

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

**SUPERIOR COURT
CIVIL ACTION
NO. 2272CV00190**

WAYNE D. HENDERSON¹

vs.

GREGORY LINO & others²

INTRODUCTION

The first amended complaint was filed by plaintiff Wayne D. Henderson as the duly appointed personal representative of the Estate of Dorothy Phyllis Henderson. On November 22, 2021, Mrs. Henderson was struck by a vehicle operated by defendant Gregory Lino on Route 28 in Mashpee. Within moments, she was then struck by a vehicle operated by defendant Patrick McCullough. Mrs. Henderson later died from her injuries. Shortly before the accident, Mrs. Henderson had disembarked a public transportation vehicle, operated by defendant Eastern MA Transit Company, Inc. Defendant Eastern Transit Company, Inc. was contracted to provide transit services by the Cape Cod Regional Transit Authority, whose parent company is defendant MV Transportation, Inc. (collectively, the "Transit Defendants"). The amended complaint alleges three counts against each defendant: "ordinary negligence," "punitive damages," and "compensatory damages."

¹ As personal representative of the Estate of Dorothy Phyllis Henderson

² Patrick J. McCullough; Eastern MA Transit Company, Inc. and MV Transportation, Inc.

The matter is currently before the court on the Transit Defendants' motion for summary judgment.³ The court held a hearing on April 16, 2026 and took the matter under advisement. For the reasons that follow, the Transit Defendants' motion is ALLOWED.

STATEMENT OF MATERIAL FACTS

Plaintiff's decedent, Dorothy Henderson used a bus operated by the Transit Defendants to take a shopping trip on November 22, 2021. On her return journey, Mrs. Henderson requested a "flag stop" on Route 28 in Mashpee. The bus driver gave her two options to disembark: either at a set of traffic lights or on a path. Mrs. Henderson identified a telephone pole as the location she would like to disembark. The bus driver agreed, and Mrs. Henderson exited the bus at the selected telephone pole at approximately 5:40 PM. On the bus video recording system, Mrs. Henderson is captured standing at the telephone pole on the side of the road after the bus proceeded on its route; she stood clear of the bus as it drove away.

Although the parties dispute precisely how she ended up in the roadway, it is undisputed that Mrs. Henderson was hit by two vehicles on Route 28. First, she was struck by defendant Gregory Lino's vehicle mirror. Second, she was struck by defendant Patrick McCullough's vehicle, who was traveling behind Lino. While the plaintiff disputes the lane in which Mrs. Henderson was struck, there is no dispute that she was in the roadway. At the time of the accident, the transit bus was no longer at the scene.

³ Also before the court is defendant McCullough's motion for summary judgment and a motion to strike deposition testimony by Judith Hogan, the driver of the bus. The court addresses McCullough's motion for summary judgment in a separate memorandum of decision. In light of the court's decision here, the court takes no action on Eastern's motion to strike.

When first responders arrived, Mrs. Henderson was only semi-conscious and had suffered multisystem blunt force trauma. Mrs. Henderson became unresponsive while being placed in the ambulance and later died.

DISCUSSION

A. Standard of Review

Summary judgment is granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Kourouvacilis v. Gen. Motors Corp.*, 410 Mass. 706, 716 (1991). Where, as here, the defendant alone moves for summary judgment, the defendant must first demonstrate that the nonmoving plaintiff's evidence is insufficient to establish an essential element of the plaintiff's claim. *Regis College v. Weston*, 462 Mass. 280, 291- 292 (2012). It is then incumbent on the nonmoving plaintiff to come forward with admissible evidence, based on specific facts, to show that a genuine dispute of material fact exists. *Id.* at 292. To that end, the nonmoving plaintiff may not rest upon mere allegations or denials in his pleading. See Mass. R. Civ. P. 56 (e). If the plaintiff fails to set forth specific facts showing a genuine issue for trial, summary judgment is rewarded to the defendant. Mass. R. Civ. P. 56 (e).

