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2011 IL App (4th) 101005-U

Filed 12/6/11

NO. 4-10-1005

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PATRICIA M. CROUSE,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
NATHANIEL T. BENNING,)	No. 06L191
Defendant-Appellee.)	
)	Honorable
)	Leslie J. Graves,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* As the jury's general verdict for defendant was supported by the evidence, the trial court's denial of plaintiff's motions for directed verdict, judgment *n.o.v.*, and a new trial is affirmed.
- ¶ 2 In September 2010, a jury found for defendant, Nathaniel T. Benning, and against plaintiff, Patricia M. Crouse, in plaintiff's negligence suit involving a car accident in which defendant rear-ended plaintiff. Plaintiff appeals, arguing the trial court erred by denying her motions for directed verdict, judgment *n.o.v.*, and a new trial. We disagree and affirm.

¶ 3 I. BACKGROUND

- ¶ 4 The accident in question occurred in Springfield on December 14, 2004, during or soon after dusk, at around 5 or 6 p.m., in the right-hand southbound lane of Veteran's Parkway (Veteran's), just north of I-72. Veteran's had two lanes of traffic in each direction where the parties' cars collided. The road and weather conditions where the accident took place were clear.

Traffic was heavy.

¶ 5 Plaintiff, driving south on Veteran's, stopped at a red light regulating the intersection of Veteran's and the westbound entrance ramp to I-72. By her account, four or five cars were stopped ahead of her with a reasonable distance between them. Plaintiff intended to turn right onto I-72 West. When the light turned green, plaintiff removed her foot from the brake pedal and advanced toward the intersection. According to her, she proceeded with the flow of traffic in front of her.

¶ 6 Meanwhile, defendant approached plaintiff from the rear. He had just passed a crash scene located on the right-hand shoulder of Veteran's just north of the bridge over I-72. He looked in his rearview mirror to make sure he had cleared the accident scene. So assured, he returned his focus from the rearview mirror to the roadway in front of him. As defendant did this, two things happened simultaneously. First, defendant noticed the green light, and saw plaintiff's car in his lane with its taillights activated, and observed that neither her car's turn signal nor its brake lights were activated. Second, at the same time, he began accelerating to between 25 and 30 miles per hour to meet the flow of traffic in the left-hand southbound lane; he intended to change lanes in preparation of turning left onto I-72 East, just past the intersection between Veteran's and the westbound interstate entrance.

¶ 7 Defendant initially misjudged the speed of plaintiff's car relative to his truck's speed. He was unaware of the flow of traffic in the right-hand lane and did not see any cars in front of plaintiff's. Shortly, defendant realized he was approaching plaintiff too quickly and applied his brakes. The brakes locked, and defendant's truck rear-ended plaintiff's car. The next vehicle in line collided with defendant's truck. According to plaintiff, the accident occurred so

soon after the light turned green that she had advanced only a short distance toward the intersection when her car was hit. According to defendant's deposition testimony, acknowledged in his trial testimony, defendant estimated the accident occurred between 200 and 300 feet before the intersection.

¶ 8 Plaintiff was hospitalized following the accident. Her head and neck injuries required continuing attention and persisted at the time of trial. Defendant, for his part, was ticketed for failure to reduce speed to avoid a collision. He later pleaded guilty to the ticket and paid a fine.

¶ 9 In July 2006, plaintiff filed her complaint, alleging defendant's negligence while driving resulted in the accident and caused plaintiff's injuries. In November 2007, defendant announced his intention to assert the affirmative defense that plaintiff was contributorily negligent by failing to use her turn signal.

¶ 10 In September 2010, the trial court held a jury trial in the cause. At the close of the evidence describing the relevant events as above, plaintiff moved for directed verdict, arguing the evidence conclusively established that defendant was negligent and plaintiff was not contributorily negligent. The court denied plaintiff's motion. The jury subsequently returned a general verdict for defendant and against plaintiff. The jury had been instructed to return this verdict if it found that either defendant was not negligent or plaintiff was contributorily negligent. The court subsequently denied plaintiff's written posttrial motions for judgment *n.o.v.* and a new trial.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Plaintiff first argues the trial court erred by denying her motions for directed verdict and judgment *n.o.v.* We review the court's ruling on these motions *de novo*. *Donaldson v. Central Illinois Public Service Co.*, 199 Ill. 2d 63, 89, 767 N.E.2d 314, 330 (2002), *overruled on other grounds by In re Commitment of Simons*, 213 Ill. 2d 523, 532, 821 N.E.2d 1184, 1190 (2004). Directed verdict and judgment *n.o.v.* are appropriate only where "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." *Pedrick v. Peoria & Eastern RR. Co.*, 37 Ill. 2d 494, 510, 229 N.E.2d 504, 513-14 (1967). "In making this assessment, a reviewing court must not substitute its judgment for the jury's, nor may a reviewing court reweigh the evidence or determine the credibility of witnesses." *Donaldson*, 199 Ill. 2d at 89, 767 N.E.2d at 331. Nevertheless, "[w]hile the determination of a defendant's negligence is ordinarily a question of fact to be submitted to the jury, it may be decided as a matter of law where all reasonable men, of fair understanding, would agree in their deductions from the evidence that the defendant was guilty of negligence ***." *Grass v. Hill*, 94 Ill. App. 3d 709, 714, 418 N.E.2d 1133, 1137 (1981).

