

trash, and proceeded to the nearest trash receptacle, located directly across the street from where he was fishing. (N.T. 6/2/04 pg. 39). The trash receptacle was not located at the intersection—the intersection was located further west on Lincoln Drive. Id. This intersection was controlled by a stop sign. Id. at 38. However, the plaintiff crossed the street from approximately the spot from where he was fishing, not from the cross walk. Id. at 39.

According to the plaintiff, while standing on the sidewalk, he first observed the defendant, Robert Lighty's, vehicle traveling westbound on Lincoln Drive, approximately two to three car-lengths away to his left. Id. at 40. The plaintiff noticed the car slowing down, but the car never came to a complete stop. Id. The plaintiff contended that the defendant gestured to wave him across the street. Id. at 41. At this point, the plaintiff began to cross the street. Id. At approximately his third or fourth step into the street, the middle of the front-end of the defendant's vehicle struck the plaintiff's left thigh, causing the plaintiff to fall to the ground on his right side, and he was drug underneath the car. Id.

According to the defendant, a totally different sequence of events allegedly occurred. As the defendant was exiting off of Lincoln Drive, he stated that he observed the plaintiff on the sidewalk. Id. at 75. The defendant asserted that he slowed down and stopped before he reached the plaintiff, which was approximately twenty (20) feet away from the intersection. Id. at 75, 81. The defendant then stated that he gestured to the plaintiff to cross the street, but the plaintiff gestured "no" to the defendant. (N.T. 6/2/04 pg. 76, 81). So the defendant contended that he then proceeded towards the intersection, and the plaintiff walked into the side-corner panel of the defendant's vehicle. Id. at 76.

The defendant's position was that he was not at fault for the accident. *Id.* Rather the defendant argued that the plaintiff's injuries were more consistent with the plaintiff walking into the side of the defendant's vehicle. For example, the bruises on the plaintiff's kneecaps were indicative of the defendant walking into the side-corner panel of his vehicle, not the result of his being run underneath the car; and his broken ankle was indicative of his foot being run over by the car's tire. (N.T. 6/3/04 pg. 43).

The parties do not dispute the plaintiff's injuries. After the accident, the plaintiff was taken to the emergency room at Medical College of Pennsylvania Hospital (hereinafter "MCP") via ambulance. (N.T. 6/2/04 pg. 45). X-rays were taken of the plaintiff's left ankle, revealing a fractured fibula and tibia. (Dep. of Dr. Horstmann 5/6/04 pgs. 13-14). The plaintiff was admitted over night. (N.T. 6/2/04 pgs. 45-46). Dr. Helen M. Horstmann, an orthopedic surgeon, performed surgery on the plaintiff's ankle the following morning. (Dep. of Dr. Horstmann 5/6/04 pg. 14). Dr. Horstmann made two incisions on both sides of the plaintiff's ankle and fastened plates to his fibula and tibia with screws. *Id.* The incisions were closed with nylon stitches, and a fiberglass cast was placed on his left leg, extending from his knee to his toes. *Id.*

The plaintiff was released from MCP on July 10, 2001. (N.T. 6/2/04 pg. 46). He was prescribed Percocet for his pain and was instructed to use crutches. *Id.* at 47-48. Plaintiff revisited Dr. Horstmann on August 27, 2001, and during this visit his cast and stitches were removed. (Dep. of Dr. Horstmann 5/6/04 pgs. 19-20). Dr. Horstmann noted that the plaintiff's wounds have "healed up well" and prescribed the plaintiff an air cast, which he wore for six months, and thereafter on an as needed basis. *Id.* at 20.

Dr. Horstmann saw the plaintiff again on February 20, 2002. *Id.* During this

visit, the plaintiff stated that he still had occasional soreness and swelling of his ankle, and Dr. Horstmann also noted limited ankle motion and tenderness over his scars. *Id.* Later, the plaintiff visited Dr. Horstmann on October 24, 2003 because he was still experiencing pain in his ankle, particularly when standing or walking up and down stairs. *Id.* at 25. However, during this visit Dr. Horstmann noted that the plaintiff regained full range of motion in his ankle, he was walking without any pain, and his wound was healed. *Id.* Dr. Horstmann also gave the plaintiff a shot of cortisone to quell the pain and swelling in his ankle. (Dep. of Dr. Horstmann 5/6/04 pg. 26).

