

2013 IL App (2d) 120701-U
Nos. 2-12-0701 & 2-12-0727 cons.
Order Filed July 24, 2013
Modified Upon Denial of Rehearing September 17, 2013

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

CHERI RAZIM,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff,)	
)	
v.	)	No. 08-L-351
)	
STEVEN R. ERICKSON and)	
ZACHARY STEWART,)	
)	
Defendants-Appellees	)	Honorable
	)	Edward J. Prochaska,
(John Razim, Plaintiff-Appellant).	)	Judge, Presiding.

CHERI RAZIM and JOHN RAZIM,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiffs-Appellees,)	
)	
v.	)	No. 08-L-351
)	
STEVEN R. ERICKSON,)	
)	
Defendant and Counterplaintiff and)	
Counterdefendant)	
	)	Honorable
(Zachary Stewart, Defendant-Appellant and	)	J. Edward Prochaska,
Counterdefendant and Counterplaintiff).	)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Application of the *Pedrick* standard reveals that the evidence, when viewed in a light most favorable to Stewart, did not overwhelmingly show that he was a proximate cause of the accident to warrant a judgment n.o.v. on that issue. Accordingly, the trial court erred in granting the motions for judgment n.o.v., denying Stewart's motion to reconsider, and ordering a new trial on the issue of apportioning fault. Based on our finding, John is foreclosed from recovering damages on his loss of consortium claim directed against Stewart.

¶ 2 Plaintiffs, Cheri and John Razim, brought this negligence action seeking the recovery of damages received when a motorcycle, upon which Cheri was riding, and upon which was driven by defendant, Steven R. Erickson, collided with a pickup truck driven by defendant, Zachary Stewart. Cheri sued both defendants for her injuries arising out of the accident. Cheri's husband, plaintiff John Razim, sued both defendants for loss of consortium. The jury returned a verdict in favor of both defendants on John's consortium claim and John appeals (appeal No. 2-12-0701), contending that the trial court abused its discretion in denying his motion for a new trial and that the jury's verdict is against the manifest weight of the evidence.

¶ 3 On Cheri's negligence claim, the jury returned a verdict against Erickson. In a special interrogatory, the jury found Stewart negligent but not a proximate cause of the accident. The trial court granted Cheri's and Erickson's posttrial motions for judgment notwithstanding the verdict (judgment n.o.v.) on their claims against Stewart. The trial court found the interrogatories to be inconsistent and it entered a judgment that Stewart was a proximate cause of the accident. The court also ordered a new trial on the issue of apportioning fault. The second jury found Stewart was 65% at fault for the accident. In a separate appeal brought by Stewart (appeal No. 2-12-0727), he contends that the trial court erred in granting the judgment n.o.v. in favor of Cheri and Erickson, in

granting the motions for judgment n.o.v., in denying his motion to reconsider, and in ordering a new trial on damages. We agree with Stewart.

¶ 4 Thus, we reverse the orders granting judgment n.o.v. and denying Stewart's motion to reconsider, and the judgment entered on the verdict apportioning fault between defendants. We further order the trial court to reinstate that portion of the original judgment entered in Stewart's favor. Based on our determination, John cannot recover damages on his loss of consortium claim directed against Stewart. Accordingly, the original judgment in favor of Cheri and against Erickson only for \$1,989,568, in favor of Erickson against John, and in favor of Stewart against plaintiffs and Erickson is affirmed.¹

¶ 5 BACKGROUND

¶ 6 Complaint

¶ 7 The accident occurred the night of May 26, 2008. Stewart was driving a 2000 GMC pickup truck in a westerly direction on Hononegah Road in Winnebago County. Cheri was a passenger on a motorcycle being driven by Erickson, who was driving in an easterly direction on Hononegah. As Stewart turned his truck south onto Valley Forge Road, the motorcycle hit the truck.

