IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

RICHARD RADFORD	:	APPEAL NO. C-080414 TRIAL NO. A-0602159
and	:	
KAREN WEAVER RADFORD,	:	*JUDGMENT ENTRY.*
Plaintiffs-Appellants,	:	
vs.	:	
RICHARD ELLENSOHN,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Richard and Karen Radford appeal the trial court's entry of summary judgment in favor of Richard Ellensohn. We conclude that the Radfords' sole assignment of error is without merit, so we affirm the judgment of the trial court.

On a rainy night in November 2004, the Radfords left a restaurant in the Oakley community of Cincinnati. When the couple began to cross Markbreit Avenue, they were hit by a car driven by Richard Ellensohn. Both Radfords were injured. The Radfords filed a complaint against Ellensohn, alleging that he had been negligent in operating his car. After the parties were deposed, Ellensohn filed a motion for summary judgment, and the Radfords filed a response. The trial court granted summary judgment to Ellensohn.

---

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In their sole assignment of error, the Radfords assert that the trial court erred when it granted summary judgment to Ellensohn. Summary judgment is proper when (1) there remains no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and with the evidence construed in favor of the party against whom the motion is made, that conclusion is adverse to that party.[2] We review the trial court's decision to grant summary judgment de novo.[3]

To prevail on their negligence claims, the Radfords had to prove that Ellensohn owed them a duty of care, that he had breached the duty, and that they were proximately harmed by his breach.[4] That a vehicle hits a pedestrian on the road does not by itself establish negligence on the part of the driver.[5] In a negligence action, the presumption that each party exercised ordinary care prevails until it is rebutted by evidence to the contrary.[6] The burden was on the Radfords to present evidence that Ellensohn had not exercised ordinary care.

Ellensohn's failure to exercise ordinary care could have been demonstrated if the Radfords had been crossing the road in a marked crosswalk when they were hit. A pedestrian crossing a road within a crosswalk has the right-of-way.[7] But neither Karen nor Richard Radford could say with certainty that they had crossed in a crosswalk. Absent such evidence, the Radfords had to present evidence that Ellensohn had otherwise breached his duty to exercise ordinary care when operating his car. No such evidence was presented. There was no evidence offered to rebut Ellensohn's statement that he had been driving at or below the speed limit when the

---

[2] Civ.R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.
[3] *Doe v. Shaffer*, 90 Ohio St.3d 388, 390, 2000-Ohio-186, 738 N.E.2d 1243.
[4] *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285, 423 N.E.2d 467.
[5] *Dixon v. Nowakowski* (Aug. 27, 1999), 6th Dist. No. L-98-1372. See, also, *Tomlinson v. Cincinnati* (1983), 4 Ohio St.3d 66, 446 N.E.2d 454.
[6] *Biery v. Pennsylvania RR Co.* (1951), 156 Ohio St. 75, 99 N.E.2d 895, paragraph two of the syllabus.
[7] R.C. 4511.46(A).

collision occurred, and that he had been watching out for other traffic and pedestrians while driving. After construing the evidence in the light most favorable to the Radfords, we conclude that summary judgment was properly entered for Ellensohn. The sole assignment of error is overruled, and we, therefore, affirm the judgment of the trial court.

PAINTER, P.J., SUNDERMANN and **CUNNINGHAM, JJ.**

To the Clerk:

Enter upon the Journal of the Court on January 28, 2009

per order of the Court ______________________________.
Presiding Judge