

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY  
IN THE COURT OF COMMON PLEAS**

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**ROSLYN WILLIAMS**

**V.**

**SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY  
and JOHN DOE**

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**TRIAL DIVISION – CIVIL**  
  
**FEBRUARY TERM, 2010  
NO. 1619**  
  
**COMMONWEALTH COURT #  
427 CD 2011**

**OPINION**

**PROCEDURAL HISTORY**

Plaintiff, Roslyn Williams, appeals the February 11, 2011 Order granting Defendants’ Southeastern Pennsylvania Transportation Authority and John Doe’s Motion for Summary Judgment.

**FACTUAL BACKGROUND**

On September 16, 2009, Plaintiff Roslyn Williams was a passenger on a Southeastern Pennsylvania Transportation Authority (hereinafter “SEPTA”) trackless trolley. (Complaint ¶ 7). At approximately 3:30 p.m., Plaintiff boarded the trolley after leaving her job as a home health aide. She intended to visit a relative near Oxford Avenue and Pratt Street in Philadelphia, Pennsylvania. (Complaint ¶ 7). It was raining that day. (Plaintiff’s Deposition, pg. 55). The trolley was equipped with eight (8) video

recorders that recorded the incident involving Plaintiff in its entirety. There were three (3) external video recorders – one side view, one front view, and one rear view – and five (5) internal video recorders – one recording the front entrance to the trolley, another recording the middle entrance to the trolley, the third recording the first third of the trolley, the fourth recording the middle third of the trolley, and the fifth recorder captured the back third of the trolley. Defendant provided, and the Court viewed, the video starting at 3:24:59 p.m. – one minute before Plaintiff boarded the trolley – until 4:00 p.m. on September, 16, 2009. The video clearly establishes that the trolley operator Paul Jeannot, identified as John Doe in the Complaint, remained in control of the trolley at all times and maintained safe, comparable levels of speed during the transit and leading up to each stop made by the trolley. (SEPTA video).

Plaintiff sat in a front-facing seat in the front third of the trolley. (SEPTA video). Plaintiff was on the trolley for approximately six (6) minutes before the incident occurred. (SEPTA video). As the trolley slowed to the scheduled stop at Oxford Avenue and Pratt Street, Plaintiff arose from her seat carrying a cell phone in one hand and personal bag in the other hand. (SEPTA video). At no time did Plaintiff reach for the support poles available to her. (SEPTA video). Plaintiff took two steps on the rubber, non-skid floor and, as the trolley slowed to a stop, she fell backwards to the floor (Plaintiff's Deposition, pg. 81). This is contrary to the allegation in the complaint that the stop was "sudden, unusual, and unsafe" which would have the plaintiff falling forward. (SEPTA video) (Complaint ¶ 7). The video, at the same time, shows a standing passenger exiting the trolley without incident.

At the time of the fall, the trolley was travelling no more than ten (10) miles per hour. According to the Plaintiff the trolley was a car length from the stop at Pratt Street and Oxford Avenue when the incident occurred. (Plaintiff's Deposition pg. 79). The video shows that two other standing passengers, who were positioned within two or three feet of Plaintiff when she fell, and were unaffected by the braking. (SEPTA video). Likewise, no seated passengers were affected by the trolley stop. (SEPTA video).

Plaintiff was helped off the trolley floor by another passenger and Jeannot but remained on the trolley after the stop until Jeannot called paramedics, which arrived approximately ten (10) minutes after the fall. (SEPTA video). Plaintiff was then taken to the Aria Frankford Hospital emergency room where she was treated for back injuries and released. (Plaintiff's Settlement Conference Memorandum, pg. 1). Plaintiff also received physical therapy as a result of the fall. (Complaint ¶ 9). Plaintiff has a history of previous back injuries. In the early 1990's she injured her lower back while at work, and in 1993 she injured her back again when she fell in the bathtub. (Plaintiff's Settlement Conference Memorandum).

