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RICHARD SHAFFER,	:	In the Court of Common Pleas
<i>Plaintiff,</i>	:	of Lackawanna County
vs.	:	
ARTHUR FRANK,	:	
<i>Defendant.</i>	:	Civil Action - Law
vs.	:	
COUNTY OF LACKAWANNA TRANSIT	:	
SYSTEM and FRANK X. GHILARDI,	:	
<i>Additional Defendants.</i>	:	No. 22-CV-2574

MAURI B. KELLY  
LACKAWANNA COUNTY  
2025 APR 24 P 3 14  
CLERK OF JUDICIAL  
RECORDS CIVIL DIVISION

### MEMORANDUM AND ORDER

#### I. Introduction.

This matter concerns a motor vehicle accident which took place on March 5, 2021. Plaintiff was riding on a bus owned by Defendant County of Lackawanna Transit System (COLTS) and driven by Additional Defendant Frank X. Ghilardi. The Amended Complaint alleges that the COLTS bus was struck by a vehicle operated by Defendant Arthur Frank in Scranton, Lackawanna County, Pennsylvania. Before us is a motion for summary judgment filed by Defendant Frank. We have reviewed the briefs and arguments of the parties and the matter is ripe for disposition.

#### II. Standard of Review.

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.Civ.P. 1035.2.

Summary judgment “is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment in its favor as a matter of law.” *Brewington for Brewington v. City of Philadelphia*, 650 Pa. 139, 149, 199 A.3d 348, 352 (Pa. 2018)(citation omitted). In making that determination, the summary judgment record and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party, with any doubts as to the existence of a genuine issue of material fact being resolved against the moving party. *In re: Risperdal Litigation*, 223 A.3d 633, 639 (Pa. 2019). A motion for summary judgment implicates the plaintiff’s proof of the elements of a cause of action. *Kline v. Travelers Personal Security Insurance Co.*, 223 A.3d 677, 685 (Pa. Super. 2019). A non-moving party who bears the burden of proof on an issue may not merely rely on his pleadings or answers in order to survive summary judgment. *Pass v. Palmiero Automotive of Butler, Inc.*, 2020 WL 632995, at \*2 (Pa. Super. 2020). The failure of a non-moving party to adduce sufficient evidence on an issue essential to his case and on

which he bears the burden of proof establishes the entitlement of a moving party to judgment as a matter of law. *Id.* The non-moving party must “point to evidence in the record indicating that a conflict in the evidence warrants review by the factfinder.” *Schell v. Guth*, 88 A.3d 1053, 1055-56 (Pa. Cmwlth. 2014), *appeal denied*, 628 Pa. 643, 104 A.3d 527 (2014). The court may grant summary judgment only when the right to such a judgment is clear and free from doubt. *Gallagher v. GEICO Indemnity Company*, 201 A.3d 131, 136-37 (Pa. 2019).

“[S]ummary judgment is only appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *Nicolaou v. Martin*, 649 Pa. 227, 246, 195 A.3d 880, 891 (Pa. 2018)(*citing* Pa.R.Civ.P. 1035.2(1)). The trial court “must take all facts of record and reasonable inferences therefrom in a light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party.” *Id.* The issue of whether there is a genuine issue of material fact is a question of law. 195 A.3d at 892.

### III. Discussion.

There is no dispute that the Plaintiff was injured while a passenger in a COLTS-owned vehicle. The Amended Complaint contained a single count of negligence against Defendant Frank who then filed a Joinder Complaint against COLTS and Defendant Ghilardi. We previously disposed of Plaintiff’s preliminary objections to the New Matter of the Additional Defendants.

The essence of Defendant Frank's motion for summary judgment is that the Plaintiff has failed to establish a *prima facie* case in negligence against him. The Defendant maintains that no evidence has been produced by the Plaintiff to indicate that he was negligent. In support, Defendant Frank relies on statements produced in discovery by the Plaintiff and the Additional Defendants. Defendant Frank focuses on Plaintiff's statement in his deposition that he did not know how this accident happened. (Plaintiff's deposition, pp.28, 32). Plaintiff also cites to statements by Defendant Ghilardi during his deposition that he did not know what caused the accident. (Ghilardi Deposition, pp.57, 69, 70-71).

Additional Defendants counter that Defendant Frank testified in his deposition that he had a clear view of the COLTS vehicle at the time of the accident. (Frank Deposition, pp. 17-23). Defendant Ghilardi admitted during his deposition that everyone is at fault when an accident happens. (Ghilardi Deposition, p.135).

Additionally, Defendant Frank contends that the COLTS bus clipped the back end of his vehicle, thus creating responsibility for the accident on the Additional Defendants.

While the deposition testimony says what it says, it is for a jury to examine the testimony of the parties and determine which testimony is believable. That is a core function of a factfinder. As noted, we must view the record in a light most favorable to the non-moving parties here and we must resolve any doubts as to the existence of a genuine issue of material fact against the moving party. Because so much of what the

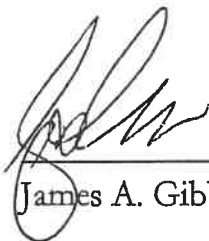
parties argue in this motion turns on, in our estimation, credibility, we cannot say that Defendant Frank is entitled to judgment as a matter of law. In sum, we conclude that there are genuine issues of material fact here which preclude the entry of summary judgment. The motion will, therefore, be **DENIED**. An appropriate Order follows.

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COUNTY OF LACKAWANNA TRANSIT	:	
SYSTEM and FRANK X. GHILARDI,	:	
<i>Additional Defendants.</i>	:	No. 22-CV-2574

**ORDER**

AND NOW, this 24<sup>th</sup> day of April, 2025, upon consideration of the motion of Defendant Arthur Frank for summary judgment in this matter, together with the submissions and argument of the parties, IT IS HEREBY ORDERED THAT Defendant's motion for summary judgment is **DENIED**.

BY THE COURT:

  
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