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SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 730470

DOROTHY M. MEADOR	:	
	:	
	:	
	:	
v.	:	APPEAL
	:	
	:	
	:	
GEORGE B. LAWSON, III, ET AL	:	

APPENDIX TO THE BRIEF OF APPELLANT

DOROTHY M. MEADOR

ARTHUR E. SMITH, ESQUIRE
404 Shenandoah Building
Roanoke, Virginia 24011
Counsel for Appellant

B. K. CRUEY, ESQUIRE
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412 Shenandoah Building
Roanoke, Virginia 24011
Counsel for Appellant

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

DOROTHY M. MEADOR Plaintiff VS. GEORGE B. LAWSON, III 508 Highland Avenue Roanoke, Virginia and, Culligan Soft Water Service of Roanoke, Inc. 5201 Williamson Road Roanoke, Virginia	:	MOTION FOR JUDGMENT

TO: THE HONORABLE JUDGE OF SAID COURT:

DOROTHY M. MEADOR, Plaintiff herein, hereby moves the Circuit Court for the City of Roanoke, Virginia, for judgment against the Defendants, George B. Lawson, III, and Culligan Soft Water Service of Roanoke, Inc., jointly and severally, for the sum of ONE HUNDRED THOUSAND ($100,000.00) Dollars for the following damages, wrongs, and injuries as follows, to-wit:

1. That, heretofore, to-wit, on the 4th day of November, 1970, the Plaintiff was employed as a rural mail carrier for the Post Office Department. At approximately 9:40 o'clock A.M., the Plaintiff was proceeding to turn east on to Route 601 from Old Shadwell Drive in Roanoke County, Virginia, when her 1969 Dodge Stationwagon slid across the highway and came to rest heading east about two feet from the guardrail. There was a light snow on the ground.

2. The Plaintiff was in the process of getting out of her vehicle near the guardrail when the Defendant, George B. Lawson, III, drove a 1968 Chevrolet Van from the eastbound lane across the westbound lane and struck the rear of Plaintiff's vehicle causing the Plaintiff to be pinned against the guardrail.

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Attorneys at Law
Roanoke, Va.

3. That the Defendant, George B. Lawson, III, was driving said 1968 Van which was owned by the Defendant, Culligan Soft Water Service of Roanoke, Inc. Plaintiff has been advised and believes that the said Defendant, George B. Lawson, III, was employed and acting as agent for the said Soft Water Service of Roanoke, Inc., at the time said collision occurred.

4. That it was the duty of the Defendant, George B. Lawson, III, as agent for the Defendant Culligan Soft Water Service of Roanoke, Inc., to operate the said vehicle at a reasonable rate of speed under the circumstances then and there existing, to keep his vehicle under control and in the proper lane, and in general to operate and drive said vehicle so as not to endanger the life and safety of the Plaintiff.

5. That the Plaintiff charges and avers that notwithstanding the duties as aforesaid, the Defendant, George B. Lawson, III, then and there operated said vehicle in a negligent, careless, and reckless manner, and with disregard of the safety of the Plaintiff, in that said Defendant failed to operate said vehicle in the proper lane, failed to operate said vehicle at a reasonable rate of speed under the circumstances then and there existing, failed to keep and maintain his vehicle under proper control, and failed to operate his vehicle so as not to endanger the life and safety of the Plaintiff and others so similarly situated.

5. That as a direct and proximate result of the aforesaid negligent acts of the Defendant, the Plaintiff has suffered injuries to her person, including a severe injury to the leg, strain and sprain of the ligaments and muscles of the neck, shoulder, and back, has undergone treatment for said injuries, and has been forced to spend sums of money in

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Attorneys at Law
Roanoke, Va.

and about endeavoring to be relieved and cured of said injuries, and has suffered and will continue to suffer great pain and mental anguish.

7. That Plaintiff has also suffered damage to her automobile as a result of Defendant's negligent acts as aforesaid.

WHEREFORE, for all of the foregoing, Plaintiff moves the Circuit Court for the City of Roanoke, Virginia, for judgment against the Defendants in the amount of ONE HUNDRED THOUSAND ($100,000.00) Dollars.

DOROTHY M. MEADOR

By_____
Of Counsel

B. K. Cruey
Bates, Cruey & Lee
412 Shenandoah Building
Roanoke, Virginia
Counsel for Plaintiff

Arthur E. Smith
404 Shenandoah Building
Roanoke, Virginia
Counsel for Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

DOROTHY M. MEADOR, Plaintiff,	)	
v.	)	RESPONSE AND
GEORGE B. LAWSON, III,	)	GROUNDS OF DEFENSE
and	)	
CULLIGAN SOFT WATER SERVICE OF ROANOKE, INC., Defendants.	)	

George B. Lawson, III, and Culligan Soft Water Service of Roanoke, Inc., the Defendants named in this action, respond to the Motion for Judgment filed against them, and for their Response and Grounds of Defense state as follows (reference being made to the numbered paragraphs of the Motion for Judgment):

1. Concerning paragraph numbered 1 of the Motion for Judgment:

The Defendants are without information concerning the truth of the allegations made in that paragraph and call for strict proof thereof, except they deny that the Plaintiff's vehicle came to rest about two feet from the guardrail.

2. Concerning paragraph numbered 2 of the Motion for Judgment:

The Defendants deny the allegations made in that paragraph, except it is admitted that because of the slick character of the road the Lawson vehicle was caused to slide into and against the rear of the Plaintiff's vehicle and that the Defendant, Lawson, exercising reasonable care under the circumstances could not have avoided the accident.

HAZLEGROVE, CARR, DICKINSON SMITH & REA
ATTORNEYS AT LAW
ROANOKE, VA

3. Concerning paragraph numbered 3 of the Motion for Judgment:

The allegations made in that paragraph are admitted.

