virginia Supreme Court that hold a
12 pedestrian guilty of contributory negligence as a matter
13 of law under similar facts are legion. There are a large
14 number of them.

15 THE COURT: Do you have one with a 15-year old?

16 MR. SACKETT: I don't have one with a 15-year
17 old. I've got one in which -- It's not cited in the
18 brief. There's a case in which the Supreme Court held a
19 10-year old guilty of contributory negligence as a matter
20 of law. That case is Norfolk & Portsmouth Railroad
21 Company versus Barker, 221 Va. 924.

22 THE COURT: Is that a Buena Vista case?

23 MR. SACKETT: That's Chesapeake.

24 THE COURT: Oh, okay.

25 MR. SACKETT: And this was a 10-year old who

1 Jumped on a train and the Supreme Court held the 10-year
2 old, in whose favor there's a presumption that he's not
3 capable of negligence, they held him guilty of
4 contributory negligence as a matter of law.

5 We are in a situation with a 15-year old, who
6 has no presumption in her favor, who is held basically to
7 an adult standard, but measured by what others her age
8 would do, what would be reasonable for them. We've in
9 fact got that measure. There were two others her age with
10 her --

11 THE COURT: That's right.

12 MR. SACKETT: -- who were standing beside her
13 and looked and saw and made the right judgment and stayed
14 where they were. So it's our position that the age of the
15 plaintiff is not a factor that precludes the Court from
16 entering summary judgment or from finding her guilty of
17 contributory negligence as a matter of law. I think the
18 opinions of the Supreme Court are clear, that the
19 pedestrian has these duties, that she as a 15-year old
20 pedestrian has the duty to look.

21 She's got the duty to see and heed what's there
22 and if she looks at a time when she can't see, then she's
23 got a duty to get a good look before she starts across,
24 and she did one or the other. She either didn't look --
25 She did one of three things. She either didn't look, she

1 looked and didn't see what was obvious, or she looked from
2 a position where her view was blocked by something that
3 she could have gotten clear of.

4 Obviously, at some point before she entered the
5 right-hand lane all she had to do was stop and look up
6 that lane. At that point there could have been nothing to
7 keep her from seeing what was there and that's what she
8 didn't do, and I submit that under these facts she's
9 guilty of contributory negligence as a matter of law.

10 THE COURT: Mr. Phillips?

11 MR. PHILLIPS, JR.: Judge, in response, the
12 first thing I'd --

13 THE COURT: Let me ask you one thing, Mr.
14 Phillips. You shouldn't open your statement of the case
15 with a sweeping no legal theory exists and no evidence
16 could be produced. That's not the test on summary
17 judgment, is it?

18 MR. PHILLIPS, JR.: Judge, it would not be the
19 test, I don't think, if the Court had heard all of the
20 evidence, but the Court is not hearing all the evidence in
21 this case.

22 THE COURT: But I'm hearing motion on undisputed
23 facts.

24 MR. PHILLIPS, JR.: You are, but, Judge, the
25 reason that I think that standard applies is because if we

1 were not in the Massie versus Firmstone situation, because
2 the plaintiff can't remember what happened at the crucial
3 time. If, in fact, the plaintiff is bound by testimony
4 that has been presented by the plaintiff himself or
5 herself, then there couldn't, because the plaintiff can
6 rise no higher than that testimony, then the Court could
7 review that testimony and say that there can be no factual
8 question.

9 In this case --

10 THE COURT: Well, I'm not even sure that's true
11 anymore under Massie. You can produce other witnesses
12 that can get you to the Jury.

13 MR. PHILLIPS, JR.: In this case, and the reason
14 that I opened with that statement is we do not have a
15 situation where the plaintiff is bound by the testimony of
16 any of these witnesses.