The plaintiff subsequently commenced this personal injury action against the defendant via filing of Complaint on May 2, 2003, alleging that the defendant was negligent in the operation of his motor vehicle, and that this negligence caused the plaintiff's fractured left ankle. The plaintiff's wife also had a claim for loss of consortium. This case proceeded to trial on June 2, 2004. Both parties put forth their cases in chief. On June 3, 2004, the jury deliberated and returned a defense verdict, finding that the defendant was negligent but that his "negligence was not a substantial factor in bringing upon the plaintiff's harm."

Subsequently, the plaintiff filed his Motion for Post-trial Relief on June 9, 2004, which this Court denied. The plaintiff has since filed his notice of appeal to the Order denying his Motion for Post-Trial Relief. Also, the plaintiff has issued his Statement of Matters according to Pa.R.A.P. 1925(b), alleging that the jury's verdict was against the weight of the evidence adduced at trial.

LEGAL ANALYSIS

ISSUE

Pursuant to the plaintiff's Statement of Matters Complained of Upon Appeal, the following issue was raised, which this Court will address accordingly:

1. Whether the trial court committed an error of law and/or abuse of discretion in denying the plaintiff's motion for post-trial relief when the jury found that the defendant's negligence was not a substantial factor in causing the plaintiff's harm?

This personal injury action was about a finding of causation. The plaintiff, however, failed to meet this burden. Hence, the jury found that the defendant was negligent in operating his motor vehicle but that his negligence was not a substantial factor in bringing about the plaintiff's harm.¹ However, the plaintiff argues that if a jury has found that a defendant was negligent and the existence of an injury was uncontroverted, then the jury is not permitted to consider whether the defendant's negligence was a substantial factor in bringing about plaintiff's injuries.² This argument lacks merit because it would have this Court eliminate the fundamental legal principle that "proximate cause" be established before one can be held liable for another's harm, and the plaintiff's argument directly conflicts with the jury's finding in this case that the defendant's version of what occurred was more credible.

The mere happening of an accident does not create liability against a defendant. *Gayne v. Philip Carey Mfg. Co.*, 385 Pa. 618, 620; 123 A.2d 432, 433 (1956). The plaintiff has the burden of proving the following elements: the defendant owed the plaintiff a duty; the defendant breached that duty; the defendant's negligence was a

¹ Contributory negligence was not an issue in this case; therefore, this opinion does not address it. In order to have invoked principles of contributory negligence, the jury first would have had to find the defendant's negligence was a substantial factor contributing to the plaintiff's harm. Here, the jury could have properly reached its verdict without considering contributory negligence. See *Daniel v. William R. Drach Co.*, 2004 PA Super 156; 849 A.2d 1265, 1273 n. 5 (2004).

² The Commonwealth of Pennsylvania uses the "substantial factor" test to determine causation. *Ford v. Jefferies*, 474 Pa. 588; 379 A.2d 111 (1977).

proximate cause or a substantial contributing factor in bringing about the plaintiff's harm; and the plaintiff suffered injuries. *Macina v. McAdams*, 280 PA Super 115, 120; 421 A.2d 432, 434 (1980). The plaintiff has the burden of proving all of the above elements. If there exist controverted facts as to the cause of the accident, as in the present case, then the issue of causation must be answered by the fact finder. See *Daniel v. William R. Drach Co.*, 2004 PA Super 156; 849 A.2d 1265 (2004).

In order for the plaintiff to have recovered in this case, the defendant's conduct must have been a substantial factor in bring about the plaintiff's injuries—*i.e.*, causation. The defendant's negligence must be more than a *de minimus* factor; the conduct must be “an actual, real factor, although the result may be unusual or unexpected, but it is not an imaginary or fanciful factor or a factor having no connection or only an insignificant connection with the accident.” *Jeter v. Owens-Corning Fiberglass Corp.*, 716 A.2d 633, 636 (1988)). The Supreme Court has cited with approval the comments to § 431 of the Restatement of Torts which defined “substantial factor” as “conduct [that] has such an effect in producing the harm as to lead reasonable men to regard it as a cause using that word in the popular sense.” *Id.* (citing and quoting *Ford v. Jefferies*, 474 Pa. 588; 370 A.2d 111, 114 (1977)). However, if the event is a significant or recognizable cause, “it need not be quantified as considerable or large.” *Jeter*, 716 A.2d at 636. Therefore, the proper evaluation is whether the conduct was “‘on the one hand, a ‘substantial factor’ or a ‘substantial cause,’ or, on the other hand whether the defendant’s conduct was an ‘insignificant cause’ or a ‘negligible cause.’” *Id.*, (citing and quoting *Ford*, 370 A.2d at 114).