4. Concerning paragraph numbered 4 of the Motion for Judgment:

The Defendants are advised that the allegations made in that paragraph pertain only to matters of law and that it is neither necessary nor appropriate that they respond thereto.

5. Concerning paragraph numbered 5 of the Motion for Judgment:

The allegations made in that paragraph are denied.

6. Concerning paragraphs numbered 6 and 7 of the Motion for Judgment:

The Defendants are without information concerning the nature or extent of the injuries and damages which the Plaintiff may have suffered and call for strict proof thereto. The Defendants deny, however, that the injuries and damages which the Plaintiff may have suffered were the proximate result of the Defendants' negligence.

7. The Defendants deny that they violated or failed to perform any duty owed to the Plaintiff.

8. The Defendants deny that they were guilty of negligence which proximately caused the Plaintiff's alleged injuries and damages.

9. The Defendants state that the Plaintiff was guilty of negligence which proximately caused or proximately contributed to cause her alleged injuries and damages.

10. The Defendants deny that the Plaintiff is entitled to a judgment against them in this action.

HAZLEGROVE,
CARR, DICKINSON
SMITH & REA
ATTORNEYS AT LAW
ROANOKE, VA

11. All matters and things contained in the Motion for Judgment which are not herein expressly admitted are hereby denied.

GEORGE B. LAWSON, III, and
CULLIGAN SOFT WATER SERVICE OF
ROANOKE, INC.

By Carroll D. Rea
Of Counsel

HAZLEGROVE, CARR, DICKINSON, SMITH & REA
P. O. Box 1218
Roanoke, Virginia 24006

Attorneys for the Defendants

CERTIFICATE

The undersigned hereby certifies that a true copy of the foregoing Response and Grounds of Defense was mailed to B. K. Cruey, Esq., Bates, Cruey & Lee, 412 Shenandoah Building, Roanoke, Virginia, and to Arthur E. Smith, Esq., 404 Shenandoah Building, Roanoke, Virginia, attorneys for the Plaintiff, this 14th day of August, 1972.

Carroll D. Rea
Carroll D. Rea

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

Dorothy M. Meador	)	Motion for Judgment
	)	
vs.	)	Law No. 133-1972
	)	
George B. Lawson III	)	O R D E R
and	)	
Culligan Soft Water Service of Roanoke, Inc.	)	

This day came the parties, plaintiff and defendants, by their counsel, and the defendants having heretofore filed their Response and Grounds of Defense herein, the parties announced ready for trial. There came also a panel of thirteen qualified jurors, drawn and summoned in the manner prescribed by law, from the list of which counsel for both plaintiff and defendants, each struck off alternately three of said jurors, leaving the following as the jury for the trial of the case, to-wit: Ronald B. Horne, William M. Graves, Thomas Wesley Furrow, John T. Burnett, Howard E. Paul, Mack Dawson Cooper and Ralph D. Mabes, who were duly sworn well and truly to try the issue joined and a true verdict to render according to the law and the evidence.

At the conclusion of the plaintiff's evidence, the defendants, by counsel, moved the Court to strike the evidence of the plaintiff for reasons assigned at bar and contained in the record herein and enter up summary judgment on behalf of the defendants, which motion, the Court, after hearing arguments of counsel, doth sustain, and to which ruling of the Court, the plaintiff, duly excepted.

And the jury from rendering their verdict herein is excused.

Whereupon, the plaintiff, by counsel, moved the Court to set aside the ruling of the Courtin sustaining the defendant's motion to strike the plaintiff's evidence in this case, and grant her a new trial, which motion, the Court overruled, and to which ruling of the Court, the plaintiff, duly excepted.

It is therefore considered by the Court that the plaintiff, Dorothy M. Meador, take nothing by her action herein, but that the defendants, George B. Lawson III and Culligan Soft Water Service of Roanoke, Inc., do have and recover of the plaintiff, Dorothy M. Meador, their costs by them in this behalf expended.

And the Clerk of this Court is directed to furnish certified copies to counsel upon request.

And this case is stricken from the law docket of this Court.

Enter: February 21, 1973,

Tom S. Fox
Judge.

A Copy Teste: Elizabeth N. Stokes Clerk
Circuit Court, Roanoke County, Va.
By Claudine N. Sheffer
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

DOROTHY M. MEADOR Plaintiff v. GEORGE B. LAWSON, III 508 Highland Avenue Roanoke, Virginia and CULLIGAN SOFT WATER SERVICE OF ROANOKE, INC. 5201 Williamson Road Roanoke, Virginia Defendants	NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

The Plaintiff, Dorothy M. Meador, hereby gives notice of her appeal of the Final Order entered by the Circuit Court of Roanoke County on February 21, 1973, and assigns as error the following:

The Court erred in sustaining the Defendants' motion to strike the Plaintiff's evidence at the conclusion of the presentation of Plaintiff's evidence and entering up summary judgment for the Defendants.

Counsel for the Plaintiff, Dorothy M. Meador, states that a statement of facts and a transcript of the testimony will be filed in the above-styled action.

DOROTHY M. MEADOR

B. K. Cruey
By Counsel

: C E R T I F I C A T E :

I, B. K. Cruey, of Counsel for the Plaintiff, do hereby certify that a true copy of the foregoing Notice of Appeal and Assignment of Error was mailed to Carroll D. Rea, Esquire, Hazelgrove, Carr, Smith, Dickinson & Rea, Colonial-American Bank Bldg., Roanoke, Virginia, this 13th day of March, 1973.

B. K. Cruey

BATES, CRUEY & LEE
Attorneys at Law
Roanoke, Va.

(Mr. Rea opened to the jury in behalf of the defendants.)

TROOPER J. R. RUHLAND

called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. You are J. R. Ruhland?

