

Anna M. Engle-Delaguardia v. Tuan Phuoc Tran

Virginia Supreme Court

May 27, 2005 (BY ORDER)

This is a case that the Virginia Supreme Court decided by order, that is, without a full written opinion.

The case is an automobile accident case where the contributory negligence of the plaintiff was one of the issues, and a defense verdict was rendered by the jury. One of the areas of contributory negligence that the plaintiff was accused of being guilty of was speed. The road in question was a 35 mile an hour speed limit. The defendant, in his deposition, apparently testified that the plaintiff was going significantly faster than that. However, at trial the defendant, upon questioning by his own counsel, testified that the speed of the plaintiff was 35 or 40 miles an hour. The defendant was then, over objection by plaintiff's counsel, allowed to review his prior deposition testimony to "refresh his memory." After this perusing of his prior testimony he then testified before the jury that the plaintiff's speed was 40 -50 miles an hour. At oral argument before the Virginia Supreme Court the defense counsel admitted that this procedure was improper, but pleaded harmless error. The Virginia Supreme Court noted the significant difference between 35 or 40 in a 35 zone, and 40 – 50 in that same zone. If the jury believed the latter then the plaintiff was obviously guilty of contributory negligence for speeding, not necessarily so at 35 or 40 in a 35 zone. Hence this was not harmless error and the case was reversed for a new trial.