

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

THOMAS NEELY,)	
)	No. 3:05-CV-304
Plaintiff,)	
)	Knoxville, TN
vs.)	June 21, 2006
)	9:30 a.m.
FOX OF OAK RIDGE,)	
)	
Defendant.)	

TRANSCRIPT OF JURY TRIAL (CONTINUED)
BEFORE THE HONORABLE H. BRUCE GUYTON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: Robert J. English, Esq.
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For the Defendant: Clint J. Woodfin, Esq.
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1 was. It's unquestioned that the rear-end collision
2 happened as alleged in the answer of the defendant.
3 And that Mr. Curd was driving a car as the agent of
4 Fox of Oak Ridge. And that he struck this man on a
5 rain-slickened road. There's an abundance of proof in
6 there. It's just a question for the jury to
7 determine, Your Honor.

8 THE COURT: Any further, Mr. Woodfin?

9 MR. WOODFIN: Your Honor, at this point, I
10 would have to think that the jury to be able to
11 determine this question, there must be some proof set
12 forth by the plaintiff that the defendant's agent
13 breached some type of duty. There is very simply no
14 proof in the record that the defendant breached any
15 duty whatsoever to this plaintiff.

16 Accidents happen. You can't infer negligence
17 from the fact that an accident happened. There must
18 be some proof set forth by the plaintiff that the
19 agent of the defendant engaged in some level of
20 conduct which merits a breach of duty that he owed to
21 the plaintiff.

22 There's no proof in the record. It's not our
23 burden to prove that. It's the plaintiff's burden to
24 allow that to be carried forth to the jury. And there
25 is no evidence in this record that anything Mr. Curd

1 did, or did not do, was negligent. It's as simple as
2 that.

3 There's no testimony from Mr. Curd whatsoever.
4 The only thing that the plaintiff can say is that he
5 was struck in the rear. Why? The jury can't tell
6 why. There is nothing for them to determine. Nothing
7 for them to weigh. There is no way that the plaintiff
8 can argue that negligence can be inferred just because
9 an accident happened.

10 THE COURT: All right, Mr. Woodfin. The
11 evidence that has been put in the record so far by the
12 plaintiff was that he was driving in a reasonable
13 manner down the road. He slowed almost to a dead stop
14 in order to allow a car to turn in front of him into a
15 shopping mall area. At that point, he was struck in
16 the rear by another vehicle.

17 That raises to the jury a question as to
18 whether or not the car that struck him was being
19 operated in an unreasonable manner in the
20 circumstances then existing.

21 I think that your argument is that their case
22 is weak. But it's still a jury question. So,
23 respectfully, your motion will be denied.

24 And shall we bring the jury back in?

25 MR. WOODFIN: There's one other matter I need