17 THE COURT: But don't we have undisputed facts
18 as to --

19 MR. PHILLIPS, JR.: Well, no, sir, we don't --

20 THE COURT: -- what happened up to the point of
21 the accident except for her ability to see?

22 MR. PHILLIPS, JR.: Judge, I'm not sure we do.
23 What we have is we have a number of --

24 THE COURT: It is disputed?

25 MR. PHILLIPS, JR.: Well, in the first place,

1 the posture that we are in is the reason that I made the
2 argument. We are not here with the stipulated agreement
3 to use all of the depositions from all of the witnesses.
4 There are a number of identified witnesses who have been
5 deposed and what we are here on is on the Response to
6 Request for Admission, which focus on the testimony of
7 several of those witnesses.

8 THE COURT: Are you saying that if on the
9 morning of trial if your answers to those Request for
10 Admissions are unchanged, then it's a different matter?

11 MR. PHILLIPS, JR.: No, sir. I'm saying that
12 when the plaintiff rests, if there's no evidence in
13 conflict with those Responses to Request for Admission,
14 then the Court could consider it at that time as you would
15 a Motion for Summary Judgment where there was an agreement
16 you could use all the evidence. But until the plaintiff
17 rests and until the Court has heard all of the evidence
18 and the plaintiff is free to pick and choose, and in fact
19 the Court would be obligated to accept all of the evidence
20 that you've heard in the light most favorable to the
21 plaintiff and granting all fair inferences thereon in
22 deciding whether or not to strike the plaintiff's
23 evidence, and that at that time, then the Court could
24 consider this motion and you would apply a more
25 restrictive standard, but now --

1 THE COURT: What's your response to that, Mr.
2 Sackett?

3 MR. SACKETT: Well, Your Honor, my response
4 first of all is that we may well be in a Massie versus
5 Firmstone situation, granted the plaintiff does not
6 remember what happened at the instant of impact, but she
7 does remember what happened at the times at which the duty
8 to look and see attached. That's the time when she starts
9 moving into the traffic lanes. She does remember that.
10 She does admit that she looked. She does admit that she
11 saw nothing at all in the right-hand westbound lane at a
12 time when she also admits that there were cars there to be
13 seen and a time at which the two people who are then
14 behind her, who could not then be obstructing her view at
15 all, have already seen the approaching car and made the
16 judgment that they shouldn't try to proceed.

17 So while she does not have a memory of the
18 actual moment of impact, she remembers right up to the
19 instant before it. She remembers being in that left-hand
20 westbound lane, starting across it. She remembers looking
21 at that time and admits that she saw nothing. Now I
22 submit that is a Massie versus Firmstone situation. She
23 certainly cannot come into Court and contend that there
24 were vehicles, that her own observation was wrong, that
25 she has made an observation of a fact within her ability

1 to observe, and she says, "I didn't see anything." Well,
2 the evidence is that there was something there to be seen.
3 I think she's bound by her admission that she didn't see
4 what was there to be seen.

5 THE COURT: I'm sorry. Mr. Phillips?

6 MR. PHILLIPS, JR.: Judge, if I could respond to
7 that briefly?

8 THE COURT: You can respond to everything.

9 MR. PHILLIPS, JR.: That goes back to the
10 problem that we have because of the posture of this case.
11 There was a Request for Admission that Jane Doe's car did
12 not obstruct the plaintiff's vision as she looked back to
13 the east and that was admitted, but there's no reference
14 in there to the testimony that has come up on deposition
15 and could come up at trial, and certainly we anticipate
16 coming up at trial, that there were a number of vehicles
17 stopped behind Jane Doe, including a large truck, and
18 there was no request whether those obstructed her vision
19 or whether her vision was obstructed by anything else.

20 Mr. Sackett says by the time she reached the
21 left-hand westbound lane there would have been no
22 obstruction in front of her. We don't know of any
23 obstruction that would have been there at that point, but
24 there's evidence from which the Jury could conclude that
25 her two friends had each stepped forward into the lane

1 that she was crossing in order to look down the line of
2 traffic and there's evidence from which the Jury could
3 infer that the girl closest to the east stepped out and
4 leaned over, the second girl stepped out further and
5 leaned over, and Trisha Carson moved even further still.