The Complaint was filed on February 15, 2010 against SEPTA and John Doe, later identified as SEPTA trolley operator Paul Jeannot. The Complaint alleged that Jeannot stopped the trolley in "a sudden, unusual, unsafe, and extraordinary manner" that caused the plaintiff to fall to the trolley floor. (Complaint ¶ 7). The Complaint also alleged Defendant failed to exercise a high degree of care and act with due regard for the point and position as a passenger and business invitee on the aforesaid bus, operated the trolley at an excessive rate of speed which was unsafe under the conditions, failed to have the bus under control at all times, failed to maintain the bus in a safe and reasonable

operating condition, violated pertinent statutes, and failed to exercise the highest degree of care required by a common carrier. (Complaint ¶ 8(a)-(f)). Plaintiff's Complaint was devoid of any allegation that a defective condition of the trolley floor caused her fall.

Defendant SEPTA filed a Motion for Summary Judgment on November 24, 2010. The Motion argues that Plaintiff has failed to establish that a genuine issue of material fact exists as to whether the action is a "sudden stop" case as the video shows other passengers were unaffected by the stop.

Plaintiff responded to the Motion for Summary Judgment on December 23, 2010. Plaintiff opposed Defendant's Motion by claiming in effect that because the plaintiff fell the stop had to be unusual and extraordinary. Plaintiff also presented, for the first time, the argument that Defendant was negligent in failing to have non-skid strips on the trolley floor.

On December 29, 2010, Defendant SEPTA replied to Plaintiff's Response. SEPTA first restated the standards for "jerk and jolt" cases in Pennsylvania. Further, Defendant states that there is no proof that SEPTA was negligent in its maintenance of the trackless trolley.

On February 11, 2011, Defendant SEPTA's Motion for Summary Judgment was granted. On March 2, 2011, Plaintiff filed her Notice of Appeal. Plaintiff submitted her Statement of Matters Complained of on Appeal on March 21, 2011.

The issue on Appeal is whether the Lower Court committed an error of law or abused its discretion in granting SEPTA's and John Doe's Motion for Summary Judgment where the Plaintiff was unable to produce any evidence to show either that the

trolley driver was negligent in his operation of the trolley under the conditions or that SEPTA was negligent in the maintenance of the trolley, causing the Plaintiff to fall.

### **LEGAL ANALYSIS**

Summary Judgment Motions are analyzed based on an abuse of discretion standard. *Weber v. Lancaster Newspapers, Inc.*, 2005 Pa. Super 192, 878 A.2d 63, 71 (Pa. Super 2005). When a Motion for Summary Judgment is made, the moving party must establish that no genuine issue of material fact exists and that she is entitled to a judgment as a matter of law based on the facts of the case. *Pennsylvania Gas and Water Co. v. Nenna Farin, Inc.*, 320 Pa. Super 291, 283 (1983). In Pennsylvania, Motions for Summary Judgment may be granted:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or (2) if, after the completion of discovery relevant to the Motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial require the issues to be submitted to a jury.

Pa. R.C.P. 1035.2.

It is this Court's position that SEPTA has met its burden of proof in establishing that Plaintiff lacks evidence to prove that SEPTA and John Doe were negligent in their operation and maintenance of the trackless trolley on which Plaintiff fell.

Sudden jerk and jolt cases apply to individuals who are passengers on transportations carriers that start or stop violently and cause injury to the passenger. *Muessner v. Port Authority of Allegheny County*, 745 A.2d 719, 721 (Pa. Cmwlt. 2000). In Pennsylvania, the standard in sudden jerk and jolt cases has expanded throughout the

years. Since 1934, Courts have drawn a distinction between seated and standing passengers: “It is common knowledge that a passenger can be thrown out of his seat only by an unusual or extraordinary jerk, whereas it is not unusual for a person to lose their balance while standing or walking in a car if an ordinary or moderate jerk occurs.” *Smith v. Pittsburgh Railway Co.*, 314 Pa. 541, 544, 171 A. 879, 880 (1934). Originally, for a passenger to establish an excessive jerk and jolt, the Plaintiff must have clearly shown that the other passengers were affected to a greater extent than usual. *Hufnagel v. Pittsburgh Railways Co.*, 345 Pa. 566, 569, 29 A.2d 4, 5 (1942).

