

FAYETTE C. AUSTIN

v.

TESSA M. RIDEOUT

Submitted on Briefs June 30, 2008

Decided July 3, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, and GORMAN, JJ.

MEMORANDUM OF DECISION

Fayette C. Austin appeals from a judgment entered by the Superior Court (Penobscot County, *Cuddy, J.*) upon a jury verdict in favor of Tessa M. Rideout on Austin's complaint alleging Rideout's negligence in striking Austin with her vehicle. Contrary to Austin's contentions, (1) the court did not err in refusing to instruct the jury that a pedestrian is not negligent as a matter of law simply because she fails to anticipate a driver's negligence, *see State v. Martin*, 2007 ME 23, ¶ 5, 916 A.2d 961, 964; *Wood v. Bell*, 2006 ME 98, ¶ 20, 902 A.2d 843, 851; (2) the court did not err in overruling her objections that Rideout's attorney improperly discussed evidence that Austin consistently walked on the wrong side of the road in his opening statement and closing argument, *see M.R. Evid.* 105, 406; *Searles v. Fleetwood Homes of Pa., Inc.*, 2005 ME 94, ¶ 33, 878 A.2d 509, 519; *Pullen v. Bartlett*, 507 A.2d 1070, 1071 (Me. 1986); and (3) the court did not abuse its discretion in denying Austin's motion for a mistrial, *Profit Recovery Group, USA, Inc. v. Comm'r, Dep't of Admin. & Fin. Servs.*, 2005 ME 58, ¶ 19, 871 A.2d 1237, 1243; *Bureau v. Gendron*, 2003 ME 145, ¶ 7, 837 A.2d 138, 139.

The entry is:

Judgment affirmed.

Attorneys for Fayette C. Austin:

Arthur J. Grief, Esq.
Julie D. Farr, Esq.
Gilbert & Grief, P.A.
82 Columbia Street
Bangor, Maine 04402-2339

Attorneys for Tessa M. Rideout:

Catherine R. Connors, Esq.
Pierce Atwood LLP
One Monument Square
Portland, Maine 04101

J. William Druary, Jr., Esq.
Daniel I. Billings, Esq.
Marden, Dubord, Bernier & Stevens,
44 Elm Street
PO box 708
Waterville, Maine 04901-0708