STATE OF MICHIGAN

COURT OF APPEALS

LISA MOLNAR and LEWIS MOLNAR,

Plaintiffs-Appellants,

v

KAREN PLESE and WILLIAM PLESE,

Defendants-Appellees.

UNPUBLISHED
April 18, 1997

No. 182672
Oakland Circuit Court
LC No. 93-461725-NI

Before: Young, P.J., and Taylor and Livo,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court judgment dated December 14, 1994, which entered a jury verdict of no cause of action in favor of defendants. We reverse and remand for a new trial.

Plaintiff filed this negligence action after her vehicle was stuck in the rear by defendant's vehicle as both women traveled from a service drive onto northbound I-75 in Toledo, Ohio at 5:45 p.m. on July 2, 1992. Plaintiff claims that she observed traffic slowing down and stopping ahead of her, and eventually, she slowed her vehicle to a stop as well. Plaintiff further claims that after she stopped, defendant negligently struck her vehicle from behind. Defendant responds that plaintiff came to a sudden stop even though the slowing traffic had not stopped ahead of plaintiff, and that she slammed on her brakes and skidded but could not avoid hitting plaintiff's vehicle.

Plaintiff argues on appeal that the trial court erred in instructing the jury with the standard jury instruction regarding the sudden emergency doctrine, SJI2d 12.02. We agree. In *Vander Laan v Miedema*, 385 Mich 226; 188 NW2d 564 (1971), our Supreme Court held that the sudden emergency doctrine only applies to circumstances involving a true "emergency" such that the circumstances surrounding an accident must present an "unusual or unsuspected" situation. *Id*. at 232. The Court further defined an "unsuspected" situation as one in which the potential peril had been "totally unexpected." *Id*. This Court has stated that any motorist in heavy, rush hour traffic should

reasonably expect sudden stops. *Hill v Wilson*, 209 Mich App 356, 360-361; 531 NW2d 744 (1995).

The evidence in the instant case was not sufficient to allow the jury to conclude that a true emergency existed within the purview of the sudden emergency doctrine and did not support instructing the jury with SJI2d 12.02. Because the instruction undoubtedly led the jury to believe that a true "emergency" existed to excuse defendant's actions, we hold that the error is not harmless and a new trial is required. Compare *Jackson v Coeling*, 133 Mich App 394, 399-401; 349 NW2d 517 (1984).

Reversed and remanded for a new trial. We do not retain jurisdiction. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Robert P. Young, Jr.
/s/ Clifford W. Taylor
/s/ Robert C. Livo