In 1961 the standard expanded. The plaintiff in *Roselyn Smith v. Pittsburgh Railways* was seated in a streetcar when the operator applied the brake and caused standing passengers to step on the plaintiff’s foot. *Roselyn Smith v. Pittsburgh Railways Co.*, 405 Pa. 340, 341, 175 A.2d 844,844 (Pa. 1961). The Court stated that plaintiffs were required to show “additional facts and circumstances from which it clearly appears that the movement of the car was so unusual and extraordinary as to be beyond a passenger’s reasonable anticipation.” *Id.* at 342. In *Connolly v. Philadelphia Transp. Co.*, the Court set forth a two prong test to establish a sudden jerk and jolt:

nothing short of evidence that the alleged unusual movement had an extraordinarily disturbing effect upon other passengers, or evidence of an accident, the manner of the occurrence of which or the effect of which upon the injured person inherently establishes the unusual character of the jolt or jerk, will suffice.

420 Pa. 280, 283, 216 A.2d 60, 62 (1966).

*Muessner v. Port Authority of Allegheny County* controls the first *Connolly* prong. 745 A.2d at 721. In *Muessner*, plaintiffs brought a claim alleging personal injuries caused by the negligent operation of a bus. The plaintiffs were passengers on a bus

owned and operated by the defendants. Plaintiffs Mr. and Mrs. Muessner indicated to the driver that they wanted to exit the bus, stood up from their seats and walked toward the front of the bus. *Id.* at 720. Plaintiffs then alleged that the bus jerked to a sudden stop and plaintiff Mr. Muessner fell to the ground, breaking his glasses. *Id.* Plaintiff, Mrs. Muessner, testified that she almost fell but was uninjured. *Id.* Further, no one else on the bus was affected by the stop. *Id.* The Court granted defendant's motion for nonsuit because the Court stated, "We cannot conclude that Mr. Muessner's fall, while walking on the moving bus when it came to a stop...was so unusual of an accident that its very nature established an extraordinary stop beyond the reasonable anticipation of a passenger." *Id.* at 724.

The case of *Asbury v. Port Authority Transit of Allegheny County* 863 A.2d 84 (Pa. Cmwlth. 2004) explains the second *Connolly* prong. In that case, the plaintiff-passenger broke her femur when the bus began to move before she sat down. *Id.* at 85. Despite testimony from a doctor that it took significant trauma to break a femur, the Court stated that nothing about the jolt showed it to be unusual, and no other passenger was affected by the bus pulling away from the stop. *Id.* at 90. The court stated, "The mere location, type and extent of the injury is not sufficient evidence upon which to reconstruct the physical events of the event. Such reconstruction must precede the solicitation of opinion evidence from a doctor that the injury was the result of a sudden...jerk and jolt." *Id.*

Pursuant to the prevalent case law, Defendants' Motion for Summary Judgment must be granted. Like *Muessner*, Plaintiff fell while standing on the trolley as it approached a stop in a clearly safe manner. Here, however, there is less support available

to Plaintiff than the plaintiff in *Muessner*. While *Muessner* had another passenger who was minimally affected by the braking, Plaintiff here was the sole passenger affected by the braking. Despite that effect on Mrs. Muessner, the Court still granted the Defendant's Summary Judgment. Likewise, the absence of affected passengers here defeats Plaintiff's claim against SEPTA and John Doe. Video evidence clearly shows that as the trolley approached the stop, the passenger to Plaintiff's left rose from his seat as the bus was moving and made his way to the exit at the front of the bus. (SEPTA video). As the passenger moved into view of the camera recording the door, video shows that he was walking at the exact moment that Plaintiff fell. (SEPTA video). Additionally, the other standing passenger was directly next to Plaintiff when she fell. Video shows that the standing passenger was completely unaffected by the stop.

Further, Plaintiff could not produce any evidence that proved her injuries inherently establish the unusual or extraordinarily disturbing character of the stop. *Asbury* stated that a fractured femur alone does not warrant submission to a jury. In this case, Plaintiff suffered a back injury. In *Asbury*, the plaintiff could not provide facts to reconstruct the physical events of the incident and prove the unusual nature of the stop. Here, there is no need to reconstruct the event because the SEPTA video clearly shows that the stop was neither disturbing nor unusual.

In support of their claim, Plaintiff cited *Buzzelli v. Port Authority of Allegheny County*, 674 A.2d 1186, which is clearly distinguishable. *Buzzelli* stated that the effect of the stop is unusual when a standing passenger, who is holding onto a railing, loses control of their movements and knocks another passenger to the ground. *Id.* In the present case, Plaintiff was the only standing passenger affected and she was not holding on to any



support pole at the time of the incident because she had a bag in one hand and a cell phone in the other hand. (SEPTA video). Further, video shows that one of the standing passengers was actually walking at the same time as Plaintiff, and still was unaffected by the stop. Given this, *Buzzelli* is not controlling authority in this case.