The plaintiff, however, has relied upon a number of cases that stand for the

proposition that where causation was conceded or was not an issue in the case, it is against the weight of the evidence for the jury to find that a defendant's negligence was not a substantial factor in causing an uncontroverted injury that resulted from an accident. *See e.g. Campagna v. Rogan*, 2003 PA Super 257; 829 A.2d 322 (2003) (holding that a jury cannot find against a plaintiff where a defendant admitted to causing a motor vehicle accident and the medical experts agreed that the plaintiff suffered some injury); *Hyang v. Lynde*, 2003 PA Super 113; 820 A.2d 753 (2003) (holding that that a new trial should be granted on damages where a jury found for a defendant, despite the fact that the defendant conceded liability and causation and medical experts agreed that a plaintiff suffered some injury); *Andrews v. Jackson*, 2002 PA Super 173; 800 A.2d 959 (2002) (holding that a jury cannot deny compensation to a plaintiff where there was uncontroverted evidence of causation and that the plaintiff suffered some injury); *Kruczkowska v. Winter*, 2000 PA Super 393, 764 A.2d 627 (2000) (holding that it was against the weight of the evidence for a jury to find that a defendant's negligence was not a substantial factor where causation was not at issue; only the extent of a plaintiff's injuries were contested).

In *Kruczkowska v. Winter*, a defendant-motorist hit the plaintiff-bicyclist when attempting to make a left turn out of a driveway. 2000 PA Super 393; 764 A.2d 627 (2000). The defendant failed to look in the plaintiff's direction before exiting the driveway. *Id.* at 628. As a result of the accident, the plaintiff suffered back, hip, and foot injuries. *Id.* The defendant did not contradict the existence of the plaintiff's injuries, but he did contest the duration and extent of her injuries. *Id.* at 630.

Ultimately, the jury returned a verdict in favor of the defendant. *Id.* at 629. The

jury found that the defendant was negligent but that her negligence was not a substantial factor in bringing about harm to the plaintiff. *Id.* The Superior Court reversed the trial court's order denying the plaintiff a new trial, and remanded the case for a new trial. *Id.* at 632. Accordingly, the Superior Court held that it was against the weight of the evidence to find that the defendant's negligence was not a substantial factor, and that the verdict bore "no rational relationship to the evidence adduced at trial." *Id.*

The Superior Court reasoned that causation was not an issue in this case:

Winter's negligent act of pulling out of a driveway into the roadway pursuant to the urging of an unknown motorist, without first looking to see if the path was clear at that time, was an established factor in causing the accident. Moreover, Winter admitted she had to back her car off of Kruczkowska's foot after the collision occurred. *Thus, Winter's negligence was clearly the cause of Kruczkowska's foot and ankle injury, the existence of which was not contradicted. Id.* at 631-632 (emphasis added).

The Superior Court applied their rationale in *Winter* to a similar, subsequent case. *Andrews v. Jackson*, 2002 PA Super 173; 800 A.2d 959 (Pa. Super. 2002). In *Andrews*, the defendant's motor vehicle stopped at a red light but too far into the intersection. *Id.* at 960. The defendant reversed his vehicle, colliding with the front-end of the plaintiff's vehicle, which was stopped immediately behind the defendant. *Id.* The parties did not dispute the cause of the accident; rather the dispute was the severity of the plaintiff's injuries. *Id.* at 961. The defendant's medical expert, however, conceded that the plaintiff had suffered a soft-tissue injury (cervical sprain) in the accident. *Id.*

The jury returned a verdict finding the defendant negligent, but the jury found that the defendant's negligence was not a substantial factor in causing the plaintiff's injuries. *Id.* The trial court granted the plaintiff a new trial on the issue of damages, and the

defendants appealed that decision. *Id.* The Superior Court affirmed the decision of the lower court and held that a jury must find that an accident at issue was a substantial cause of at least some injury, where both parties' medical experts agreed that the accident caused some injury. *Id.* at 965.

As evidenced above, causation was not an issue in either *Winter* or *Andrews*. Rather in those cases there was uncontroverted evidence that the plaintiffs suffered some injuries but also uncontroverted evidence that the defendants' negligence caused the plaintiffs' injuries. Therefore, the Superior Court held that it was improper for these juries to find against the plaintiffs. But the Superior Court has recently distinguished the *Winter*-line of cases, holding that if there is an uncontroverted injury but controverted evidence as to whom caused the plaintiff's injuries, then the issue of causation must be resolved by the jury. *Daniel v. William R. Drach Co.*, 2004 PA Super 156; 849 A.2d 1265 (2004).