A. Yes, sir.

Q. Are you now connected with the Virginia State Police?

A. No, sir.

Q. Were you in November of 1970 a member of the Virginia State Police?

A. Yes, I was.

Q. And was one of your tours of duty the Northwest section of Roanoke County?

A. I think it is considered the Northeast section.

Q. Northeast section, all right. I ask you if on November 4, 1970, you were on duty?

A. Yes, sir.

Q. And did you receive a call to attend the happening of an automobile accident on State Route 601?

A. Yes, sir.

Q. And about what time did you receive this call?

A. Somewhere in the vicinity of 9:40 or 9:45.

Q. I see. And did you proceed on Route 601 to investigate this accident?

A. Yes, sir; I did.

Q. All right. Now, in your own words, will you please state what you found upon arrival at Route 601 and where this location was with regard to intersecting roads, using the map, if you choose?

A. This, the location of the accident, is approximately 3.1 miles north of the city limits of Roanoke. That is measuring from the top of Boxley Hills, which is known as Boxley Hills, where the city limits sign is to this location. I do not remember where I was at the time, or how I went to the accident scene.

Now, this was one of two accidents that I had received previously to work. When I arrived at the scene, the vehicles were in this position as here shown on this diagram (indicating) "G.R." right here, standing for guardrail. One of the vehicles was a station wagon which I found to be operated by, later to be operated by, Mrs. Meador; and the other one was a '68 Chevrolet Van, which I found to be operated at the scene by George Bilton, III, is the way I have it here (indicating).

Q. Do you have the weight or capacity of this van, Trooper?

A. No, sir; I do not.

Q. Was it a pickup type or was it larger than that?

A. It is a van.

MR. REA: May I put this in right now, and we will just have the picture? (Indicating)

MR. SMITH: Mr. Rea, do you know the tonnage? Is it a ton, 3/4 ton; or what is the capacity?

MR. REA: He may know.

THE WITNESS: It's written on the registration, but it is not usually put in the accident report.

BY MR. SMITH:

Q. Uh-hum.

A. So I did not take it down.

MR. SMITH: Just so the jury will get a look at it, I'll let them see this photograph.

(Photograph was then handed to the jury for inspection.)

THE COURT: I take it that is also filed as an exhibit by agreement?

MR. SMITH: Yes, sir.

(Photograph referred to above was received in evidence and marked, DEFENDANTS' EXHIBIT A.)

THE WITNESS: At this particular location, I think this is the old road as I remember it back in 1968, I believe; and as it was coming around like this (indicating). And then this direction here goes over to Ingersoll Rand plant or the old Hollins Station as you go this way (indicating). This route here goes back to Route 11 (indicating) and there is businesses located in this area here.

This road right here is sloped. I don't know the degree of it, but it is sloped down this way (indicating). This is the crest up here or which I consider to be the crest, (indicating) the top of the road, and goes down towards this way right here (indicating). This is the lake along in this location (indicating) somewhere and is the Botetourt County line. I don't know exactly where it is. The signs are back in this direction as you cross the creek (indicating), and there is -- and it runs into this lake someplace. I don't know where it does.

At this time when I arrived at the scene, the road was covered with snow and, as you see,

it does have no passing lines or double solid lines. But these were covered with snow. We considered this to be open country, and it was daylight at the time, and the road was blacktop.

BY MR. SMITH: (continues examination)

Q. And the speed limit is what there in open country?

A. The speed limit is 55. I think it has been posted since that time to something else; I think it's about either 35 or 45 but I'm not sure.

Q. All right. Go ahead.

A. When I arrived there, I don't remember whether Mrs. Meador was there or not. But I did go to her home after I finished up at the scene, and it was considerable concern about the mail being in the back of the vehicle and who was to take care of the mail, and so forth, as being unattended. I talked with Mr. Lawson at the scene along with a general conversation and so forth, as we were sitting in the car. I wrote down in taking down the accident report, and he stated to me "The lady had already run into the rail. I saw her and put on my brakes and I skidded into her. She was pinned in, and I was going to help her." And that's just about the extent of the importance that I thought that was in his statement at the time.

Q. In other words, he contended she had already hit the rail and was pinned in the vehicle before --

A. I don't know whether he contended it or not. There was damage on the left side of the car, and from my preliminary investigation from there I could determine -- I couldn't determine whether the vehicle had hit the rail before the truck hit it, or after the truck hit it. There was just no way for me to tell.

Q. But that was his complete statement to you?

A. Well, this is what I thought was the important part to his statement and that we don't -- as a trooper, you don't write down everything the man says. You just run over and over and over if you try to get it all.

Q. And his explanation was what again? I didn't catch it, just that part --

A. "The lady had already run into the rail. I saw her and put on my brakes and skidded into her. She was pinned in and I was going to help her."

Q. Did he make any explanation to you as to how he went about getting over behind her vehicle? He did strike her in the rear, didn't he?

A. Well, he stated that he put his brakes on, you know, on the road there, and just skidded across right into her, right into the back of the vehicle (indicating).

Q. When you arrived, were the vehicles like you have them on the diagram?

A. Yes, sir.

Q. Back to back?

A. I don't -- they weren't touching. If they'd have been touching, I wouldn't have put them that way.

Q. But they weren't at any angle to the road, they were both like you have them drawn?

A. I didn't take any photographs, and I would consider my diagram as accurate, I would think.

Q. I see. Uh-hum. Now, I show you here Exhibit #7 for the plaintiff -- (handed to the witness) -- and does that pretty well picture the rear end of Mrs. Meador's vehicle when you arrived there?

A. That is the same license number on the back and I wrote down "The tailgate and left rear fender of the vehicle was damaged." So I would assume that this is it. I mean I didn't take any photographs myself.

Q. But that is the license number, and so forth?

A. Yes, that's the license number (indicating).

Q. I think we stipulated that this is the vehicle.

A. Okay.

Q. And do you recall examining the side of the vehicle?

A. Yes, sir.

Q. I show you Exhibit #11 for the plaintiff (handed to the witness), and ask you if the marks along there are pretty illustrative, or do you have a recollection that that is the way the vehicle was damaged when you arrived?