¶ 8 Cheri sued both defendants for her injuries arising out of the accident. Count I alleged that Erickson was negligent in operating his motorcycle, with Cheri riding as his invited passenger, when he lost control of his motorcycle as he was traveling eastbound on Hononegah, approaching the intersection of Valley Forge, and struck Stewart's truck. Count II was predicated upon the same allegations but brought by John for loss of consortium. Count III alleged that Stewart was negligent

¹We initially denied a motion to consolidate the appeals. Upon reconsideration, we order both appeals consolidated for our review.

in that he operated his truck in such a fashion that he was unable to avoid colliding with Erickson's motorcycle, he failed to maintain an adequate lookout, and failed to yield the right-of-way to Erickson's approaching motorcycle. Count III also alleged that Stewart's negligence was a proximate cause of the injuries sustained by Cheri. Count IV was predicated upon the same allegations as count III but brought by John for loss of consortium.

¶ 9 Each defendant filed a contribution counterclaim against the other, denying all wrongdoing.

¶ 10 Trial

¶ 11 Erickson testified that he was at Pee Wee's where he met Cheri, who asked him for a ride. They stopped at the Brick House, where they met Nicole, a friend of Cheri's. From there, Erickson intended to take Cheri back to her car at Pee Wee's. Nicole and her friend, Greg, were riding side-by-side on another motorcycle. Erickson was driving eastbound on Hononegah. Although Erickson was driving within the speed limit, because he could see a lot of activity in the Jeep ahead and it was going over the line erratically, he decided to pass up the Jeep after they crossed a bridge. Erickson returned to the eastbound lane as soon as he was 80 to 100 feet ahead of the Jeep and cruised back to 40 m.p.h.

¶ 12 Around 8 p.m., as Erickson headed toward the "T" intersection with Valley Forge, he saw maybe three or four vehicles approaching from the opposite direction. A pickup truck heading westbound on Hononegah slowed and turned in front of him onto Valley Forge without using its signal. Erickson had been traveling 40 to 43 m.p.h. and applied both brakes, causing the rear tire to lock. He thought he might clear the truck, but the motorcycle's front tire collided with the back of the truck. He applied his brakes and, while Erickson was still upright, the motorcycle struck the truck at a point between the rear tire and bumper on the passenger side of the truck, right at the end

of the truck bed. Erickson testified that he did not lose control of the motorcycle before the collision. He did not go around the truck because he thought there was another car coming from the opposite direction. His first indication that the truck intended to turn left was when it was turning south onto Valley Forge and crossing in front of his lane of travel.

¶ 13 Stewart testified that the accident occurred around 9:34 p.m. He was heading westbound on Hononegah and was intending to turn left onto Valley Forge. No vehicles were ahead of him or behind him as he slowed and approached the intersection of Hononegah and Valley Forge. Stewart slowed from 40 m.p.h. to 5-to-10 m.p.h., and he used his left turn signal when he was a block and a half away from the intersection of Valley Forge. Hononegah is a fairly straight road; it has no hills, and nothing impeded Stewart's view of the vehicles coming from the opposite direction. Stewart did not pull his truck into the other lane before he began his left turn. The accident happened as he was completing his left turn and was facing completely southbound. Stewart never saw the motorcycle or a motorcycle's headlight, and his passenger never did either, before the motorcycle struck the truck, at the very rear, causing the truck to slide to the east and end facing southwest.

¶ 14 Stewart remembered that his vehicle was "mostly in the southbound lane," already facing south and perpendicular to Hononegah when the impact took place. When the collision happened, he thought he was hit by a full-sized car. Stewart felt and heard the impact, which he described as "a loud bang." The damage was to the passenger side at the rear of the truck, between the tire and the bumper.

