

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

14-P-1100

CHERIE A. RUBNER¹

vs.

ALL STAR ENTERPRISES and COLLISION CENTER, INC., & another.²

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Dillon Renard was fatally injured when the vehicle in which he was a passenger collided with a tow truck owned by the defendant All Star Enterprises and Collision Center, Inc. (All Star) and which was illegally parked on the street in front of All Star's business. Renard was a passenger in a vehicle owned and operated by the defendant Angelique Griffin, whose vehicle struck the rear of the truck. Griffin was intoxicated by alcohol at the time of the accident. The plaintiff commenced this action for wrongful death, alleging that All Star illegally and negligently left its flat-bed tow truck parked on the street overnight and that All Star's violation and negligence caused or was a contributing factor to the collision in which Renard was

¹ In her capacity as personal representative of the estate of Dillon P. Renard.

² Anglique Griffin and Leaha A. Albrecht.

fatally injured.³ A Superior Court judge allowed summary judgment for All Star, holding that the Salem traffic ordinance, chapter 42, § 55B (referred to by the parties and the judge as the parking ordinance) which All Star violated was not intended to prevent collisions, and that All Star's violation of the parking ordinance did not proximately cause the accident that resulted in Renard's death. The plaintiff now appeals. We affirm the allowance of summary judgment.

At the outset, we note that the record does not include any of the summary judgment exhibits. Accordingly, our review is limited to errors of law apparent on the limited record provided to us.

As noted, Renard was a passenger in a motor vehicle which struck the back of a tow truck owned by the defendant All Star which, at the time of the collision, was illegally parked on the side of a road in Salem.⁴ The arguments below, and on appeal, focus on the city parking ordinance prohibiting the parking of large (greater than four tons) commercial vehicles on certain residential streets overnight. The judge concluded that the ordinance was not intended to prevent collisions and,

³ The plaintiff also alleged a negligence claim against Griffin and Leaha Albrecht, a social host who had served alcoholic drinks to Griffin prior to the accident. The plaintiff settled with Griffin and Albrecht, and the parties filed a stipulation dismissing all counts and claims other than against All Star.

⁴ All Star received a citation for violating the ordinance after the accident.

accordingly, could not be used to support an inference of negligence. He also concluded that the violation of the ordinance could not be a cause of the accident, as other vehicles are permitted to park on the street in that area and even large vehicles are permitted to park in that area for brief periods of time while loading or unloading passengers or goods. He noted that "[o]n the summary judgment record, there is nothing to suggest that there was anything about the size of the vehicle or its inactive status that contributed to the collision."

On appeal, the plaintiff argues that the judge erred in concluding that the violation of the ordinance did not warrant an inference of negligence. As noted by the motion judge, a violation of a statute or ordinance warrants an inference of negligence where the harm that has resulted from the violation is the type of harm that the statute or ordinance is intended to prevent. See Baggs v. Hirschfield, 293 Mass. 1, 3 (1935) ("The violation of a penal statute is evidence of negligence as to all consequences that the statute was intended to prevent"); Ford v. Boston Hous. Authy., 55 Mass. App. Ct. 623, 625 (2002) (violation of State building "code is evidence of negligence as to the consequences the code and its regulations were intended to prevent"). The judge concluded that the intent of the statute was aesthetic, as the ordinance prohibited only the parking of

large commercial vehicles for extended periods of time, i.e., smaller vehicles could park there any time and even large vehicles could park for short periods of time. The judge stated:

"The ordinance appears primarily intended to preserve aesthetics. If the ordinance were designed to prevent the kind of danger posed by the parking of vehicles generally in the subject areas, then, presumably, it would have been made applicable to all vehicles and not simply commercial vehicles. If it were designed to prevent a unique danger posed by the parking of commercial vehicles, then, presumably, there would be no exception for commercial vehicles weighing less than four tons. If it were designed to prevent a particularly unique danger posed by the parking of larger vehicles, then, presumably, they would never be entitled to park in the prohibited areas, rather than be allowed to park for an hour during the day and for as long as necessary at any time when receiving or discharging passengers or loading or unloading goods. Lastly, if it were designed to address a unique danger posed by nighttime parking, then all nighttime parking by all vehicles would be prohibited.

" . . . As already noted, in the absence of such an inference, there is no evidence of negligence at all."

The plaintiff points to the general purpose of the zoning ordinance (to promote the health, safety, and welfare of the inhabitants of Salem) and argues because the parking ordinance made reference to the zoning districts, the general zoning ordinance purposes should be inferred to apply to the parking regulation. We are not persuaded by this argument and conclude that the motion judge's common sense reading was correct.

Because we agree with the judge that there was a failure of proof on the issue of negligence, there is no need for us to

reach the issue of proximate cause. See Kourouvacilis
v. General Motors Corp., 410 Mass. 706, 711-712 (1991).

Judgment affirmed.

By the Court (Cypher,
Trainor & Katzmann, JJ.⁵),

Clerk

Entered: August 28, 2015.

⁵ The panelists are listed in order of seniority.