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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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BY: [Signature]

**LACEY CAMERON,**  
**Plaintiff,**

vs.

**SPIRIT EXPRESS TRUCKING, INC.,**  
**and ROBERT OLSEN,**  
**Defendants.**

**MEMORANDUM DECISION AND  
ORDER**

Case No. 2:02CV1223DAK

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This matter is before the court on Plaintiff Lacey Cameron's Motion for Partial Summary Judgment as to liability. The parties fully briefed the motion and the court held a hearing on this motion on September 1, 2004. Plaintiff was represented by Nathan D. Alder and David C. Biggs. Defendants' counsel did not appear. The only question the court posed to Plaintiff's counsel was whether Defendant had been deposed and Plaintiff's counsel represented that he had not. The court advised Plaintiff's counsel that the matter would be decided on the parties' briefs. After carefully considering the pleadings, memoranda, and other materials submitted by the parties, as well as the law and facts relevant to the parties' motions, the court enters the following Memorandum Decision and Order.

**BACKGROUND**

On June 9, 2002, Plaintiff, Lacey Cameron, and Defendant Robert Olsen were in an accident on State Road 6, approximately 27 miles east of Spanish Fork, Utah. Plaintiff was

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driving a white Chevrolet Blazer and heading westbound. Defendant Olsen was driving a Spirit Express Trucking, Inc. tractor-trailer with approximately 44,000 pounds of cargo and heading eastbound.

Olsen wrote a statement to police immediately after the accident that states: "I rubbed my face. My glasses fell off. I reached to pick up & jerked the wheel & the truck went over." Olsen also spoke to his employer, Ray Watson, Vice President of Spirit Express Trucking, after the accident. In that conversation, Olsen told Watson that he dropped his glasses, picked them up, and when he did, he realized he had crossed the center line, at which time he pulled the wheel to the right, which caused the truck to flip over and slide. The Spirit Express truck first hit a red vehicle traveling westbound in front of Plaintiff ("Begay vehicle").

Olsen's son, Chris Olsen, was in the Spirit Express truck as a passenger at the time of the accident. He witnessed the truck move over into the other lane, flip, and slide. The Spirit Express truck first hit another vehicle ("Begay vehicle") which was traveling westbound in the same lane as Plaintiff. The Spirit Express truck then slid into Cameron's vehicle and forced her vehicle off the road and into the Provo River. Cameron was transported by Life Flight to a hospital.

Spirit Express Trucking has a policy that a driver should take a drug test within two hours of an accident. However, Olsen waited three days to obtain a drug test. Olsen was fired by Spirit Express for misleading his employer following the accident and for failing to take a drug test within two hours of the accident. He was not fired because he caused the accident.

Plaintiff brought this action asserting a negligence cause of action against Olsen and Spirit Express. Spirit Express admits that, at the time of the accident, Olsen was operating the

Spirit Express truck while in the course and scope of his employment. Spirit Express also admits that it is liable for the accidents of Olsen.

The attorneys in this case traveled to Olsen's home to take his deposition and his son's deposition. Olsen's son was deposed first, and Olsen sat through it. However, Olsen then refused to be deposed. His attorney made a statement at the deposition stating that his client emotionally could not handle the deposition. Olsen has never been deposed.

### **DISCUSSION**

Plaintiff argues that she is entitled to summary judgment on liability based on the investigating officer's report, photographs, witness statements, the completed depositions of Chris Olsen and Ray Watson, and Olsen's post-accident statements to police and Watson. Specifically, Plaintiff argues that Olsen owed her a duty to exercise reasonable care in the operation of the Spirit Express truck, he breached that duty by causing the accident, and that breach was the proximate cause of her injuries.

Although Defendants argue that there is no first-hand testimony as to the cause of the accident, Olsen gave a post-accident statement to police and a statement to his employer. Defendants contend that these statements are inadmissible hearsay. However, the statements are not hearsay because they are admissions against interest by a party-opponent. *See* Fed. R. Evid. ("FRE") 801(d)(2). In both statements, Olsen admitted his actions were the cause of the accident and failed to mention any other cause of the accident. The statements could also be considered a present sense impression under FRE 803(1) ("A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or *immediately thereafter*"); an excited utterance under FRE 803(2) ("A statement relating to a startling event or

condition made while the declarant was under the stress of excitement caused by the event or condition.”); a recorded recollection under FRE 803(5) (“A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’ memory and to reflect that knowledge correctly.”); and a record of regularly conducted activity under FRE 803(6) (“A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity.”). Therefore, the court concludes that Olsen’s post-accident statements to the police and his employer are admissible evidence.