¶ 15 Travis Magnus, a witness to the accident, testified that he was driving his Jeep, traveling eastbound on Hononegah with his wife and children when he noticed two motorcycles behind him "moving pretty fast" as he reached a bridge on Hononegah, which crossed over Highway 2. One of

the motorcycles came by him in “a matter of seconds” at 50 or 60 m.p.h. as Magnus reached the end of the bridge, and the motorcycle was still going fast enough to pull away and cause him to lose sight of it as Magnus accelerated from the 30 m.p.h. speed limit over the bridge to 40 m.p.h. as he neared Valley Forge. Magnus lost sight of the motorcycle before the Valley Forge intersection, right where “a little curve” in the road began.

¶ 16 It was not long before Magnus heard a loud screech and a crash or a bang. After he drove around the curve, he saw the motorcycle and two people lying in the middle of the road, and a pickup truck parked off to the side of the road. The intersection was illuminated with a streetlight and Magnus was able to see the skid mark from the motorcycle.

¶ 17 Heather Magnus testified that she saw a skid mark from the motorcycle down the middle of the eastbound lane of Hononegah near the Valley Forge intersection. The other motorcycle that had been behind them had never passed them.

¶ 18 Robert Wozniak, an accident reconstructionist and mechanical engineer retained by plaintiffs, testified that he conducted a site inspection on July 18, 2008. To calculate the speeds and timing of the vehicles, Wozniak took photographs, inspected the vehicles, made drawings, placed the skid mark, placed the vehicles at impact and at their rest positions, and analyzed the distances the vehicles traveled after impact.

¶ 19 The truck’s damage was at the rear corner on the passenger side, which he described as a “substantial dent” at the wheel well all the way to the back of the box. The entire box of the truck “rotated on the frame” as a result of the impact. The skid mark from the motorcycle’s rear tire to the point of impact with the truck was 98 feet. The motorcycle “likely hooked” the truck’s bumper at impact, and pulled the bumper rearward, causing the rider and passenger to come off the motorcycle,

which continued down the roadway and slid to its resting position. It was Wozniak's opinion, based on the damage and how far each vehicle traveled after impact, that the motorcycle was traveling between 52 and 60 m.p.h. when the rider began braking, without locking the brakes. The motorcycle was moving between 30 and 37 m.p.h. at impact, slowed as a result of impact, and continued moving between 25 and 28 m.p.h. The truck was traveling between 18 and 25 m.p.h. at impact. Assuming a one-second reaction time, the motorcycle traveled 76 to 88 feet before the motorcyclist applied his brakes, meaning that he had a total of 174 to 186 feet to try to avoid the accident. Wozniak testified that, had the motorcyclist been traveling the posted speed limit of 40 m.p.h., he would not have needed to brake and the accident would not have happened.

¶ 20 Wozniak testified that the "T" intersection with Valley Forge had a stop sign for northbound traffic on Valley Forge. The skid mark began slightly left of the center of the eastbound lane and veered slightly to the right near impact, with the impact completely within the eastbound lane. Wozniak believed that the motorcycle's front tire could have come into contact with the very rear of the truck, causing a change of direction in the motorcycle and a secondary impact with the truck's rear tire.

¶ 21 Wozniak testified that the truck had almost cleared the intersection before impact. No matter how Stewart turned, the accident would not have happened if the motorcycle had been traveling at 40 m.p.h. If Stewart started the turn further back, he might have cleared the intersection and, if he started the turn closer to the intersection, the collision could have happened more toward the middle of the truck. Erickson had room in his own lane, approximately six feet, to avoid Stewart's truck without leaving his lane of travel.

¶ 22 Anthony Moore, a crash reconstructionist employed by the traffic division of the Winnebago County sheriff's office, described Hononegah as an asphalt roadway consisting of two lanes, one in each direction, east and west, with a broken yellow centerline and white fog lines along the edges. Valley Forge is a roadway with no centerline and a stop sign for northbound traffic. It was dark at the time of the accident. He spoke with Stewart at the scene of the accident, who told him that he was traveling westbound making a left turn when the motorcycle struck the right rear of his truck. Stewart told him that he felt the impact but never saw the motorcycle.