6 There's evidence from which the Jury could
7 conclude that what actually carried her into the lane
8 where the impact occurred was her momentum. There'll be
9 testimony from Investigator Adams and other witnesses,
10 potentially, that she was moving forward, appeared to
11 attempt to stop, went down from the force of her momentum
12 and as her body went forward as she tried to stop, that's
13 when the impact occurred.

14 So there's substantial questions based on the
15 factual posture of the case, that other facts could come
16 in from which the Jury could decide in favor of the
17 plaintiff. As far as the legal arguments go, we've
18 already talked about the Massie versus Firmstone rule, and
19 here I have to tell the Court in all candor, it cuts both
20 ways. I do believe that the Massie versus Firmstone rule
21 applies to Mr. Cook's client, because my client remembered
22 looking and seeing Mr. Cook's client giving a hand
23 gesture, but she remembered and she told Mr. Cook in her
24 deposition that she was not relying on that gesture as
25 telling her that the right-hand westbound lane was clear,

1 only that Jane Doe was going to wait until she crossed the
2 left-hand westbound lane. Then her memory stops because
3 she suffers from retrograde amnesia.

4 But given that admission and given that being a
5 fact she remembers, I don't see how I can distinguish this
6 case as far as Jane Doe is concerned from Coefield versus
7 Nuckles, a Virginia Supreme Court decision, 239 Va. 186.

8 THE COURT: Is that not cited in here?

9 MR. PHILLIPS, JR.: It was not cited in the
10 brief. And, Judge, the interesting thing about Coefield
11 is that it is almost precisely on all fours with this
12 case, not only as far as it applies to Mr. Cook's client,
13 Jane Doe, but also as far as it applies to Mr. Sackett's
14 client. I call the Court's attention to the words of the
15 Supreme Court on page 189 and 190 of the opinion, and it
16 was interesting that on page 190 as the Supreme Court
17 recites the argument, they start out saying, "Coefield
18 also contends that Nuckles was negligent as a matter of
19 law for failure to keep a proper lookout. Coefield points
20 to the principle that if a pedestrian crosses a busy
21 street 'without looking or if looking fails to see or heed
22 traffic that is obvious and in dangerous proximity and
23 continues on into its path,' he is guilty of negligence as
24 a matter of law."

25 That's precisely the argument made by Mr.

1 Sackett's client in this case and, in fact, it cites one
2 of the same cases as authority. In this case, however,
3 the evidence was that there was a van stopped in the lane
4 that Nuckles crossed immediately before he reached the
5 lane where he was struck and Nuckles' testimony was that
6 he "slowed down to a slow gait to look to my right, but I
7 never got to look." He was struck immediately upon
8 entering the right-hand westbound lane and the Court held
9 that that was a Jury issue. "That when there's a claim of
10 an obstruction of vision and whether you, in fact, are
11 using reasonable care in proceeding into the street and
12 you enter the lane and then are struck, whether you're
13 guilty of negligence is for the Jury."

14 Now the significant difference in that case is
15 that Mr. Nuckles was an adult. Here we have a Grant
16 versus Mays situation, where not only do we have a
17 situation where the Jury could find, based on the evidence
18 interpreted in the light most favorable to the plaintiff,
19 that her vision was obstructed until she was too late, too
20 far committed to stop, but we also have a 15-year old
21 child rather than an adult. And surely if, in fact, it
22 was a Jury in the case of Mr. Nuckles, it would also be a
23 Jury issue in the case of this 15-year old child.

24 And we would respectfully submit that the
25 Coefield case is dispositive of both of these Motions for

1 Summary Judgment. I have to concede that it appears to me
2 to be dispositive also in Mr. Cook's argument.

3 THE COURT: Would the van in Coefield be in the
4 same position as Jane Doe in this case?

5 MR. PHILLIPS, JR.: Judge, I believe that's
6 true. The evidence was that the van was close to Mr.
7 Nuckles and he was, in fact, trying to cross directly in
8 front of the van.

