2015 IL App (3d) 130835-U

Order filed January 21, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

CINDY L. CHARBONNEAU,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellant,	)	Kankakee County, Illinois,
	)	
v.	)	Appeal No. 3-13-0835
	)	Circuit No. 06 L 157
ANTHONY J. LAMBERT,	)	
	)	The Honorable
Defendant-Appellee.	)	Kendall Wenzelman,
	)	Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying the plaintiff's motion for judgment notwithstanding the verdict or, in the alternative, a new trial. The evidence was sufficient to support a finding by the jury that the defendant was not negligent in his operation of his vehicle and/or that the accident was not a proximate cause of the plaintiff's injuries. Also, the court did not abuse its discretion in determining that the jury's finding was not against the manifest weight of the evidence.

¶ 2 FACTS

¶ 3 On Wednesday, November 24, 2004, plaintiff, Cindy L. Charbonneau, was involved in a motor vehicle accident while riding as the front seat passenger in the truck driven by defendant,

Anthony J. Lambert. The truck spun "violently out of control" on a two lane highway and into an abutting ditch. The plaintiff sued the defendant for injuries she claimed were due to his negligent actions that caused the accident.

¶ 4 At trial, the defendant testified that it was snowing the day of the accident and 3 to 4 inches had accumulated. He also admitted that prior to the accident the plaintiff told him his driving scared her and that she had asked him to slow down. He testified that he was driving 20-25 mph. The accident report admitted into evidence showed the defendant stated he was driving 25-30 mph at the time of the accident. The speed limit for the highway is 55 mph. The defendant further testified that there was nothing mechanically wrong with the truck. He stated that "we were just driving normal, and when we hit the ice, we just shot towards the ditch because of the crowning and the ice." The defendant admitted trying during the skid to maneuver the truck into the ditch rear-end first and that he was responsible for how the truck went into the ditch.

¶ 5 The plaintiff at trial testified to the defendant's erratic driving at the start of their travels. The defendant had done "donuts" in the snow in the parking lot. The plaintiff stated that while they were driving she asked the defendant to slow down and she estimated he was driving 35-40 mph. She further noted that she "[t]old him [she] was scared and then the truck- the back end of it just kind of spun around." The plaintiff stated that the time between when she told him she was scared and asked him to slow down and the accident was "immediate pretty much... [she] had mentioned [the fear and speed] and then [the accident] was just – just happened."

¶ 6 The plaintiff declined medical care at the scene on Wednesday. She did go to the emergency room on Friday, November 26, after beginning to feel "not too great" and "awful" as well as feeling "dizzy" on Thursday, November 25. She testified she had an MRI and a CAT scan with resulting diagnoses of a concussion and whiplash. She further testified that she

continued to feel worse, had headaches, and body pains, but still went to work. She continued to feel pain in her left shoulder blade and was eventually diagnosed with nerve damage. Due to therapy for the pain, she missed work. Her doctor suggested applying for the Family Medical Leave Act relief. However, she subsequently quit her job in April 2006 – approximately six months after the accident – due to self professed continual pressure, write-ups and demerits received for absenteeism. She took several lower paying jobs and exhausted her 401K to support herself and her two children. On cross examination, the plaintiff failed to recall visiting the emergency room a few months prior to the accident for chest wall injury and back pain associated with having been thrown into a pool. She explained that she continued to feel pain even during the trial, and she attributed her pain to the accident.

¶ 7 The medical reports admitted into evidence did not show any brain or spinal injury. However, due to the plaintiff's continued complaints of headache and neck pain, the physicians started and continued her physical therapy with notes discussing her need for time off from work. The plaintiff's physical therapist and neurologist testified that her subjective pain could be attributed to nerve damage. The only objective evidence of pain was the atrophy of plaintiff's muscles. She received various nerve pain injections that she stated provided little relief. The plaintiff attributed all of the pain to the November 24 accident. The defendant's medical expert testified that he saw no objective cause for the pain the plaintiff was experiencing. He opined it was unlikely that the continued subjective pain could be associated with the accident.

¶ 8 On May 23, 2013, after approximately 30 minutes of deliberation, the jury returned a verdict in favor of defendant and against plaintiff. On June 19, plaintiff filed a motion for judgment notwithstanding the verdict (JNOV), on the issue of negligence, or alternatively for a new trial. On October 2, plaintiff's post-trial motion was denied. This appeal followed.

¶ 9 ANALYSIS

¶ 10 The plaintiff argues that the judge erred by not granting her motion for JNOV or, in the alternative, her motion for a new trial. The standard by which the trial court is governed in evaluating a motion for JNOV is whether " 'all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand.' " *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992) (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). "A trial court cannot reweigh the evidence and set aside a verdict merely because the jury could have drawn different inferences or conclusions, or because the court feels that other results are more reasonable." *Id.* at 451. Moreover, a JNOV will not be granted just because a verdict is against the manifest weight of the evidence." *Id.* at 453.

