



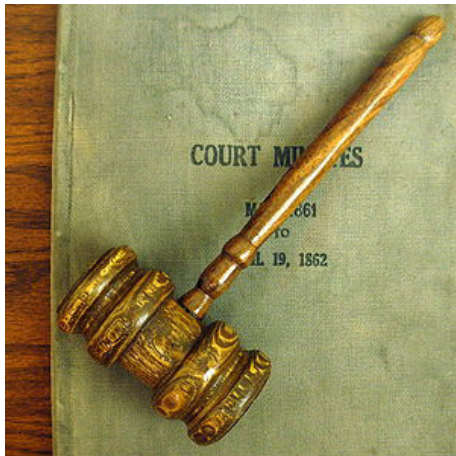
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Illinois Court On Summary Judgment in Pedestrian Accident Case

October 31st, 2011 by Admin - BN



In *Merca v. Rhodes*, No. 1-10-2234, the Appellate Court of Illinois, First District, considered the issue of whether the trial court properly granted summary judgment in favor of the defendant. This case arose from a serious accident which caused the death of 14 year old Cassandra Merca, a pedestrian who had been hit by a car driven by the defendant.

At the trial level, the defendant argued that she was not liable for the accident since the plaintiff's actions contributed to the accident and there was nothing she could have done to avoid the accident. The defendant successfully argued that there were no issues of fact regarding whether she breached a duty or caused the accident, since she was operating her vehicle at speeds below the posted speed limit and thus the accident was unavoidable.

The appellate court disagreed, noting that a driver has a duty to drive more carefully in a school zone:

"Where children are known to be or may reasonably be expected to be in the vicinity, a degree of vigilance commensurate with the greater hazard created by their presence or probable presence is required of a driver of a motor vehicle to measure up to * * * ordinary care * * *." *Stowers*, 29 Ill.App.2d at 64...

The court then explained that although the plaintiff's negligence may have contributed to the accident, the percentage of contributory negligence was an issue of fact for the jury to decide. The Court then applied Illinois law regarding summary judgment to the facts of the case, concluding that the trial court should not have entered summary judgment in favor of the defendant:

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The evidence that was presented in this case raises a factual question as to whether the decedent's percentage of contributory negligence and as to whether the defendant was operating her motor vehicle with ordinary care based on the fact that she knew a high school was in the area, and the wide ranges of speed that the witness testimony reveals she was traveling. A reasonable jury may differ as to whether the defendant was exercising the degree of care commensurate with the greater hazard created by the potential presence of children in the area. A reasonable jury may also differ as to whether it finds that the decedent's death was a direct and proximate result of defendant's negligence or as to the percentage of the decedent's contributory negligence. There are factual issues that should be decided by a jury. A trial court would not have directed a verdict for the defendant from the evidence that is before us. Accordingly, this case satisfies the *Foden* requirements, and the trial court improperly entered summary judgment.

The case was then returned to the trial court and the plaintiff was given the opportunity to prove her [personal injury case](#) by showing a jury that her serious injuries were caused by the negligence of the defendant.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles [workers' compensation](#) and [personal injury cases](#). Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.

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