A. There was damage to the left side; yes. You'd have to consider that at the time I worked this accident, that to the number of accidents we worked that this was a minor one.

Q. Uh-hum.

A. And snowing like it was, and there was two troopers on the road, it was chaos, you know, because we have got so much to do. And I had to give them the time that I could.

Q. A short time, I understand.

A. Yes.

Q. All right. Now, referring to your report, you did file a report, did you not?

A. Yes, sir.

Q. It's your form 300?

A. Yes, sir.

Q. Did you get a statement of speed from Mr. Lawson who operated this Culligan Soft Water truck?

A. Yes, sir. About, I think, he stated about 25 miles per hour is what I wrote down.

Q. In other words, you filled out the report from the notes you had taken?

A. I filled out this book at the scene of the accident (indicating), and then when I get back to the office I fill out that permanent book (indicating).

BY MR. SMITH: (continues examination)

Q. Trooper, what is the width of Route 601 there?

A. I don't know. I didn't measure it.

Q. It is a two-lane hard surface roadway, is it not?

A. Yes, sir; it is.

Q. And isn't it relatively new?

A. Yes, sir; it is.

Q. Now, the road that comes into it on your diagram at the top (indicating) --

A. Yes, sir.

Q. -- is 856. Is that the one known as the Old Shadwell Drive?

A. I don't know.

Q. You don't know that either?

A. No, sir.

Q. All right. Is it a two-lane roadway?

A. It's two-lane. I don't think it's marked with double lines or anything.

Q. All right. Which is the wider road, 601 or --

A. 601 is.

Q. -- is wider than 856?

A. Yes, sir.

Q. Did you observe any damage to the front of the Culligan truck?

A. I have written down here "The damage was to the front bumper, and it was very minor. And $10.00 was my estimate of the cost of the damage to the truck."

Q. The photographs that we have already agreed upon are part of the evidence, indicate what we often refer to as sight distance. For instance, Plaintiff's Exhibit #4 indicates it was taken 250 feet back. Do you remember, or do you think that it is fairly representative of the sight distance?

A. You mean around the curve up there?

Q. Yes. (Handed to the witness.)

A. The scene looks like it is.

Q. It looks like that now?

A. Yes, sir.

Q. In other words, if you are 250 feet back from where this accident occurred, you can see?

A. Oh, yes.

Q. No question about that?

A. Uh-hum.

Q. Can you see even farther than that?

A. You can see around the curve right up to where these trees (indicating), you can see all the way around to those houses.

Q. I'm talking about a vehicle traveling the way the Culligan truck was traveling, can see it parked a distance for -- a distance of at least 250 feet; is that correct?

A. Well, I didn't ask him whether he came out of this road here (indicating) or whether he came around that road. I don't know.

Q. You don't even known which way he came from?

A. No. I didn't ask him. No, sir.

MR. SMITH: All right. I think that's all.

CROSS EXAMINATION

BY MR. BROWN:

Q. Trooper Ruhland, you testified you were no longer with the State Police Department. I believe you are now working for the State Fire Marshall's Office?

A. Yes, sir.

Q. You're investigating fires instead of automobile accidents?

A. Yes, sir.

Q. Now, did you indicate what time you arrived on the accident scene?

A. No, sir; I did not.

Q. Do you have that in your notes?

A. No, sir; I do not.

Q. Do you have on your notes any indication what time the accident occurred?

A. Approximately 9:40, and I arrived -- I derived this between the two parties involved.

Q. From what they told you?

A. Yes. That's the only thing you have to go by.

Q. And it was some little time, I assume, before you arrived on the scene because it was a busy morning?

A. Yes, sir; it was.

Q. Now, by the time that you arrived on the accident scene, there was a substantial amount of snow on the road, I believe?

A. Yes, sir.

Q. And this had been building up all during that morning, I take it?

A. From the time it started snowing, it did.

Q. Mr. Smith asked you whether you made an estimate of the cost of damage to the Culligan vehicle. Did you make an estimate of the damage to the plaintiff's vehicle?

A. "Plaintiff" being Mrs. Meador?

Q. Yes.

A. I estimated it just by looking at it, $300.00. Of course, ours is not anything like it would be if you take it to a shop to have it repaired.

Q. All right. Now, trooper, did you -- you said that you're not sure, or to the best of your recollection, that Mrs. Meador was not at the accident scene when you arrived because you had to stay with the mail there.

A. Until the mailman came and so forth; yes, sir.

Q. In any event, you don't remember seeing her there?

A. I don't remember whether she was at the scene when I arrived or whether she had already gone.

Q. But at any event, at sometime during the next twenty-four hours or so, you did talk to her at her home; did you not?

A. Yes, sir.

Q. Do you have any notes of that conversation?

A. Not exactly; I didn't. No, sir.

Q. Do you have any recollection of the conversation with her?

A. Well, I went into her home and I was asking about the accident; and it was very vague to her then what

had happened. She just didn't know.

Q. In other words, she just didn't really know what had happened?

A. No.

Q. Did she explain to you how her car ever got over here on the shoulder of the road (indicating)?

A. She skidded across the road.

Q. She came along here (indicating) and somehow skidded across (indicating)?

A. That's it.

Q. And from your investigation of the accident and from talking to the defendant, Mr. Lawson, he came along and he was going to render assistance, touched his brakes and he slid across just the same way she did; is that correct?

A. That's what he stated to me that he was going to do.

Q. And the cars wound up one right behind the other (indicating)?

A. That's right.

Q. Did your notes indicate or could you tell how far forward this lady's car was knocked?

A. No, sir.

Q. You couldn't tell how much or how far forward the truck was -- how far the truck moved after impact,

I take it?

A. No, sir. It was snowing and it was muddy in that area.

Q. And you couldn't tell by the tracks in the snow?

A. Well, there was all sorts of cars going through there from the time I got there to mess them up.

MR. BROWN: That's all. Thank you.