¶ 11 However, with a motion for a new trial, " 'a court will weigh the evidence and set aside the verdict and order a new trial if the verdict *is* contrary to the manifest weight of the evidence.' " (emphasis added) *Id*. at 454 (quoting *Mizowek v. De Franco*, 64 Ill. 2d 303, 310 (1976)). " 'A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings of the jury are unreasonable, arbitrary and not based upon any of the evidence.' " *Id*. (quoting *Villa v. Crown Cork & Seal Co.*, 202 Ill. App. 3d 1082, 1087 (1990)).

¶ 12 To recover damages based on common law negligence, a plaintiff must allege and prove that the defendant owed a duty to the plaintiff, the defendant breached that duty, and the breach proximately caused plaintiff's injury. *Thompson v. County of Cook*, 154 Ill. 2d 374, 383 (1993). Denial of a JNOV is proper where the assessment of witnesses' credibility or the determination of conflicting evidence is decisive to the outcome, because this is the jury's duty. *Maple*, 151 Ill.

2d at 454. A jury's determination as to factual disputes should stand. *Crosby v. Distler*, 38 Ill. App. 3d 1058, 1059-61 (1976).

¶ 13 Here, the jury heard testimony from both parties, the only witnesses to the incident. At points where their stories conflicted, the jury was able to assess credibility and assign weight to resolve those conflicts. Both parties testified with conflicting rates of speed for the defendant at the time of the accident and the plaintiff introduced the police report from the accident where the defendant stated yet a different speed. All of the rates of speed alleged were well below the posted speed. Additionally, both parties' accounts of the cause of the accident – plaintiff stating it was due to the defendant's speeding and defendant stating it was due to an unexpected patch of ice – were weighed by the jury.

¶ 14 The jury was also able to determine not only whether the injury complained of by the plaintiff was caused by the accident but also whether in fact there was a real injury. It heard from the plaintiff's physicians that her subjective pain is possibly due to nerve damage and the physician hired by the defendant stated it was unlikely it could not be associated with the accident. The jury reviewed the plaintiff's medical records which included a pool injury a few months prior to the accident. It also took note of the timeline and the plaintiff's professed physical state before, during, and after she sought medical assistance regarding the accident at issue. The jury could have determined that the plaintiff was not in fact injured or that the accident was not the cause. The evidence viewed in the light most favorable to the defendant supports the jury's conclusion that there was no common law negligence.

¶ 15 The plaintiff's statutory argument challenging the denial of the JNOV also fails. Although the statute requires the defendant to reduce speed in an effort to prevent a collision, the jury must have determined that the rate of speed was not the cause of the accident, but it was the

unexpected patch of ice. The defendant had a duty to exercise ordinary care in the operation of his vehicle. Both parties agreed that the defendant was driving at a reduced speed. Even though a driver can be found negligent while driving under the speed limit by driving too fast for conditions in violation of sections 11–601(a) of the Illinois Vehicle Code (625 ILCS 5/11-601(a) (West 2012)), both parties also agree that the accident happened very unexpectedly. The plaintiff even stated that though she knew the defendant was driving below the posted speed limit, at the exact moment she asked him to slow down further "[the accident] was just – just happened." The defendant stated that they hit an unexpected patch of ice. Thus in finding that there was no statutory breach, the jury must have believed it was not the defendant's rate of speed, but the unexpected ice that caused the accident.

¶ 16 In review of the evidence regarding the trial court's denial of the plaintiff's alternative motion for a new trial, we find that the trial court did not abuse its discretion. A court's ruling on a motion for a new trial will not be reversed except in those instances where it is affirmatively shown that it clearly abused its discretion. *Maple*, 151 Ill. 2d at 456.

¶ 17 The jury was provided instructions on common law negligence as well as the statutory requirements of a person operating a vehicle. The evidence supports a jury finding that either the defendant did not breach his duty of ordinary care or he was not the proximate cause of the plaintiff's injuries for a common law negligence claim. The evidence also supports the jury's finding that the defendant did not breach his statutory duty. The evidence is not inconsistent with a finding that the accident resulted from the unexpected patch of ice and not the speed of the defendant's vehicle. The jury's verdict was not against the manifest weight of the evidence and the trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

¶ 18 CONCLUSION

¶ 19 The trial court did not err in not granting the plaintiff's JNOV motion because there is sufficient evidence to support the jury's finding for the defendant. The verdict was also not against the manifest weight of the evidence. A new trial is not warranted because there was sufficient evidence to support the jury's finding that the defendant was not negligent. The trial court's ruling denying both the JNOV and a new trial is affirmed.

¶ 20 Affirmed.