

2016 IL App (2d) 150972-U
No. 2-15-0972
Order filed May 17, 2016

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|-----------------------|---|-------------------------------|
| JEFFREY HIGGINBOTHAM, |) | Appeal from the Circuit Court |
| |) | of Du Page County. |
| Plaintiff-Appellant, |) | |
| |) | |
| v. |) | No. 14-AR-573 |
| |) | |
| ROSA MARIA ALVARADO, |) | Honorable |
| |) | Brian R. McKillip, |
| Defendant-Appellee. |) | Judge, Presiding. |

JUSTICE BURKE delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The jury's verdict for defendant was not against the manifest weight of the evidence, as the jury was entitled to resolve the evidentiary conflicts in defendant's favor; the fact that plaintiff had won at arbitration was irrelevant.
- ¶ 2 Plaintiff, Jeffrey Higginbotham, appeals the trial court's judgment in favor of defendant, Rosa Maria Alvarado. He contends that the jury's verdict for defendant was against the manifest weight of the evidence. We affirm.

¶ 3 Plaintiff sued defendant to recover for injuries he sustained in an automobile accident. A panel of arbitrators awarded plaintiff \$9,007 plus costs. Defendant rejected the award and the matter proceeded to a jury trial.

¶ 4 At trial, plaintiff first called defendant as an adverse witness. She testified through an interpreter that, on October 27, 2012, she was driving west on St. Charles Road nearing its intersection with Ardmore Avenue. It was almost sunset and she was driving into the sun. She intended to go to a shopping center along St. Charles Road and entered the left-turn lane for that purpose. However, before she started the turn, her vehicle was struck by plaintiff's. In response to repeated questions from plaintiff's counsel, she reiterated that she had not yet begun to turn when the accident occurred. She first saw plaintiff's car approaching from the opposite direction about 20 seconds before the impact. Defendant's car was spun around, winding up in the opposite lanes of traffic.

¶ 5 During questioning by plaintiff's counsel, the following colloquy occurred:

“MR. RICE: Now, the car with which you collided, it did not enter your left-turn lane, correct?

A. He hit me. I was on the lane to turn.

MR. RICE: If I may reask that, your Honor, I didn't get an answer.

THE COURT: You may ask that again, yes.

MR. RICE: So the car with which you collided, did not enter your left-turn lane before you got to the intersection, correct?

A. He hit me in the front.

MR. RICE: I ask for an instruction, yes or no.

THE COURT: I am going to ask you to rephrase the question, Mr. Rice.

MR. RICE: I will.

THE COURT: Please.

Q. The car with which you collided did not enter your left-turn lane, correct? Yes or no?

A. Yes.

Q. All right. Yes, meaning my statement was correct, right?

A. Yes.”

¶ 6 Defendant identified photographs of her vehicle taken at the scene of the accident. The photographs show damage to the front of the vehicle, on the passenger side. In response to questioning by her own attorney, defendant testified that the other vehicle did enter the left-turn lane.

¶ 7 Plaintiff testified that, on October 27, 2012, he was driving home from a friend’s house when he collided with another vehicle. The collision occurred 50 to 100 feet from Ardmore Avenue. He was driving 30 to 35 miles per hour. The weather was good and he had his lights on. The traffic light was green in his direction. One to three seconds after he passed the intersection with Ardmore Avenue, a car turned left in front of him and he had no time to avoid colliding with it. His head struck the windshield. At the time of impact, the other vehicle was at an angle, turning into plaintiff’s lane.

¶ 8 Plaintiff further testified that the front left side of his vehicle was damaged. He described his injuries and subsequent medical treatment. His medical bills totaled \$4,007.

¶ 9 The jury found for defendant. The trial court denied plaintiff’s posttrial motion and plaintiff timely appeals.

¶ 10 Plaintiff contends that the verdict was against the manifest weight of the evidence. He argues that the evidence overwhelmingly established that defendant turned left in front of him, causing his injuries. Additionally, he points out that the verdict is contrary to the arbitrators' award.

¶ 11 Plaintiff's complaint alleged that defendant was negligent. To prevail in a negligence action, a plaintiff must establish (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, and (3) an injury proximately caused by that breach. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006).

¶ 12 It is the jury's function to resolve conflicts in the evidence, to pass upon the witnesses' credibility, and to weigh their testimony. *Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992). A reviewing court may reverse a verdict only if it is against the manifest weight of the evidence. *Snelson v. Kamm*, 204 Ill. 2d 1, 35 (2003). The reviewing court may not simply reweigh the evidence and substitute its judgment for that of the jury. *Id.* A verdict is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the jury's findings are unreasonable, arbitrary, or not based on the evidence. *Redmond v. Socha*, 216 Ill. 2d 622, 651 (2005).

¶ 13 Here, although plaintiff insists that the only possible interpretation of the evidence is that defendant turned in front of him, defendant repeatedly testified that she did not. She testified consistently that, although she had pulled into the left-turn lane, she had not yet begun to turn when plaintiff's car struck hers. The jury, as the arbiter of witness credibility, could reasonably accept this testimony and, accordingly, find that plaintiff had failed to prove that defendant was negligent. The photographs showing damage to the front of defendant's car, do not compel a different conclusion, as the damage to the car is consistent with either party's version of events.

¶ 14 In his reply brief, plaintiff argues that defendant testified that plaintiff did not enter her lane of traffic. He contends that, given this testimony, it would have been impossible for him to have struck defendant's car unless she turned in front of him. It is true that, in response to a leading question, defendant testified that plaintiff's car did not enter her lane. However, later, in response to questioning by her own attorney, she said that plaintiff did enter her lane. Such conflicts in the evidence are for the jury to resolve. See *Maple*, 151 Ill. 2d at 452.

¶ 15 In any event, a plaintiff has the burden to prove every necessary element of his claim by a preponderance of the evidence. *Redmond*, 216 Ill. 2d at 646. Thus, defendant was not required to proffer a completely cohesive alternate theory in order to prevail. As noted, given the conflicting testimony, the jury could reasonably conclude that plaintiff failed to prove his case.

¶ 16 Plaintiff argues that the jury's verdict is inconsistent with the arbitrators' award. Although the supreme court rules provide for mandatory arbitration in cases such as this one, to protect the constitutional right to a jury trial the rules also allow litigants who have been ordered to arbitration the right to reject the arbitrators' award. Ill. S. Ct. R. 93(a) (eff. Jan. 1, 1997); *Stemple v. Pickerill*, 377 Ill. App. 3d 788, 791 (2007). No party who participated in good faith may be forced to accept an arbitration award. *Stemple*, 377 Ill. App. 3d at 791. The rules further provide that "no reference to the fact of the conduct of the arbitration hearing may be made at trial." Ill. S. Ct. R. 93(b) (eff. Jan. 1, 1997). Thus, the arbitration award was inadmissible at trial. As it was not, and could not have been, before the jury, it is simply irrelevant to whether the jury's verdict was against the manifest weight of the evidence. To hold otherwise could effectively nullify the right to reject an arbitration award, by allowing the arbitration award to control the subsequent verdict.

¶ 17 The judgment of the circuit court of Du Page County is affirmed.

¶ 18 Affirmed.