BY THE COURT:

Q. Trooper, I take it the line that you have with the writing "State Route 601", and the arrow drawn from that touching the line, indicates the edge of the pavement?

A. Yes, sir; it does.

Q. And now, this is the rebuilt road that runs from Hollins Station to Murray's Store on the Lee Highway. Do you know where Murray's Store is?

A. Barr Store now.

Q. Well, it may be. I may be a little behind times on the names of the store right there in the fork of the road, on the highway?

A. Yes, sir. They built a new intersection in this area when they put the Ingersoll Rand in.

THE COURT: Okay.

BY MR. BROWN:

Q. One further question. Insofar as your notes or recollection is concerned, Mr. Lawson didn't make any statement to you about losing control of the vehicle, did he?

Q. One further question. Insofar as your notes or recollection is concerned, Mr. Lawson didn't make any statement to you about losing control of the vehicle, did he?

A. Not to my knowledge, he didn't. He just said he skidded across (indicating).

Q. On the snow?

A. Yes, sir.

MR. BROWN: Thank you.

THE WITNESS STANDS ASIDE.

- - - - - - -

MRS. DOROTHY M. MEADOR

the plaintiff, called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. State your name to the jury, please.

A. Dorothy Meacher Meador.

Q. And where do you live, Mrs. Meador?

A. 6337 North Barrens, Northwest.

Q. And, Mrs. Meador, you live there with your husband, David, who is behind me here (indicating)?

A. Yes, I do.

Q. And how many children do you have?

A. Three.

Q. What are their ages?

A. Twenty-four, twenty-one and seventeen.

Q. I see. And what is your husband's occupation?

A. He is an agent for Prudential Insurance.

Q. And in November of 1970, were you employed also?

A. Yes, sir; I was.

Q. And by the Postal Service?

A. United States Post Office at that time.

Q. Now, on November 4th, 1970, what type of motor vehicle did you use in your work?

A. It was a 1969 Dodge station wagon.

Q. Uh-hum. And what was the nature of the work that you did? Were you a rural carrier?

A. I was.

Q. And delivered mail to outside postal areas?

A. That's right.

Q. All right. Now, what time did you start your route that morning on November 4, 1970?

A. It was about 9:00 o'clock in the morning.

Q. And you started from what location?

A. The Hollins Station, Hollins Post Office.

Q. Uh-hum. Now, did part of your route take you on Secondary Route 856 as shown there on the map to

your right (indicating)?

A. Yes.

Q. And what is that road known as other than 856?

A. Well, we call it "Old Shadwell Drive" on account of when they made the new road, that was the New Shadwell Drive.

Q. I see. So 601 you call "New Shadwell Drive"?

A. Yes, we do.

Q. All right. Now, immediately before this accident happened, which route were you traveling on?

A. 856.

Q. 856?

A. Yes. I think it was -- it had another number at that time -- but they have changed it since then.

Q. All right. Now, let me direct your attention over here, please (indicating). Were you coming out 856 entering 601?

A. Yes, I was.

Q. And describe what happened and how you operated your car.

A. Well, there is a stop sign there and I stopped and I put it in second gear, and I went to make a

right-hand turn going toward Ingersoll Rand, and the car just slid across the road and it landed in the mud about a foot from the guardrail.

Q. All right. Did your car at this time strike the guardrail?

A. No, it did not. Because I could see the front of the car when I tried to get out.

Q. All right. Now, what stopped you from sliding into the rail?

A. The mud, because it had no gravel on the side of the road.

Q. It was just a mud shoulder; is that right?

A. That's right.

Q. All right. Did you try to go forward with your car?

A. I tried to go forward, and then I tried to go back. But the wheels just kept spinning, and I was getting deeper and deeper, so --

Q. About how long do you think you were there before this accident happened?

A. Oh, I'd say a matter of three to five minutes.

Q. Uh-hum, all right. Then what happened?

A. Then I put on the flashers, and I put it in park and I had my foot out the door to get ready to get

out. And the car just jolted forward and threw me back into the car, and I hit my head and this arm went underneath me (indicating).

Q. Your right arm went underneath you?

A. Yes. And I had a hat on and it knocked it in the back of the station wagon; and --

Q. Was your leg out of the car when you were struck?

A. Yes. I was getting ready to get out.

Q. Uh-hum. Did you see the Culligan vehicle coming up behind you?

A. No, I didn't.

Q. But your flashers were on, you say?

BY MR. SMITH:

Q. All right. Mrs. Meador, you were off from work?

A. Yes, sir; I am.

Q. And has your job been terminated?

A. Yes. I have been terminated.

MR. SMITH: All right. Now, you answer any questions that Mr. Rea or Mr. Brown may ask you, please.

THE COURT: Let's take and give the jury a break here.

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(Thereupon, a recess was taken from 11:40 o'clock, A. M., to 11:45 o'clock, A. M.)

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CROSS EXAMINATION

BY MR. REA:

Q. Mrs. Meador, to clarify for all of us, would you please come around and show us on the map where you came from, and what happened, on the map, please, ma'am?

A. (Witness approached diagram.) I was coming from, I will say, Old Shadwell Drive (indicating).

Q. You had come in from Route 11?

A. And there is a stop sign here (indicating).

Q. I see. Did you stop at that?

A. Yes. I stopped and I put it in second gear, and as I went to make the turn (indicating), it slid like this (indicating) and it went into the mud. And it was about a foot from the guardrail.

Q. You just slid parallel to the guardrail; is that it?

A. Yes; uh-hum.

Q. Is the trooper's diagram substantially accurate there?

A. I think so; yes.

Q. All right. Thank you, ma'am.

(Witness returned to witness stand)

Now, I believe you said that you came to rest there and tried to go forward, and your wheels were spinning and you couldn't go in either direction; is that correct?