¶ 23 Moore believed the minimum speed that the motorcycle had been traveling was between 43 and 49 m.p.h. at the start of the skid mark. He had no opinion as to the speed of the truck because it had no bearing on the accident. The weather did not affect the accident and there were no defects or obstructions in the roadway to prevent the driver of the truck from seeing the motorcycle. It was Moore's opinion that the motorcycle was traveling at 35 m.p.h. at impact. There was room for the motorcycle to go around the rear of the truck if the rider was able to control the motorcycle.

¶ 24 Nathan Shigemura, another crash reconstructionist hired by Erickson, opined that the truck was traveling approximately 20 m.p.h. at impact and the motorcycle was traveling at 53 to 58 m.p.h. at the start of the skid (assuming full braking) or 40 to 46 m.p.h. (assuming rear braking only), and between 28 and 36 m.p.h. at impact. It was his opinion that the motorcycle was between 192 and 207 feet away from the point of impact and that the truck began to make its left turn between 57 and 76 feet prior to the point of impact. Based on the damage to the vehicles, Shigemura characterized the collision as more of "a sideswipe" as the truck was turning and the motorcycle came into contact with the fender on the side, as opposed to a "more perpendicular type" angle. It was his opinion that,

regardless of speed, the motorcycle was in view of the truck before the truck made its turn and slowed down before or as it made the turn.

¶ 25 At the conclusion of trial, the jury returned special verdicts finding the following: (1) Erickson was negligent and a proximate cause of the accident; (2) Stewart was negligent but not a proximate cause of the accident; and (3) Erickson's negligence was 100% of the proximate cause of the accident. The jury determined that the damages suffered by Cheri were \$1,989,568, and that John's damage for loss of consortium was zero. The trial court entered judgment in favor of Cheri and against Erickson only, for \$1,989,568, entered judgment for Erickson against John, and entered judgment in favor of Stewart against plaintiffs and Erickson.

¶ 26 Both plaintiffs filed a posttrial motion for judgment n.o.v. John filed a motion for a new trial for damages on the consortium claim. Erickson filed a posttrial motion for judgment n.o.v. or a new trial relating to the contribution counterclaim.

¶ 27 On December 1, 2011, the trial court denied John's motion for a new trial, but granted Cheri's and Erickson's motions for judgment n.o.v. and granted a new trial limited to an allocation of fault between defendants. The court found:

“THE COURT: This verdict cannot stand *** [I]t's inexplicable, to the core, how the jury could find that defendant, Zachary Stewart, was negligent in the operation of his vehicle, which they answered affirmative in No. 3, and then answer No. 4, that the negligence of Stewart was not a proximate cause of the accident and injuries to the plaintiff, Cheri Razim.

That is completely inconsistent. And not only is it inconsistent, the evidence in this case is overwhelming, in the Court's opinion, that Zachary Stewart was, in fact, negligent. That portion of it is correct.

I mean, the evidence, even in a light most favorable to Mr. Stewart was that he had a clear and unobstructed view for at least a half a mile down on Hononegah Road. It was a clear night. It was dark out. Mr. [Erickson] had his headlight on his motorcycle, a large bright headlight on his motorcycle. And I think there may have been a couple of side lights next to the headlight.

There was nothing impeding the view of Stewart to the Erickson motorcycle. Clearly, the Erickson motorcycle was in front of the Magnus vehicle for some period of time, after he passed the Magnus vehicle and before this accident.

* * *

So you've got a motorcycle coming down a flat straight roadway with its headlight on with the right-of-way, and I don't care whether he's going 40 or 50 miles an hour, that is a vehicle that you've got to yield to if you're planning on turning left in front of him.

[I]t's inexplicable from the evidence, how one—really inexplicable from the evidence how Mr. Stewart could not have seen this motorcycle. It's simply inexplicable.

* * *

So the jury was right when they said he was negligent. They were wrong when they said that his negligence was not a proximate cause of the accident and injuries to this plaintiff, Cheri Razim.