9 THE COURT: And you've answered the Request for
10 Admission saying that Jane Doe didn't obstruct her vision?

11 MR. PHILLIPS, JR.: Because, Judge, the Jane Doe
12 vehicle was a small vehicle, it's our belief that a Jury
13 could find, and it'll be out argument, that the
14 obstruction of her vision was not by Jane Doe, but by the
15 line of traffic stopped by Jane Doe and also --

16 THE COURT: Did you articulate that in your
17 Response to the Request for Admissions?

18 MR. PHILLIPS, JR.: Judge, I believe that we
19 indicated -- The only request that was there was did Jane
20 Doe's vehicle, and we in all candor have to say it was a
21 small vehicle; it would not have obstructed. But, surely,
22 we did say that we believe that her vision was obstructed
23 by the stopped traffic and also by her companions, and in
24 a case where there's a claim for obstructed vision, then
25 it would be for the Jury to decide whether or not the

1 plaintiff exercised reasonable care.

2 Mr. Sackett's already admitted a pedestrian case
3 would convert the pedestrian into an insurer, because if
4 the argument he makes is correct, if either you should
5 have seen it but you didn't or you should have looked and
6 you didn't or you saw it and you went ahead anyway, if
7 those three things are right, then anytime a pedestrian is
8 struck by a car the pedestrian would be guilty of
9 contributory negligence as a matter of law and that would
10 be converting a pedestrian into an insurer of his or her
11 own safety, and clearly that is not the standard.

12 At least where there's an argument to be made
13 where we have obstructed vision and the Jury has an
14 opportunity to infer that this could have happened in
15 spite of the plaintiff exercising reasonable care, given
16 her age, intelligence and experience, then the matter
17 ought to be sent to the Jury. Now the Jury could accept
18 Mr. Sackett's argument and conclude that Trisha Carson is
19 guilty of contributory negligence, but we would submit
20 it's not a decision that the Court can make as a matter of
21 law in the face of the Coefield versus Nuckles decision.
22 We would ask the Court to overrule the Motion for Summary
23 Judgment.

24 THE COURT: Mr. Sackett?

25 MR. SACKETT: Judge, my response is that this

1 case is simply so far different factually from Coefield,
2 and as the Court has already noted, the plaintiff admits
3 that the vehicle that was the equivalent of the van in
4 Coefield did not obstruct vision.

5 The plaintiff has admitted that she looked and
6 saw nothing. The plaintiff has never made a claim herself
7 that she couldn't see. Up until the time that she has a
8 memory, there's no contention that she couldn't see. In
9 fact, she says she looked and that there was nothing
10 there. She's not saying, "I looked and couldn't see."
11 She says, "I looked and there was nothing there." On the
12 other hand, we've got two people who were with her who
13 looked and did see from the same position, and the
14 plaintiff has admitted they have no evidence to contradict
15 that.

16 I mean I don't see how any other conclusion can
17 be reached other than that the view was not -- Number one,
18 the view was not obstructed, because the other two people,
19 who were in the same position who would have had the same
20 vehicles between them and the approaching defendant's
21 vehicle, saw the vehicle approaching. The only contention
22 the plaintiff has made is that her view may have been
23 blocked by her teammates and that's just an argument.
24 There's no evidence of that.

25 Plus it still doesn't answer the question, when

1 she gets to the line dividing the two westbound lanes, all
2 she has to do is look. There can't possibly be anything
3 between her and the approaching traffic at that point
4 because if it was, the car would have hit whatever was
5 between her and the approaching car first. There was
6 nothing in the right-hand westbound lane once she got to
7 the line dividing those two to keep her from seeing and
8 the cases have made it clear that she has a duty to look
9 when she steps into the street and as she continues
10 across. That's Hopson versus Goolsby, cited in our brief.
11 The duty is continuous. You can argue about whether back
12 on the double-solid line she could have seen, although the
13 other two people with her did, but her duty to look
14 continues all the way across the street and when she gets
15 to the dividing line between those two lanes, there's no
16 room for argument that there was something to keep her
17 from seeing.