A. That's right.

Q. And I think you said that you tried that for some two, I think three to five minutes, I believe you said?

A. Well, I was there, you know, and I was there for about three to five minutes trying to get out.

Q. And then what did you do?

A. I put the flashers on, and I put it in

park and I took my keys and I was going to get out of the car. And all of a sudden --

Q. How wide did you open the door?

A. Oh, it was about (indicating) about a foot, I'd say; about a foot.

Q. About like that (indicating), and you stuck your leg out the door?

A. Yes.

Q. Was your leg on the ground?

A. Yes, it was.

Q. And then I believe you said that you felt your car move ahead?

A. It just jolted forward (indicating).

Q. You never saw anything hit you at any time?

A. No. There was snow on the back of the car, and when I was going to get out, I was going to walk out and going to clear the back as well.

Q. So, as a matter of fact, you weren't aware that anybody had hit you until the trooper told you?

A. That's right.

Q. When was the last time that you saw Dr. Ripley?

A. (The witness pondered.) I really don't remember.

Q. Do you have any idea how long ago that was? Was that months ago or --

A. I think it was last summer. I wouldn't say for sure because he gave me a shot in my hip.

Q. Yes.

A. And then it didn't take, and then I had to wait ten days in order to get another one.

Q. Now, as I understand it, Dr. Johnson has not wanted to give you these shots in your hip?

A. No, because he said "He'd rather an orthopedic man give it to me."

Q. And the last shot you had in your hip was perhaps last summer or thereabouts?

A. Yes, uh-hum.

Q. You did say you stopped at the stop sign, I believe?

in any way?

A. Well, no. It just slid across the road (indicating) and into the mud.

adverse party.

THE COURT: All right.

MR. GEORGE B. LAWSON, III

a defendant, called as an adverse party, being duly sworn, testified as follows:

CROSS EXAMINATION

BY MR. SMITH:

Q. Have you been sworn?

A. Yes, sir.

Q. All right. State your name to the jury, please.

A. My name is George B. Lawson, III.

Q. How old are you, Mr. Lawson?

A. Twenty-nine.

Q. And in November of 1970, were you employed by Culligan Soft Water Service of Roanoke?

A. Yes, sir.

Q. In what capacity?

A. I was in the installation. I installed water conditioners.

Q. I see. And on November 4th, were you operating one of their motor vehicles in the course of your employment for them?

A. Yes, sir.

Q. And were you operating it on Route 601?

A. Yes, sir.

Q. Referring to this -- referring to this diagram on the board (indicating), are you familiar with it at this point?

A. Yes, sir.

Q. All right. Now, which direction did you come from?

A. I came from this direction coming off of U. S. 11 (indicating), turning onto 601.

Q. Were you familiar with this road?

A. Yes, sir. I have been over it many times.

Q. Now, you were coming then toward the same direction that Mrs. Meador's car was facing; you were going in whatever direction that might be.

A. I was going there in this direction (indicating) right.

Q. I don't know whether that is east or west.

A. That is south.

Q. South. And did you strike the back of Mrs. Meador's automobile with your truck?

A. Yes, sir. Would you like me to --

Q. Just answer these questions now. You struck the back; is that correct?

A. My right bumper struck her tailgate, right.

Q. Your right bumper struck --

A. Right.

Q. -- her tailgate?

A. That's right.

MR. SMITH: All right. Where are the photographs, Judge? Have you got the photographs?

THE COURT: Yes, right here.

(Photographs handed to Mr. Smith.)

BY MR. SMITH: (continues examination)

Q. This Defendants' Exhibit A (indicating), is that your truck?

A. Yes. That's the truck.

Q. That's the way you were driving?

A. Yes, sir.

Q. Were you alone?

A. Yes, I was.

Q. Did you see the damage that you did to the car?

A. Yes, sir.

Q. Is that it shown on Plaintiff's Exhibit #7 (handed to the witness)?

A. That seems to be; yes, sir.

Q. You recall it being a gold color or yellow motor vehicle?

A. Yes, sir.

Q. That is this one (indicating). And did you knock the vehicle forward?

A. If it went forward, it went only one foot or about a foot.

Q. Uh-hum. All right. Now, you were traveling south, I assume, on the right-hand side of the road?

A. Yes, sir.

Q. And you saw this vehicle ahead of you?

A. Yes, sir.

Q. Then, I believe, your counsel in his opening statement said that you saw a woman's foot sticking out?

A. Yes. As I approached the car and --

Q. Let's just stick to that.

MR. REA: Mr. Smith, please don't interrupt your witness. You have asked him a question and he has a right to answer it.

MR. SMITH: I asked him if he saw a woman's foot sticking out.

THE WITNESS: I did; yes, sir.

MR. SMITH: All right. That's the only answer I asked for.

THE COURT: All right. Continue.

BY MR. SMITH:

Q. All right. And did you then move to the

left side, or did you stay on the right side of the road?

A. I stayed on the right side. I applied my brakes when I saw the lady in distress.

Q. How far away were you from her when you saw her in distress?

A. I would say 125 feet when I saw her foot sticking out.

Q. And you applied your brakes?

A. Yes, sir.

Q. How fast were you going?

A. I was going about 25 miles an hour. I slowed when I first saw the car, I slowed down.

Q. And you applied your brakes 125 feet away?

A. Yes, sir.

Q. All right. What happened to your car?

A. Well, the truck slid over sideways (indicating) towards her car (indicating), and it slid over to the embankment or to the shoulder of the road. And then veered off sort of, sort of veered off the guardrail into the back of her car (indicating).

Q. Did you strike the guardrail?

A. I just -- not at any impact; no, sir. I just sort of slid down it (indicating).

Q. Did you have contact with the guardrail though?

9.

A. Very little.

Q. Well, what did you do, lock up the brakes on your -- on the truck? Is that what you are saying?

A. When I applied the brakes?

Q. Yes.

A. I slid in the snow; so apparently I just skidded across the road. I don't know what you mean by "locking up the brakes."