This accident would not have happened had he seen the motorcycle and not turned. It's pure and simple. He clearly would not have turned in front of that motorcycle had he seen it. This—his negligence was a cause; in fact, it was a legal cause. It was the proximate cause of the accident.

In a light most favorable to Zachary Stewart, the evidence so overwhelmingly favors the plaintiffs on that point that this verdict cannot stand. This is a *Pedrick* case if I've ever seen one.

So the Court is going to grant the motion of [plaintiffs] and [Erickson] and I'm going to enter a verdict that the negligence of Zachary Stewart was a proximate cause of the accident and the injuries to the plaintiff, Cheri Razim. That verdict is the correct verdict.”

¶ 28 In denying John's motion for a judgment n.o.v. or a new trial, the trial court found that the damage issue was within the purview of the jury. The court believed that there was some evidence in the record by which the jury could conclude there was not a loss of consortium. Specifically, the court pointed to the testimony about Cheri “just being with Steven Erickson on more than one occasion, and riding on his motorcycle”; that is not something that “a normal, loving wife does.” The court concluded there was “not a warm, loving, marital relationship between John and Cheri Razim,” from which the jury could reasonably find a loss of consortium claim.

¶ 29 Second Trial

¶ 30 Following a second trial, the jury found Erickson 35% at fault and Stewart 65% at fault, and the trial court entered judgment in favor of Cheri against defendants for \$1,989,568. By the same order, judgment was entered on Erickson's contribution counterclaim against Stewart for \$1,293,219 and on Stewart's contribution counterclaim against Erickson for \$696,349.

¶ 31 John timely appeals from the trial court’s denial of his motion for a new trial regarding the loss of consortium claim. Stewart timely appeals from the trial court’s granting of the judgment n.o.v. and from the judgment entered against him from the second trial.²

¶ 32 ANALYSIS

¶ 33 Stewart’s Appeal

¶ 34 We first address Stewart’s appeal (appeal No. 2-12-0727), in which he contends that the trial court erred in granting a judgment n.o.v. The trial court granted the judgment n.o.v., concluding that Stewart’s negligence was a proximate cause of the accident, and that the interrogatories, in which the jury found Stewart negligent but not a proximate cause of the accident, were entirely inconsistent. Stewart argues that the jury could have reasonably determined from all of the evidence that Erickson’s negligence was the sole proximate cause of the accident, and the trial court usurped the jury’s role as the trier of fact when it found Stewart’s negligence was a proximate cause, found the verdicts were legally inconsistent, and changed the jury’s determination on proximate cause.

¶ 35 Cheri argues that Stewart was negligent and that his negligence was a proximate cause of the accident, “as a matter of law.” She asserts the evidence shows that Stewart failed to keep a proper lookout and failed to yield the right-of-way, thereby creating an “immediate hazard.” Cheri argues that Stewart cannot be exonerated from proximately causing the accident on the basis that it was possible for Erickson to have swerved to the left to avoid hitting Stewart’s truck, as the truck was blocking Erickson’s path.

¶ 36 In ruling on a motion for judgment n.o.v., the court does not weigh the evidence, nor is it concerned with the credibility of the witnesses. *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992).

²Erickson is not a party to either appeal.

Instead, the court may only consider all of the evidence, and any rational inferences therefrom, in the light most favorable to the nonmoving party, and find that it so overwhelmingly favors the moving party that no contrary verdict based on that evidence could ever stand. *Maple*, 151 Ill. 2d at 453 (citing *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). We review this ruling *de novo*. *Ford v. Grizzle*, 398 Ill. App. 3d 639, 650 (2010).