18 THE COURT: What's your response to that, Mr.
19 Phillips?

20 MR. PHILLIPS, JR.: Judge, it seems to me to be
21 the same situation exactly presented in Coefield versus
22 Nuckles. When he reached the line, then he --

23 THE COURT: Then that's your answer, Coefield
24 versus Nuckles?

25 MR. PHILLIPS, JR.: Yes, sir, yes, sir.

1 THE COURT: Is there anything else?

2 MR. COOK: Judge, I've got a Motion for Summary
3 Judgment, too, and given his concession about that she did
4 not fall to rely looks like that that's the basis to
5 dismiss Jane Doe.

6 THE COURT: Do you want to come back for Mr.
7 Cook's Motion at an appropriate time or --

8 MR. PHILLIPS, JR.: Judge, I can't say that I
9 was surprised by Mr. Cook making the Motion for Summary
10 Judgment. He had --

11 THE COURT: It's not before me, technically, at
12 this time.

13 MR. PHILLIPS, JR.: Well, I think he filed it.
14 The only thing that he didn't do --

15 THE COURT: Hasn't been filed.

16 MR. PHILLIPS, JR.: He may not have noticed it.

17 MR. COOK: Well, I mean -- Okay, I think they
18 knew that, though. I mean we -- They knew --

19 THE COURT: Do you want me to consider that, as
20 well?

21 MR. PHILLIPS, JR.: Judge, I don't see any
22 reason to come back to hear arguments on this. If you can
23 consider Mr. Cook's motion, as well, I think it's
24 appropriate to do that. I'm not surprised by anything
25 that he relied upon. He had indicated all along his

1 intention to do that and the fact that it may not have
2 been noticed for this morning is not something I want to
3 rely on.

4 THE COURT: Do you all want to -- John, do you
5 want to argue your motion or has it already been argued?

6 MR. COOK: Well, I think Mr. Phillips has
7 conceded. It's in my letter of January --

8 THE COURT: Your letter's not in the file
9 though.

10 MR. COOK: Oh, it's not?

11 THE COURT: What's the date on your letter?

12 MR. COOK: It was supposed to be hand delivered
13 to the file yesterday. I'm not sure --

14 THE COURT: I have the file. The Clerk's Office
15 may have it.

16 MR. COOK: Well, anyway, it's the same case and
17 in that case they talk about a gesture, what happens when
18 a defendant makes a gesture and they say in that case
19 there's no duty on the defendant to make any kind of
20 gesture. In this case we've got the plaintiff admitting,
21 of course, she did not rely on it as meaning that the
22 westbound lane was clear so --

23 THE COURT: So you're conceding, Mr. Phillips,
24 that there was nothing else Jane Doe could have done but
25 stopped?

1 MR. PHILLIPS, JR.: Judge, the problem that I
2 have in distinguishing Coefield versus Nuckles, the Court
3 does say that in some cases John Doe can be negligent if
4 they interject themselves and wave a pedestrian across.
5 The problem I've got is the proximate cause problem and
6 the Court in Coefield versus Nuckles based its ruling
7 squarely on the fact that the plaintiff in that case
8 admitted that he had not relied on the gesture as
9 indicating that the lane adjacent to where the van was
10 stopped was clear, and I would like to be able to tell the
11 Court that I can distinguish that in this case, but I
12 can't do that. The plaintiff testified on her deposition
13 that she relied on the gesture as indicating that Jane Doe
14 was going to stay stopped while she crossed in front of
15 her, but that that was all that she and her companions
16 interpreted the gesture as meaning, and for that reason it
17 would be disengenderous of me to try to distinguish the
18 case.

19 MR. SACKETT: Your Honor, I would just add that
20 that points out that the plaintiff, in fact, recognized
21 that she in fact had the duty, irrespective of what Jane
22 Doe did, to see that her way was clear and safe before she
23 proceeded. That very admission and acknowledgement by her
24 is also an acknowledgment of the duty that I say she
25 breached.