Q. Did you put the brakes on?

A. I had the brakes on; yes, sir.

Q. And the wheels were all not turning then, I take it?

A. That's right; that's right.

Q. And you slid to the left and up behind her car, and off the road --

A. Yes, sir; yes, sir.

Q. -- for 125 feet?

A. That is an estimate; yes, sir. That was an estimate, and I base this on the fact I was approximately right here (indicating) when I applied my brakes, because I saw the foot sticking out of the door and I was approximately right here (indicating).

Q. Well, here are some photographs of the area (indicating). Now, this photograph was taken 155 feet away (handed to the witness).

A. Well, the car was in the -- here the car was past this sign (indicating). And this road is -- say that is straight here (indicating) and here is the point of the curve over here (indicating).

Q. Point it up here to the jury.

A. (The witness approached the jury with the photographs.) Okay. The car, according to this picture, is not the right place here. Her car was past this sign (indicating) down a little further past that sign.

Q. Like this one? (Another photograph handed to the witness.)

A. Yes, sir. It may be just a little further past that.

Q. You mean it was farther on south beyond the sign that --

A. Beside the guardrail.

Q. -- about where this one is (additional photograph handed to the witness)?

A. About maybe 5 feet past that. (Indicating)

Q. That would be farther on south?

A. Yes.

Q. All right.

A. So I saw the foot sticking out approximately right here, and this is the estimate of 125 feet to the point back from her car to this intersection, the

top of the intersection. (Indicating)

Q. Uh-hum. Now, the trooper testified this morning -- you heard him?

A. Yes, sir.

Q. At least, I gathered from his testimony that you told him that you saw this woman wreck this car?

A. I didn't say that.

Q. I didn't say you did, did I? I said "I gathered --"

MR. REA: May it please the Court --

THE COURT: I don't think there was any testimony to that effect.

MR. REA: I did not hear anything to that effect, and I thoroughly object to this. This is not the first time that this has happened in this case.

MR. SMITH: I don't even known what you are talking about. I got the impression from the trooper --

THE COURT: Well, just ignore it. The jury is admonished to disregard that question. And ask it in a proper form.

BY MR. SMITH:

Q. All right. Did you see the lady wreck her car?

A. I did not see the actual wreck. No, sir.

Q. Did you see it in motion at any time?

A. I did not see the car in motion. It was against the guardrail when I first saw the car.

Q. All right. That's what I wanted. You say it was against the guardrail or close to it?

A. No. Yes, sir; it was against the guardrail.

Q. Against it?

A. Yes, sir.

Q. And yet you saw her foot hanging out the left side?

A. I saw the front of the car against the guardrail, and it was at an angle against the guardrail. The car was on the road, and the front part was against the guardrail; therefore, it was at an angle on the bank.

MR. DAVID R. MEADOR

called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CRUEY:

Q. Will you state your full name, please?

A. David R. Meador.

Q. What relationship are you to Mrs. Meador?

A. I am her husband.

Q. I want to ask you, Mr. Meador, did you have occasion to visit the scene of where this collision took place?

A. Yes, sir; I did.

Q. When did you go to the scene?

A. I went to the scene, it was the next day, November 5th, 1970.

Q. And, I believe, you are the one that took these photographs; is that correct?

A. Yes, I did.

Q. What did you observe at the scene along the rail when you arrived?

A. Well, I went back to the scene to try to see what actually, you know, or determine what happened. And I observed the ruts in the road where the car had attempted to go forward and backwards to get out; and then

on the guardrail, having seen the car which was this photo here (indicating) the paint was off the front of the car. And I went down and in looking at the guardrail I could see the yellow paint down the guardrail for a distance of about 14 feet.

And by looking at the positions of the rear wheels and the length of the car, the car had to move approximately another 6 feet before that yellow line started on the guardrail (indicating).

Q. What was the height of it?

A. The guardrail?

Q. The yellow place on the guardrail.

A. It was on the top part of the guardrail where the guardrail comes down. And it was on the top part of the guardrail.

Q. Can you determine where that paint came from?

A. It came from the front of the vehicle which shows evidence of having went down the guardrail.

MRS. DOROTHY M. MEADOR

the plaintiff, recalled in her own behalf, having been previously sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Mrs. Meador, I want to clarify one point. You did not see the Culligan truck coming towards you, you said; is that correct?

A. No, I didn't.

Q. But you did have a foot out?

A. Yes, I did.

Q. And were you struck from the rear?

A. I was.

Q. And how was your vehicle knocked, if it was?

A. It jolted forward, and then it hit the guardrail.

Q. Which part of your car struck the guardrail; do you know?

A. The front end of it.

Q. Uh-hum. Was it ever against the guardrail before you were hit from the rear?

A. No, because when I tried to get out, I could see the front fender (indicating); and it wasn't -- it was not against the guardrail.

MR. SMITH: All right. Mr. Rea may want to ask you something.

CROSS EXAMINATION

BY MR. REA:

Q. I believe that from the beginning, Mrs. Meador, that you have said that the car jolted or moved forward somewhat, and that you did not know that you were struck until the policeman told you at home; is that correct?

A. That's right.

MR. REA: Thank you.

BY THE COURT:

Q. Let me ask you something. You say you could see the front of your car was not touching the rail. Is that a two-door or a four-door car? Is it a four-door automobile, station wagon.

A. Yes, it is.

Q. And so the door that you opened was somewhere in the middle of the car?

A. I didn't have the door open at the time that I was trying to get out, when I was trying to get out of the mud.

Q. No. I'm talking about when you opened it and put your foot out. I say, first I ask you, is the door in about the middle of the station wagon, the one

that you opened to stick your foot out?