¶ 37 Section 11-902 of the Illinois Vehicle Code states that a vehicle intending to turn left within an intersection must yield the right-of-way to any vehicle approaching from the opposite direction “which is so close as to constitute an immediate hazard, but said driver, having so yielded may proceed at such time as a safe interval occurs.” 625 ILCS 5/11-901 (West 2008). Based on section 11-902, the jury received an instruction that Stewart, as the motorist intending to turn left from westbound Hononegah onto southbound Valley Forge, was to make the turn with reasonable safety and to yield to approaching eastbound traffic, but only for traffic that was so close as to constitute an “immediate hazard.” Cheri argues that, when Stewart made his turn, Erickson had the right-of-way and was so close to the intersection as to constitute an “immediate hazard.”

¶ 38 Auto accidents rarely lend themselves to *per se* rules or easily applied formulas for evaluating the standard of care to be exercised by a driver. Issues concerning who had the right-of-way, and weighing the relative speed and distances of the vehicles, must be left to the trier of fact, and cannot be lightly overturned. *Pennington v. McClean*, 16 Ill. 2d 577, 583 (1959); *Bogatyrew v. Wachter*, 71 Ill. App. 3d 654, 656-57 (1979).

¶ 39 From the testimony at trial, the jury could have inferred that, when Stewart started his turn, Erickson’s motorcycle was far enough away from the intersection that the act of turning was reasonable, giving Stewart, not Erickson, the right-of-way. Stewart testified that he slowed down

before he turned onto Valley Forge and signaled his intention to turn one and a half blocks away from the intersection. Stewart's truck was damaged in the rear. From this evidence, the jury could infer that Stewart had almost finished his turn when the accident occurred. This inference is reasonable and certainly supports the verdict that Erickson did not have the right-of-way and that Stewart's actions did not proximately cause the accident.

¶ 40 Additionally, testimony showed that Erickson was speeding well in excess of the 40 m.p.h. limit, anywhere from between 52 and 60 m.p.h. or more, as Erickson approached the intersection before he began to brake. Plaintiffs' own expert, Wozniak, testified that the accident would not have happened if Erickson had been traveling only 40 m.p.h. instead of speeding between 52 and 60 m.p.h. or more. Wozniak also testified that Erickson still had six feet in his own lane and that there was nothing to prevent him from going into the other lane to avoid the collision. The jury reasonably could infer from this evidence that Erickson had the time and space to move around the truck to avoid the collision.

¶ 41 It is error to direct a verdict or enter judgment n.o.v. where the evidence demonstrates a substantial factual dispute or where the assessment of the credibility of witnesses may be decisive of the outcome, as in this case. In *Noel v. Jones*, 177 Ill. App. 3d 773, 782 (1988), the Third District Appellate Court found it was proper for the trial court to refuse to direct a verdict or enter judgment n.o.v. when the issue of liability was substantially in dispute. See also *Grizzle*, 398 Ill. App. 3d at 650 (citing *Maple*, 151 Ill. 2d at 454). Moreover, questions of negligence, due care, and proximate cause are ordinarily questions of fact for the jury to decide. As the supreme court in *Ney v. Yellow Cab Company*, 2 Ill. 2d 74 (1954), stated:

“Questions which are composed of such qualities sufficient to cause reasonable men to arrive at different results should never be determined as matters of law. The debatable quality of issues such as negligence and proximate cause, the fact that fair-minded men might reach different conclusions, emphasize the appropriateness and necessity of leaving such questions to a fact-finding body. The jury is the tribunal under our legal system to decide that type of issue. To withdraw such questions from the jury is to usurp its function.” *Ney*, 2 Ill. 2d at 84.

¶ 42 While the jury could have found Stewart negligent for not seeing the motorcycle before he turned, the evidence does support the jury’s determination that Erickson was the sole proximate cause of the collision. “ ‘It is entirely consistent with reason that the jury found that while the defendant was negligent in causing the collision, no injury was suffered or that her injury was not proximately caused by the defendant’s negligence.’ ” *Noel*, 177 Ill. App. 3d at 786 (quoting *Cohen v. Sager*, 2 Ill. App. 3d 1018, 1020-21 (1971)).