1 MR. PHILLIPS, JR.: And, of course, the last
2 point Coefield versus Nuckles makes is, "You cannot
3 concede that you owe a duty. That's a question for the
4 Court to determine as a matter of law." In that case the
5 other driver had admitted that he was guilty of
6 negligence, because he was doing something that he thought
7 was wrong, and that was the reason that case was reversed
8 as to him. The Court pointed out that irrespective of
9 what an individual may believe, the law will make the
10 determination of what duties existed and whether they were
11 violated.

12 THE COURT: Let me read Coefield versus Nuckles.
13 I won't even say re-read. I've read your briefs and I've
14 read your Request for Admission. I'll try and let you
15 know pretty quick, because the trial date's in about a
16 month?

17 MR. PHILLIPS, JR.: It's the 3rd and 4th, isn't
18 it?

19 MR. SACKETT: That's right.

20
21 (Whereupon this hearing was concluded.)
22
23
24
25

1 STATE OF VIRGINIA

2 AT LARGE: TO-WIT,

3 I, Brenda B. Alger, Notary Public in and for the
4 Commonwealth of Virginia at Large, do certify that the
5 foregoing pages represent an accurate transcript of this
6 proceeding to the best of my ability.

7 My commission expires September 30, 1993.

8 Given under my hand this 4th day of March, 1992.

9
10 Brenda B. Alger
11 Notary Public

12
13
14
15
16
17
18
19
20
21
22
23
24
25

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

TRISHA QUEEN CARSON,
a minor who sues by and through
her mother and next friend,
Patricia C. Meredith,
Plaintiff

Case No. 14844

v.

O R D E R

LINDA F. LEBLANC
and
JANE DOE,
Defendants

This matter is before the Court on the motions for summary judgment filed by both defendants. The Court having reviewed the briefs filed by the parties, having heard the argument of counsel which were presented on January 31, 1992, and having reviewed the plaintiff's responses to the defendants' requests for admission, is of the opinion for the reasons more specifically stated in the Court's letter to counsel of February 11, 1992, a copy of which is hereto attached and incorporated herein by reference, that the plaintiff was guilty of contributory negligence as a matter of law and that the defendants' motions for summary judgment should be sustained. It is, therefore, ORDERED that the defendants' motions for summary judgment be, and the same hereby are, sustained. Judgment is hereby entered in favor of the defendant Linda F. LeBlanc and the defendant Jane Doe, and this case is dismissed from the docket of this Court.

Plaintiff, by counsel, respectfully objects and excepts to the action of the Court in granting the motion of defendant Linda F. LeBlanc for summary judgment for the reasons set forth in her brief in opposition to that motion and for the reasons set forth during oral argument on the motion on January 31, 1992, including

specifically, without limitation, the argument that granting defendant LeBlanc's motion for summary judgment on the ground plaintiff was guilty of contributory negligence as a matter of law is contrary to the holding in Cofield v. Nuckles, 239 Va. 186 (1990).

Plaintiff further respectfully objects and excepts to the ruling of the Court as set forth in the Court's opinion letter dated February 11, 1990, in which the Court states that the plaintiff conceded during oral argument that summary judgment in favor of defendant LeBlanc would be appropriate at the conclusion of the plaintiff's evidence if no new and different evidence was presented at trial on the ground that plaintiff's argument was that summary judgment at this stage of the proceedings was clearly premature and that summary judgment might be appropriate at the conclusion of plaintiff's case, which did not amount to a concession, tacit or otherwise, that summary judgment at the conclusion of plaintiff's case would be appropriate.

ENTER: 2/26/92

W. J. Starnes
Judge

WE ASK FOR THIS:

Henry M. Lockett III
Counsel for Linda F. LeBlanc

John T. Cook
Counsel for Jane Doe

TWENTY-FOURTH JUDICIAL CIRCUIT
OF VIRGINIA

RICHARD S. MILLER, JUDGE
900 COURT STREET
LYNCHBURG, VIRGINIA 24504
(804) 847-1490

MOSEY G. PERROW, II, JUDGE
900 COURT STREET
LYNCHBURG, VIRGINIA 24504
(804) 847-1490



COMMONWEALTH OF VIRGINIA
CITIES OF LYNCHBURG AND BEDFORD
COUNTIES OF AMHERST, BEDFORD, CAMPBELL AND NELSON

February 11, 1992

Henry M. Sackett, III, Esq.
P. O. Box 958
Lynchburg, VA 24505

Thomas L. Phillips, Jr., Esq.
Irongate at Spring Hill
Route 4, Box 179 P
Rustburg, VA 24588