Under Utah law, a violation of a safety statute constitutes prima facie evidence which, if not justified or excused by competent evidence, is sufficient to support a verdict of negligence. *Child v. Gonda*, 972 P.2d 425, 432 (Utah 1998). Utah Code Ann. § 41-6-53(1) required Olsen to keep his vehicle on the right side of the roadway at all times. In addition, under Utah Code Ann. § 41-6-53(1), Olsen had a duty to keep his speed under control. Based on Olsen’s post-accident statements, the investigating officer’s report, the photographs of the accident, the depositions of Chris Olsen and Ray Watson, and the opinion of Plaintiff’s expert witness as to the cause of the accident, the court concludes that Plaintiff has demonstrated a prima facie case of negligence. Therefore, under *Childs*, Defendants are charged with rebutting Plaintiff’s prima facie case with competent evidence.

Defendants argue that there is a material question of fact as to what caused Olsen to apply his brakes, which ultimately resulted in the Spirit Express truck crossing over into

oncoming traffic. Defendant relies on a picture of skid marks in Olsen's lane to assert that there may have been another cause for the accident. The police report indicates that the Begay vehicle, which Olsen hit first, exited a rest stop entrance, crossed the eastbound lane and traveled in the westbound lane for approximately 100 feet before impact with the Spirit Express truck. Based on the fact that there are skid marks in Olsen's lane and the fact that the Begay vehicle had exited the rest stop 100 feet prior to the impact, Defendants contend that a jury could logically conclude that Olsen reacted to the Begay vehicle by applying his brakes and eventually sliding into the westbound lane.

However, by failing to allow his deposition to be taken, Olsen has failed to refute his post-accident statements as to the cause of the accident. Defendants arguments are mere speculation. Defendants have not presented any deposition testimony or any fact affidavits to support their theory. Defendants theory as to the potential cause of the accident is without any documentary support other than a photograph indicating skid marks in Olsen's lane. Nobody, including Olsen in his post-accident statement, has ever mentioned the Begay vehicle as a potential cause of the accident before Defendant's opposition memorandum. This type of speculative argument is not the kind of competent evidence required to rebut a prima facie case and does not create a genuine issue of material fact that can defeat summary judgment.

The court is cognizant of case law cautioning courts from finding negligence as a matter of law. However, this is a rare case in which summary judgment for Plaintiff on the issue of liability is appropriate. Plaintiff has provided ample evidence to establish a prima facie case of negligence based on Olsen's violation of safety statutes, and Defendants have provided no competent evidence to rebut it. Therefore, summary judgment on liability is appropriate under

*Child v. Gonda*, 972 P.2d 425, 432 (Utah 1998).

Plaintiff also seeks costs and attorneys' fees associated with having to prosecute this liability case because Defendants denied various Requests for Admission. Defendants denied requests for admission that were specifically tied to Olsen's statement to police. Defendants knew of Olsen's post-accident statements, have failed to have Olsen appear for his deposition, and have not attempted to provide any conflicting evidence through an affidavit from Olsen or any other fact witness. Furthermore, Defendants never conducted any discovery of their own to investigate any other potential cause of the accident. The lack of discovery into other causes is telling. Based on the evidence before the court, Defendants should have admitted many of the requests for admission instead of forcing Plaintiff to conduct further discovery on the issue of liability. Therefore, the court finds that Plaintiff is entitled to her reasonable fees and costs expended to prove the issue of liability from the date Defendants denied Plaintiff's requests for admission. Plaintiff is instructed to file a detailed memorandum and affidavit within twenty days detailing the amount of fees and costs associated with discovery on the issue of liability and the filing of this motion for summary judgment.

#### CONCLUSION

Based on the above reasoning, Plaintiff's Motion for Partial Summary Judgment on the issue of liability is GRANTED.

DATED this 2d day of September, 2004.

BY THE COURT

  
DALE A. KIMBALL  
United States District Judge

United States District Court  
for the  
District of Utah  
September 3, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:02-cv-01223

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