¶ 14 Here, due to the general form of the verdict, it is unknown whether the jurors found for defendant on the grounds that he was not negligent or that plaintiff was contributorily negligent. Accordingly, plaintiff would be entitled to a directed verdict or judgment *n.o.v.* only if no reasonable juror could have made either of these findings. That is, plaintiff has the burden of convincing us that both defendant was negligent and she was not contributorily negligent. As we conclude a reasonable juror could have found plaintiff was contributorily negligent, we need not discuss the question of defendant's negligence.

¶ 15 The determinative question in this appeal is whether the evidence, construed in defendant's favor, so conclusively refutes that plaintiff was contributorily negligent that no reasonable juror could have found for defendant on that issue. "Contributory negligence is lack of due care for one's safety as measured by the objective reasonable-man standard. [Citation.] In other words, plaintiff is required to exercise that care which the reasonably prudent person would take to avoid injury in like circumstances." *Long v. City of New Boston*, 91 Ill. 2d 456, 463-64, 440 N.E.2d 625, 628 (1982).

¶ 16 Defendant argues plaintiff was contributorily negligent by failing to use her turn signal, in violation of statute. Specifically, defendant maintains plaintiff violated section 11-804(a) and (b) of the Illinois Vehicle Code (625 ILCS 5/11-804(a), (b) (West 2002)), which requires a driver intending to turn right or left to operate his turn signal continuously for the last 100 or 200 feet approaching the turn, depending on the setting. As defendant asserts, when construed in his favor, the evidence establishes that plaintiff failed to operate her turn signal within 100 feet of the intersection where she intended to turn, in violation of the statute. Using the statutory obligation as a measure of the standard of care of a reasonably prudent person, this violation establishes that plaintiff was negligent.

¶ 17 Further, construing the evidence in favor of defendant, a reasonable juror could conclude that, had plaintiff's turn signal been activated when defendant viewed her car while approaching from the rear, defendant would have altered his driving in such a way as to avoid the collision. *Cf. Hickock v. Erwin*, 101 Ill. App. 3d 585, 589-90, 428 N.E.2d 520, 523-24 (1981) (finding the plaintiff was not contributorily negligent where "it [could not] be said that the accident would not have occurred if the plaintiff had used his turn signal"); *Zaeh v. Huenke*,

70 Ill. App. 3d 39, 40-41, 388 N.E.2d 434, 436 (1979) (finding the plaintiff was not contributorily negligent where, as the accident occurred when the defendant drove forward without looking, the plaintiff's failure to signal a turn could not have been the proximate cause of the collision); *Burroughs v. McGinness*, 63 Ill. App. 3d 664, 668, 380 N.E.2d 37, 40 (1978) (finding the plaintiff was not contributorily negligent as the court "[could not] conclude from the evidence that had the plaintiff activated his turn signal, the accident would not have occurred"). The purpose of a driver's turn signal, with respect to vehicles approaching from the rear, is to indicate that the driver may not accelerate as anticipated and intends to slow for an upcoming turn. While the testimony is not definitive either way, defendant's acceleration occurred after or simultaneously with his observation of plaintiff's car at the stoplight. Had he seen plaintiff's car with its right turn signal activated at that point, defendant may have adjusted his driving to decrease his speed and allow more space between his vehicle and plaintiff's. A reasonable juror could have concluded plaintiff's failure to communicate her intention of turning proximately caused the accident.

¶ 18 The evidence at trial was sufficient to support a jury verdict for defendant on the question of plaintiff's contributory negligence. Accordingly, the trial court did not err in denying plaintiff's motions for directed verdict and judgment *n.o.v.*

¶ 19 Plaintiff also argues the trial court erred by denying her posttrial motion for a new trial. "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 [the court] clearly abused its discretion." *Maple v. Gustafson*, 151 Ill. 2d 445, 455, 603 N.E.2d 508, 513 (1992). A new trial should not be granted where the jury's verdict was supported by the evidence and the losing party was not otherwise

denied a fair trial. *Id.* In this case, plaintiff argues the jury's verdict was against the manifest weight of the evidence. To the contrary, as discussed above, the evidence would have supported a verdict for defendant on the grounds that plaintiff was contributorily negligent. Accordingly, the court in this case did not abuse its discretion in denying plaintiff's motion for a new trial.

¶ 20

III. CONCLUSION

¶ 21

For the foregoing reasons, we affirm the trial court's judgment.

¶ 22

Affirmed.