John T. Cook, Esq.
P. O. Box 6360
Lynchburg, VA 24505

Re: Trisha Queen Carson, a minor, etc. v.
Linda F. LeBlanc and Jane Doe

Gentlemen:

The parties are before the Court on pretrial motions for summary judgment filed by defendants Linda F. LeBlanc and Jane Doe. These defendant assert that they are entitled to summary judgment because plaintiff, a 15 year old pedestrian, was contributorily negligent as a matter of law based upon the plaintiff's responses to sixty two (62) request for admissions filed by LeBlanc and eleven (11) request for admissions filed by Doe.

Counsel for plaintiff forthrightly concedes and the Court finds that Doe is entitled to summary judgment under Cofield v. Nuckles, 239 Va. 186, 192 (1990), since it is admitted that the plaintiff did not interpret the gestures of Doe to mean that LeBlanc's lane of travel was clear. Accordingly, summary judgment will be granted in favor of Doe.

Counsel for plaintiff further concedes that LeBlanc would be entitled to summary judgment on a motion to strike at the conclusion of plaintiff's evidence if that evidence is consistent with plaintiff's responses to LeBlanc's request for admissions. However, plaintiff's counsel vigorously asserts that LeBlanc's pre-

Henry M. Sackett, III, Esq.
Thomas L. Phillips, Jr., Esq.
John T. Cook, Esq.
February 11, 1992
Page 2

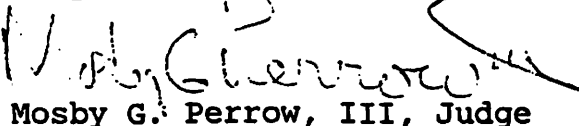
trial motion for summary judgment is premature since evidence might be developed before or at trial that would create a jury issue on liability.

The Court has carefully considered the arguments made and authorities cited by counsel as well as the plaintiff's responses to LeBlanc's request for admissions. The conclusion is inescapable that the plaintiff as a matter of law was contributorily negligent and that her negligence was a proximate cause of the accident, Straughan v. Nash, 215 Va. 627, 630-631 (1975); Lindberg v. Goode, 200 Va. 784, 787-789 (1959); Cook v. Shoulder, 200 Va. 281, 285 (1958); Hopson v. Goolsby, 196 Va. 832, 838-839 (1955). The further conclusion is inescapable that the plaintiff as a matter of law was neither helpless nor inattentive so as to reach the jury on the doctrine of last clear chance, notwithstanding her contributory negligence, Pack v. Doe, 236 Va. 323 (1988).

The accident in question occurred October 8, 1987. Suit was filed October 31, 1989. The case is set for trial by jury March 3 and 4, 1992. The parties have engaged in extensive discovery. The request for admissions are based upon deposition testimony which the plaintiff does not expect to change. The plaintiff has no evidence with which to contradict the deposition testimony upon which the request for admissions are based. Under these circumstances summary judgment in favor of LeBlanc seems appropriate, Schluderberg-Kurdle Co. v. Trice, 198 Va. 85, 87 (1956); Kasco Mills, Inc. v. Ferebee, 197 Va. 589, 593 (1956); Carwile v. Richmond Newspapers, Inc., 196 Va. 1,5 (1954). Accordingly, summary judgment will be granted in favor of LeBlanc.

Counsel for the defendants will prepare an appropriate order for endorsement by counsel for plaintiff and presentation to the Court for entry.

Very truly yours,



Mosby G. Perrow, III, Judge

MGP,III/vkh
cc: Larry Palmer, Clerk

ASSIGNMENT OF ERROR

The Circuit Court for the City of Lynchburg erred in holding that Trisha Carson was guilty of contributory negligence as a matter of law.