

STATE OF MICHIGAN
COURT OF APPEALS

MARIA BITONTI,

Plaintiff-Appellant,

v

ROBIN RYCZEK,

Defendant-Appellee,

and

CHRISTINE RYCZEK.

Defendant.

UNPUBLISHED

April 17, 2001

No. 217275

Wayne Circuit Court

LC No. 97-735740-NI

Before: Cavanagh, P.J., and Talbot, and Meter, JJ.

PER CURIAM.

In this negligence action, plaintiff appeals as of right following a jury verdict for defendant. We affirm.

This case arises from an automobile collision. Plaintiff testified that a vehicle driven by defendant Robin Ryczek (“defendant”) hit plaintiff’s vehicle from behind while plaintiff was waiting to make a left-hand turn. According to plaintiff’s testimony, her car was at a complete stop when the collision occurred, and she had activated her turn signal. Defendant testified that she was driving below the posted thirty-five mile per hour speed limit, did not see any brake lights or a turn signal on plaintiff’s car, and did not see plaintiff’s car at all until it was too late to avoid a collision. The jury verdict form contained ten questions. The first question asked, “Was the defendant negligent?” and instructed the jury not to answer further questions if its answer was “no.” The jury answered “no” to the first question and, therefore, never reached the issues of plaintiff’s possible negligence, damages, or causation.

Plaintiff argues that there was insufficient evidence to support the jury’s verdict of no cause of action and that reversal is therefore required. We disagree. Indeed, while it is true that defendant stated that she had no opportunity to look for brake lights before the accident occurred

and that she didn't see plaintiff's vehicle until it was too late to avoid an accident, she also testified as follows:

Q: When you slammed on your brakes, though, were you able to see whether or not [plaintiff] had brake lights?

A: I know that I didn't see any brake lights.

Q: Are you certain you didn't see a turn signal?

A: Oh, I'm certain. I know that I didn't.

* * *

Q: Could you tell the jury why you didn't notice [plaintiff] was stopping?

A: Because I didn't see any lights.

In light of this testimony, the jury reasonably could have concluded that plaintiff's brake lights were not illuminated and that the accident occurred because of this. Accordingly, even though the evidence in favor of defendant was not overwhelming, there nonetheless was *sufficient* evidence to support the jury's verdict.

Plaintiff additionally argues that the verdict was against the great weight of the evidence and that the trial court therefore erred by denying plaintiff's motion for a new trial. We review a trial court's decision on a motion for a new trial for an abuse of discretion. *Setterington v Pontiac General Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997). A new trial may be granted on all or some of the issues when the substantial rights of a party were materially affected and there was a verdict or decision against the great weight of the evidence or contrary to law. MCR 2.611(A)(1)(e). Here, in light of defendant's testimony regarding brake lights, we cannot say that the trial court *abused its discretion* in concluding that the verdict was not against the great weight of the evidence.

We acknowledge that MCL 257.402(a); MSA 9.2101(a) provides that if a driver's vehicle overtakes and strikes the rear end of another vehicle traveling in the same direction or lawfully standing, a rebuttable presumption of the striking driver's negligence arises. See *Hill v Wilson*, 209 Mich App 356, 359; 531 NW2d 744 (1995). However, plaintiff did not raise this statute in her complaint or at trial and did not object to the jury instructions, which did not discuss this statutory presumption. Plaintiff does not allege on appeal that she requested an instruction on the statutory presumption, nor is there any evidence in the record that she did so. Accordingly, plaintiff cannot legitimately argue that she was entitled to this presumption. See MCR 2.516(D)(2)(c) (indicating that the trial court must give applicable instructions *if they are requested by a party* [emphasis added]).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Michael J. Talbot

/s/ Patrick M. Meter