B. Duty of Care

The Transit Defendants contend that they are entitled to summary judgment because they did not owe a duty of care to Mrs. Henderson once she safely disembarked the bus on which she had been a passenger. Therefore, the plaintiff cannot meet its burden of proof as to the claims of negligence or to show that the Transit Defendants caused Mrs. Henderson's death.

To establish a claim for negligence, a plaintiff must plead 1) a legal duty was owed to the plaintiff by the defendant; 2) a breach of that duty; 3) the breach caused the injuries to the

plaintiff; and 4) damages. *Santos v. U.S. Bank Nat. Ass'n*, 89 Mass. App. Ct. 687, 699 (2016).

Whether a defendant breached a duty of care, the extent of damage caused, and whether a defendant's breach and the damage were causally related are generally questions of fact for the jury. See *Mullins v. Pine Manor College*, 389 Mass. 47, 57–58 (1983). However, whether a defendant has a duty is a question of law, and is thus an appropriate subject of summary judgment. *Jupin v. Kask*, 447 Mass. 141, 146 (2006).

A common carrier is "bound to exercise reasonable care according to the nature of its contract with her." *Holton v. Boston Elevated Ry. Co.*, 303 Mass. 242, 244 (1939). Thus, the common carrier has a heightened duty of care in "guarding and protecting a passenger from all dangers and perils that might ordinarily and naturally be encountered *during his transportation*" (emphasis added). *Id.* This duty includes alighting from the carrier, and has been extended to stations utilized by the carrier, but is limited to foreseeable harms. See, e.g., *Sharpe v. Peter Pan Bus Lines, Inc.*, 401 Mass. 788, 791 (1988) (common carrier duty of care extended to bus terminal utilized by carrier, even if carrier did not own the property); *Quigley v. Wilson Line of Mass., Inc.*, 338 Mass. 125, 130 (1958) (duty extends to foreseeable harms); *Glennen v. Boston Elevated Ry. Co.*, 207 Mass. 497, 500–501 (1911) (passenger entitled to safely alight from carrier on to crowded platform). The rationale for the more stringent duty imposed on common carriers is because passengers have little control over the operation and conduct of their transportation; instead, passengers must rely on the carrier's car to secure their safety. *Holton*, 303 Mass. at 244.

Here, the agreed-upon facts establish that Mrs. Henderson was no longer a passenger on the bus: she requested to disembark, safely did so, and is pictured safe and unharmed on the side of the road as the bus continued its route. Significantly, Mrs. Henderson was not struck in the

location where she disembarked. Cf. *Sharpe*, 401 Mass. at 791 (common carrier duty extended to known and foreseeable harms in bus terminal where passengers disembark). Rather, she was struck when *she* decided to enter the roadway. In short, Mrs. Henderson's role as a passenger had terminated, along with the Transit Defendant's duty of care, by the time she left her disembarkment point, entered the roadway, and was struck by unrelated vehicles. See *Holton*, 303 Mass. at 244 (common carrier duty extends to passengers in transit).

This is congruent with the historical rationale for the heightened duty generally imposed on common carriers; the Transit Defendants had control, as opposed to Mrs. Henderson, of the operation and conduct of the bus, and Mrs. Henderson relied upon the Transit Defendants' care to secure her safety. *Holton*, 303 Mass. at 244. However, once Mrs. Henderson exited the bus and safely disembarked, she was no longer reliant on the Transit Defendants to secure her safety. Rather, at that point she controlled her own safety when she decided to enter the roadway. *Id.*

Therefore, at the time Mrs. Henderson was struck by vehicles in Route 28, the Transit Defendants did not owe her a duty of care. The Transit Defendants' motion for summary judgment must be ALLOWED.

ORDER

It is hereby ORDERED that the Transit Defendants' motion for summary judgment be ALLOWED.

Dated: July 9, 2026



Michael A. Cahillane
Justice of the Superior Court

A true copy, Attest:

⁵  Clerk

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