A. I guess you'd call it in the middle of the car.

Q. Just about the middle. And, I believe, you said that you couldn't open the door but about a foot?

A. About a foot; yes.

Q. So your car at that time it must have had -- it was pretty close then to the guardrail, wasn't it?

A. Yes, but it was not up against the guardrail.

Q. Well, it may not have been touching it, but it was close to it?

A. It was about a foot away.

Q. Well, are you saying then that your car was parallel with the guardrail?

A. Yes; I would say it was.

THE COURT: Yes.

IN CHAMBERS AT 3:45 O'CLOCK, P. M.

(Out of the presence of the jury.)

MR. REA: Let me go on and make this motion, and then it will be necessary to take it up further, I'm sure.

MR. SMITH: All right.

MR. REA: Your Honor, the defendants move that the plaintiff's evidence be stricken and that summary judgment be entered for the defendants on the grounds that no prima facie case of negligence has been made against the defendants. There is no evidence of speed on the part of the defendant driver, there is no evidence of failure to keep a proper lookout, there is no evidence of failure to do any of those things which were or might have been alleged in the motion for judgment.

Now, it is true that there is a presumption that a car on the wrong side of the road is, perhaps, negligently there until that is explained; but Mr. Smith has explained that in both instances. He has put on both his driver, Mrs. Meador, to explain why she was on the wrong side of the road, and that was because she slipped on the ice; and he has also put on the defendant driver to explain why he was on that side of the road, because he slipped on the slippery road. And so, there-

fore, that presumption has been overcome by the evidence which Mr. Smith has adduced, and which is uncontradicted in this case.

Now, it is true that he called the defendant driver as an adverse witness, but he is bound by the evidence, the uncontradicted testimony of an adverse witness. And based upon that, I feel that summary judgment should be entered at this time. After all, the defendant driver did exactly what the plaintiff driver did, and Mr. Smith adduced the evidence of both.

MR. SMITH: Except for one thing. She came out one road and he came another way.

MR. REA: But she slid at the same spot and to the same point.

MR. SMITH: Well, let's assume that she was negligent and that she was --

THE COURT: She went across there.

MR. SMITH: But she didn't cause the accident, Judge.

THE COURT: Well, her negligence would be the proximate cause if she was in the spot where she was when she got hit. I tell you frankly what worries me is whether she was negligent and after she landed there.

MR. SMITH: She was getting out.

THE COURT: But she never looked. She said

that she didn't look, she said that -- she said that snow was on the back. And she had a mirror right there on the side where she could have looked straight up the road.

MR. REA: And she never looked, and she --

THE COURT: She never looked to see whether she could get out in safety.

MR. REA: And for both the failure to make a prima facie case of negligence and --

MR.SMITH: She was sitting in a gulley, Judge.

THE COURT: She was on the shoulder. That's probably a jury question as to whether she was negligent. But by her own testimony she never looked, and the pictures show that she could have looked in the mirror and seen the Court coming and stuck her leg out there.

MR.CRUEY: What could she have done?

THE COURT: She could have pulled her leg back in.

MR. REA: What does the jury have to consider concerning the defendant's negligence? There is nothing for them to consider that he did wrong. Mr. Smith has put the evidence on which is clearly that he was driving along and simply slid at the same place that the plaintiff did.

MR. SMITH: Well, the ice was there.

question. But because if we had just presented evidence that she was hit on the wrong side of the road, regardless of how the car got there, the cases just go right down the line saying you've got a prima facie case if it's on its side and does not present a reasonable explanation. Then they have to hold for the plaintiff under those circumstances. And it says what a reasonable explanation is is a jury question.

THE COURT: Well, but what I'm saying, if there is any conflict in the testimony as to the -- if it's purely a set of facts, it would come to a matter of law.

(Discussion off the record.)

THE COURT: Well, I think I've made up my mind.

MR. SMITH: If you are convinced that is going to be the law of this Court, that's the way you ought to decide it. But I sure think that is opening the gates.

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(Thereupon, at 5:05 o'clock, P. M., Court and counsel returned to the courtroom where the following took place in the presence of the jury.)

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THE COURT: Gentlemen of the jury, at the conclusion of the plaintiff's evidence, the defendants made a motion to strike the plaintiff's evidence and on the basis that negligence has not been proven against him on the part of the defendant. The Court has struck the evidence, and accordingly there is, therefore, nothing for the jury to inquire into and consider in this case. You all are dismissed and be back at 10:00 o'clock, the morning of the 27th.

(The jury was dismissed at this time, 5:07 o'clock, P.M.)

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MR. CRUEY: Your Honor, in the event that this was not put in the record, I would like to state our grounds of objection to the Court's ruling.

THE COURT: All right.

MR. CRUEY: It is our position that the Virginia Supreme Court in a number of cases has decided issues very similar, if not identical, to the situation before the Court. And referring specifically to Virginia Transit Company v. Durham, which is 190 VA. page 979, the Court held in that case that if a defendant

is on the wrong side of the road at the time of the collision, this fact raises a prima facie presumption that he was negligent. This presumption does not shift the burden resting upon the plaintiff to prove by a preponderance of the evidence that the defendant was negligent, but it does shift to the defendant the burden of producing evidence in reasonable explanation of the presence of the vehicle on the wrong side of the road was due to something other than negligence on his part.

It is our position that whether there was a reasonable explanation in this case is a jury question and not the Court's. And the way I understand it, the Court is ruling as a matter of law that if a person hits his brakes on a snowy street going 25 miles an hour, and does collide in the left lane that, as a matter of law, that is not negligence in itself. And we disagree with the ruling of the Court.

Also Virginia Jury Instructions on driving on the wrong side of the road gives a number of citations, Section 26.03 and deals specifically with skidding in snow and on ice. And we would refer to those cases as our position in this

matter. And we except to the ruling of the Court.

THE COURT: Well, I think the Court has argued with counsel enough on the interpretation of the law, and I'm not going to answer at this stage. The motion and motions are still overruled.

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(The proceedings were CONCLUDED at 5:10 o'clock, P. M.)

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