Because the video clearly shows that there was no sudden jerk and jolt, Plaintiff's counsel alternatively argues that SEPTA was negligent in its maintenance of the trolley because the floor lacked non-skid strips. However, this argument lacks merit because the trolley floor was entirely made of rubber non-skid material, Plaintiff admitted that the movement of the trolley was the only reason she fell, SEPTA'S alleged negligent maintenance of the trolley was never a cause of action, and Plaintiff did not produce any expert testimony to support her claim that the condition of the trolley floor contributed to her fall. (Defendant's Deposition, pg. 19).

An affidavit of Jerry Guarcino, Manager of Bus Engineering for SEPTA, stated that the entire floor of the trolley was made of non-skid material, which would make additional non-skid strips unnecessary. (Defendant's Reply to Motion for Summary Judgment, Exhibit C ¶ 6). Mr. Guarcino's affidavit also explains that the trolley is one of SEPTA's newest trolleys and the specifications require it to have "non-skid life surface material." (Defendant's Reply, Exhibit C, ¶ 6). Further, SEPTA policy requires that all carriers have "0.10 inch thick welded seam, non-skid long life surface that remains effective in all weather conditions..." (Defendant's Reply, Exhibit 1, § 5.4.4.5). Thus Plaintiff has failed to prove that Defendant SEPTA was negligent in the maintenance of its trolley.

Further, Plaintiff admitted in her deposition that the operation of the trolley was the sole cause of her fall:

Q: You told me the Operator slammed on the brakes, made a hard, sudden stop. Anything else besides that that caused you to fall?

Plaintiff Counsel: And she also testified he was driving fast.

Q: What caused you to fall?

Plaintiff Counsel: Objection. Asked and answered. She already answered what caused you to fall. She said the bus was going to fast and he braked hard.

Q: Anything else that caused you to fall besides the bus going too fast and the bus driver slamming on the brakes? Anything else cause you to fall?

A: No.

Plaintiff's Deposition, pgs. 125-26.

Plaintiff was asked multiple times what caused her fall, and both Plaintiff and her counsel affirmed that the alleged sudden stop, not any defect of the trolley's floor, caused the fall.

Plaintiff's claim regarding Defendant's negligent maintenance also fails because it was never a cause of action established in the Complaint. Plaintiff did not mention the floor's condition in Paragraph 8 §§ (a)-(f), which set forth Plaintiff's causes of action. The floor condition of the trolley was not initially introduced until Plaintiff filed her Response to Defendant's Motion for Summary Judgment on December 23, 2010, almost a year after her Complaint was filed.

Lastly, Plaintiff did not produce any expert witnesses to corroborate her claim that the condition of the floor was defective and a direct cause of her fall. Pennsylvania has determined that expert witnesses are required to support a negligence claim in any profession. *Tennis v. Fedorwicz*, 140 Pa. Cmwlth. 7, 9 592 A.2d 116, 117 (1991) (expert

testimony is required to show that a road was negligently designed). See also *Storm v. Golden*, 371 Pa. Super 368, 538 A.2d 61 (1988) (when the matter before the court involves special skills and training not common to a lay person expert testimony is required). Here, testimony beyond the knowledge of the average layman is required to show the incident was caused by a defective condition of Defendant's trolley floor. The safety design of a trolley requires knowledge beyond that of a lay person. While Defendant produced an Engineer with first-hand experience with SEPTA trolleys, Plaintiff did not present any expert report to support her claim of a defective condition on the trolley floor. The fact that it was raining outside at the time of the incident, by itself, does not create the causal connection between Plaintiff's fall and the condition of the trolley floor that is required to defeat Defendant's Motion for Summary Judgment.

### CONCLUSION

For the forgoing reasons, this Court's Order granting Summary Judgment in favor of Defendant SEPTA should be AFFIRMED.

**BY THE COURT:**

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**ALLAN L. TERESHKO, J.**

**6-29-2011**

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**DATE**

**cc:**  
**Bernard M. Gross, Esq for Plaintiff**  
**Leslie G. Dias, for Defendant**