In *Daniel*, the plaintiff was a truck driver who was picking up 800 pound barrels of scrap metal from the defendant's loading dock. *Id.* at 1266. The plaintiff attempted to pick these barrels up by rolling them. *Id.* The plaintiff contended that, while rolling these barrels, he slipped on a wet and greasy spot on the floor. *Id.* The defendant, however, contended that the condition on the floor had nothing to do with the plaintiff's fall; rather the plaintiff lost control of the 800 pound drum, which jerked his arm, causing him to fall. *Id.* at 1269.

The jury ultimately found that the defendant was negligent, but that this negligence was not a substantial factor in causing the plaintiff's injuries. *Id.* at 1266. The plaintiff appealed, alleging that the trial court abused its discretion in denying the

plaintiff's motion for post-trial relief where the jury found that the defendant's negligence was not a substantial factor in causing the harm despite the uncontroverted injury. *Id.* at 1267.

The Superior Court, however, affirmed the judgment of the lower court and held that the verdict bore a rational relationship to the evidence presented at trial because the jury could have found the plaintiff's case theory incredible and instead accepted the defendant's theory of defense. *Id.* at 1273. The Court reasoned that it was the jury's province, as the fact finder, to determine which version of the events it found more credible. *Id.* at 1271.

The *Daniel* court noted that "this case is about a finding a substantial factor" (ie causation). *Id.* at 1273. This was a critical element in the court's analysis in distinguishing *Daniel* from the *Winters* and Andrews line of cases. The *Daniel* court further stated that:

In *Andrews* and the other cases that the Appellant cite, the jury's finding of negligence established that the negligent operator of the vehicle caused the collision. Whereas those juries findings on negligence established that the drivers were liable for causing the collision, the jury's decision in the case that Appellee was negligent did not establish that its negligence caused the alleged accident in which Mr. Daniel injured himself. *Id.* at 1268.

Lastly, the *Daniel* court explained:

...[w]e do not extrapolate from this caselaw that regardless of the factual circumstances, a finding of negligence combined with an uncontroverted injury *automatically requires a finding that the negligence was a substantial factor in causing the accident* that caused the injury. *Id.* (emphasis added).

Here, the plaintiff makes the same misreading of the law on causation as the plaintiff in Daniel by his reliance upon the Winter-line of cases. Plaintiff, in this case, assumed that the cause of the accident was established by the jury's finding that the operator of the vehicle was negligent. This inference was clearly an unwarranted assumption because the jury found that, although there was some negligence by the operator, it was not the legal cause of the accident in accordance with the charge of this court:

[that] in order for the plaintiff to recover in this case, the defendant's (negligent) conduct must have been a substantial factor in bringing about the accident. This is what the law recognizes as legal cause. A substantial factor is an actual, real factor, although the result may be unusual or unexpected, but it is not an imaginary or fanciful factor or a factor having no connection or only an insignificant connection with the accident. (N.T. dated 6/3/04 pg. 64).

As previously stated, the issue in this case was whether the defendant's negligence caused the accident that resulted in the injury. The jury's verdict, that the defendant was negligent, did not establish that his negligence caused the alleged accident. As the record shows, there were two completely different theories that were offered as to what caused the accident.

The plaintiff alleged that as he approached the sidewalk to cross the street—not from the cross walk—he saw the defendant's vehicle approaching. (N.T. 6/2/04 pg. 40). The plaintiff alleges the defendant waved him across the street and as the plaintiff proceeded to cross the street the defendant failed to bring his vehicle to a complete stop and struck the plaintiff on his left side. Id. at 41.

Conversely, the defendant contended that the plaintiff walked into the side of his vehicle. Id. at 76. According to the defendant, as his car was approaching the plaintiff,

he slowed down and stopped. *Id.* at 75. The defendant waved the plaintiff across the street, but the plaintiff gestured “no” back to the defendant. *Id.* at 76, 81. So the defendant proceeded towards the intersection, which was when the plaintiff walked into the side of his vehicle. *Id.*

Viewing the facts in a light most favorable to the prevailing party, the defendant, the verdict bears a rational relationship to the evidence presented at trial because the jury could have found the plaintiff’s version of the events incredible, and it could have instead accepted the defendant’s theory of defense.

III. CONCLUSION

In consideration of the analysis set forth above, this Court believes that the verdict rendered by the jury bore a rational relationship to the evidence adduced at trial; therefore, this Court’s denial of the plaintiff’s Motion for Post-Trial Relief should be affirmed by the Court above.

BY THE COURT:

Date

ALLAN L. TERESHKO, J.

cc: Derek S. Liss for Appellants
Kevin Blake for Appellee