IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

LYNN FONGER,

Appellant,

v. Case No. 5D17-2927

JAMES NALL,

Appellee.

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Opinion filed November 15, 2019

Appeal from the Circuit Court
for Orange County,
Renee A. Roche, Judge.

Robert Morris and Crystal Eiffert, of Eiffert & Associates, P.A., Orlando, for Appellant.

Angela C. Flowers, of Kubicki Draper, Ocala, for Appellee.

ORFINGER, J.

In this rear-end auto collision case, Lynn Fonger appeals the trial court's judgment entered after a jury returned a verdict in favor of the rear vehicle operator, James Nall. Because we conclude the trial court erred in denying Fonger's motion for directed verdict, we reverse.

On the morning of the accident, Nall was driving to work on Old Winter Garden Road. It was sunny and clear. As Nall approached the intersection with Killington Way,

he noticed Fonger's vehicle directly in front of him and a tan sedan in front of Fonger. Nall testified that although the light was green, for no apparent reason, the tan sedan came to a complete stop just short of the intersection. Nall and Fonger applied their brakes almost simultaneously. Fonger stopped short of the tan sedan, which then proceeded through the intersection, but Nall failed to stop in time and rear-ended Fonger's car. After the trial court denied Fonger's motion for directed verdict as to Nall's negligence, the jury found Nall not liable, and the court entered judgment on the verdict.

Fonger argues that Nall failed to present evidence sufficient to rebut the presumption of negligence by the rear driver in a rear-end collision, entitling him to a directed verdict as to Nall's negligence. We review the trial court's ruling on a motion for directed verdict de novo, Andrews v. Direct Mail Express, Inc., 1 So. 3d 1192, 1193 (Fla. 5th DCA 2009), viewing the evidence in the light most favorable to Nall as the non-moving party on the motion for directed verdict. See Tenny v. Allen, 858 So. 2d 1192, 1195 (Fla. 5th DCA 2003).

It is well established that a rear-end collision creates a rebuttable presumption that the rear driver was negligent. Clampitt v. D.J. Spencer Sales, 786 So. 2d 570, 572-73 (Fla. 2001). If left unrebutted, the presumption requires a directed verdict reflecting the rear driver's negligence. See id. at 573. To rebut this presumption, the rear driver must come forward with evidence or some explanation that "'fairly and reasonably tends to show' that the presumption is misplaced or that the 'real fact is not as presumed.'" Birge v. Charron, 107 So. 3d 350, 360 (Fla. 2012) (quoting Eppler v. Tarmac Am., Inc., 752 So. 2d 592, 595 (Fla. 2000)). Once such evidence is produced, the presumption is rebutted

"and all issues of disputed fact regarding comparative fault . . . should be submitted to the jury." Cevallos v. Rideout, 107 So. 3d 348, 349 (Fla. 2012).

Courts in this state have generally recognized four situations to rebut the presumption: "(1) a mechanical failure in the rear driver's vehicle, (2) the lead driver's sudden stop, (3) the lead driver's sudden lane change, and (4) the lead driver's illegal or improper stop." Douglas-Seibert v. Riccucci, 84 So. 3d 1086, 1088-89 (Fla. 5th DCA 2012). Here, Nall contends that the evidence of Fonger's sudden stop rebutted the presumption of negligence and supported the trial court's denial of the motion for directed verdict.

It is also well established that a sudden or abrupt stop, without more, will not rebut the presumption of the rear driver's negligence. Clampitt, 786 So. 2d at 575; Pierce v. Progressive Am. Ins., 582 So. 2d 712, 714 (Fla. 5th DCA 1991). This is so because each driver has a duty to remain alert and to follow the vehicle in front of him or her at a safe distance. See § 316.0895(1), Fla. Stat. (2017) (providing that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of, the highway"). In principle, "the law requires all drivers to push ahead of themselves an imaginary clear stopping distance or assured stopping space or adequate zone within which the driven vehicle can come to a stop." Clampitt, 786 So. 2d at 575 (quoting Lynch v. Tennyson, 443 So. 2d 1017, 1020-21 (Fla. 5th DCA 1983) (Cowart, J., dissenting)). Rear drivers must be prepared to stop suddenly and to anticipate sudden stops by vehicles in front of them. Therefore, to rebut the presumption of negligence in a rear-end collision through evidence of the lead driver's sudden stop, the rear driver must show that

the stop was "not expected, i.e., 'abrupt and arbitrary,' and in a place not reasonably expected." Wright v. Ring Power Corp., 834 So. 2d 329, 331 (Fla. 5th DCA 2003); see, e.g., Eppler, 752 So. 2d at 595-96 (holding that lead driver's slamming on brakes in bumper-to-bumper traffic, without warning and for no reason, was irresponsible, dangerous, and not reasonably expected, and thus, rebutted presumption of rear driver's negligence). But, if the stop occurs at a place where it was to be expected, the presumption of negligence is not rebutted, and the plaintiff is entitled to a directed verdict as to the rear driver's negligence. Wright, 834 So. 2d at 331.

Here, the evidence showed a sudden stop without more. Fonger stopped in response to the tan sedan's sudden stop as he approached a busy traffic intersection. This is a place where sudden stops are to be expected because "[i]t is not at all unusual for vehicles preceding through busy intersections, for example, to have to suddenly brake for pedestrians, emergency vehicles or other drivers running a red traffic light from a cross-street." Tacher v. Asmus, 743 So. 2d 157, 158 (Fla. 3d DCA 1999); see also Clampitt, 786 So. 2d 570 (holding that lead driver's stop on two-lane, 55-mph highway was reasonably anticipatable where lead driver rear ended trailer that was being pulled off highway into driveway, and highway contained several nearby entrances/exits); Hunter v. Ward, 812 So. 2d 601 (Fla. 1st DCA 2002) (holding lead driver's stop reasonably anticipatable where, from inside lane of four-lane divided highway, first driver tried to turn left at median break, first driver's truck hitch continued to protrude into inside lane, and lead driver braked to avoid hitch); Pierce, 582 So. 2d 712 (holding lead drivers' stops reasonably anticipatable where, in crowded lane of traffic approaching busy intersection controlled by traffic light that was in view of rear driver, four vehicles were driving in a line,

and first driver stopped for red light and was rear-ended by second driver, who was rear-ended by third driver, who was rear-ended by rear driver). Thus, Fonger's stop occurred at an anticipatable time and place, and, as such, could not serve as a basis to rebut the presumption of Nall's negligence.

Because the evidence presented by Nall could not rebut the presumption of negligence by the rear driver in a rear-end collision, the trial court erred in denying Fonger's motion for directed verdict. Therefore, we reverse and remand for entry of a directed verdict on the issue of Nall's negligence and for a new trial on all remaining issues.

REVERSED and REMANDED.

SASSO, J., and TATTI, A.M., Associate Judge, concur.