¶ 43 We further find support for our holding in *Guy v. Steurer*, 239 Ill. App. 3d 304 (1992), and *Bogatyrew*. In *Guy*, we upheld a verdict in the defendant’s favor, reasoning that there was evidence that showed that the plaintiff had the opportunity to avoid the collision and that the defendant’s negligence did not proximately cause the collision in the intersection. *Guy*, 291 Ill. App. 3d at 310.

¶ 44 In *Bogatyrew*, the jury returned a verdict in the defendant’s favor and, by special interrogatory, found that Bogatyrew was contributorily negligent. *Bogatyrew*, 71 Ill. App. 3d at 655. The defendant testified at trial that he did not see any cars before he turned and that, after almost completing the turn, with his car actually facing perpendicular to oncoming traffic, he saw Bogatyrew’s car out of the corner of his eye as it struck the right rear portion of his car. *Id.* at 655.

On appeal, Bogatyrew argued that the jury's verdict was against the manifest weight of the evidence, suggesting the evidence showed that the defendant was negligent because he did not keep a reasonable lookout and that this failure caused the accident. *Id.* at 656. Bogatyrew contended that the defendant's testimony that he did not see any cars coming toward him was an admission that he was negligent because it was clear from the record that Bogatyrew's car had to be visible to the defendant before he made his turn. *Id.* The court held that analysis of the evidence demonstrated that it could be interpreted to support the verdict that the defendant was not negligent in failing to see Bogatyrew's car before it struck him. *Id.* Even where the defendant testified he did not see the car before turning, the defendant's car was damaged in the rear and from that the court found it could be inferred that he had almost finished his turn when the accident occurred. The court concluded that "[s]uch inferences are reasonable and certainly support the verdict that Bogatyrew did not have the right of way and that the defendant's actions *did not proximately cause* the accident." (Emphasis added.) *Id.* at 657.

¶ 45 Application of the *Pedrick* rule reveals the evidence, when viewed in a light most favorable to Stewart, did not overwhelmingly show that he was a proximate cause of the accident so as to warrant a judgment n.o.v. on that issue. The jury was clearly in the best position to determine from the facts if Stewart was negligent, and if his negligence was a proximate cause of the accident. The record presented conflicting testimony and a substantial factual dispute as to the speed of the vehicles, distances, and right-of-way. Since the jury's resolution of these questions involved an assessment of the credibility of expert witnesses, the parties, and the circumstantial evidence they presented, we find the trial court erred in granting the motions for judgment n.o.v., denying Stewart's motion to reconsider, and ordering a new trial on the issue of apportioning fault.

¶ 46 Thus, we reverse the orders of the circuit court of Winnebago County granting judgment n.o.v. and denying Stewart's motion to reconsider, and the June 6, 2012, judgment entered on the verdict apportioning fault between defendants. We further order the trial court to reinstate that portion of the original judgment entered on August 8, 2011, in Stewart's favor. Because Stewart has no liability to Cheri, John cannot recover damages on his loss of consortium claim directed against Stewart. Accordingly, the August 8, 2011, judgment in favor of Cheri and against Erickson only for \$1,989,568, in favor of Erickson against John, and in favor of Stewart against plaintiffs and Erickson is affirmed.

¶ 47 We wish to point out that Cheri and John argue for the first time in their petition for rehearing that should we reverse the judgment n.o.v. ruling, we should remand the cause for a ruling on their alternative motion for a new trial, wherein they argued that the jury's verdict was against the manifest weight of the evidence. The jury's verdict that Stewart was not a proximate cause of the accident was not against the manifest weight of the evidence based on the testimony of the experts that (1) the accident was caused by Erickson's excessive speed, and (2) Erickson had time to maneuver around the truck within his own lane. Had the trial court granted the motion for a new trial in light of this evidence, it would have been an abuse of discretion. Accordingly, we deny the petition for rehearing.

¶ 48 Appeal No. 12-2-0701, affirmed.

¶ 49 Appeal No. 12-2-0727, affirmed in part and reversed in part; cause remanded with directions.