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IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

WESLEY CROSS,
Plaintiff,

v.

CIVIL ACTION NO. 06-C-120

MARK E. SMITH,
Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR NEW TRIAL

This matter came before the court on September 21, 2007 on a motion for new trial filed by the plaintiff, the response thereto filed by the defendant, and reply to the defendant's response filed thereto by the plaintiff. Appearing at the hearing thereon was the plaintiff by and through his attorney Frank Cuomo Esq.; the Defendant, Mark E. Smith by and through his attorney Monica N. Haddad, Esq. of the law firm MacCorkle Lavender Casey & Sweeney, PLLC; and State Farm Mutual Automobile Insurance by and through its attorney W. Gus Saines, Esquire of the law firm McDermott & Bonenberger, PLLC.

Whereupon the court proceeded to hear the arguments of counsel, as well consider the briefs filed by all parties, and relevant trial testimony, and based upon the same does Find that the Defendant was guilty of negligence as a matter of law by turning left without looking effectively to see the passing vehicle in which the plaintiff was riding as a non-negligent innocent passenger. Further, relevant trial testimony of the defendant Smith showed the following:

- Q. Can you tell me why you didn't see the Yost vehicle prior to the impact, other than what you've already testified to?
- A. I have no idea. I mean, I didn't see it, that's all I know.

This court does accordingly ORDER as follows:

1. The plaintiff is hereby granted a new trial, and the court's previous Judgment Order is set aside.

2. The other grounds asserted by the plaintiff in his motion for new trial are denied.

To all of which the objections and exceptions of any party who is adversely affected are preserved.

ENTERED this ^{was} ~~October~~ 5 2007.


MARTIN J. GAUGHAN, CHIEF JUDGE
First Judicial Circuit