Rel: October 20, 2023

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2022-0901

State Farm Mutual Automobile Insurance Company

v.

Brian M. Wood and Jennifer A. Wood

Appeal from Lee Circuit Court
(CV-18-900157)

BRYAN, Justice.

State Farm Mutual Automobile Insurance Company ("State Farm"), a defendant below, appeals from a judgment entered against it on a jury verdict in an automobile-accident case. We affirm.

As will be discussed in more detail below, Brian M. Wood ("Brian") was driving through an intersection in Auburn when his vehicle was T-boned by a vehicle being driven by Mark Stafford. Brian and his wife Jennifer A. Wood sued Stafford, an uninsured motorist, in the Lee Circuit Court, alleging claims of negligence, wantonness, and loss of consortium. Because Stafford was uninsured, the Woods also sued their automobile-insurance company, State Farm, seeking uninsured-motorist benefits under their policy. The Woods unsuccessfully attempted to serve Stafford. Pursuant to Rule 4(f), Ala. R. Civ. P., the Woods sought to proceed to a final judgment against the other defendant, State Farm.[1] The trial court held a jury trial, at which several witnesses testified. At the close of the Woods' evidence, State Farm moved for a judgment as a matter of law ("JML") on its contributory-negligence defense and on the

[1]Rule 4(f) provides, in pertinent part:

> "When there are multiple defendants and the summons (or other document to be served) and the complaint have been served on one or more, but not all, of the defendants, the plaintiff may proceed to judgment as to the defendant or defendants on whom process has been served and, if the judgment as to the defendant or defendants who have been served is final in all other respects, it shall be a final judgment."

Woods' wantonness claim, and the trial court denied that motion. State Farm renewed its motion for a JML at the close of all the evidence, and the trial court denied that motion as well. In relevant part, the trial court charged the jury on claims of negligence and wantonness, the affirmative defense of contributory negligence, and the doctrine of subsequent negligence.

The jury returned a verdict in the Woods' favor, awarding them $700,000 in compensatory damages, and the trial court entered a judgment on that verdict. The jury did not award any punitive damages. State Farm filed a postjudgment motion challenging the judgment on various grounds, including whether the wantonness claim should have gone to the jury. The postjudgment motion was denied by operation of law, and State Farm appealed.

The accident occurred at the intersection of Sandhill Road and South College Street in Auburn on April 26, 2016, at approximately 6:15 p.m., on a clear, sunny day. Stafford was driving a BMW automobile south on South College Street. At trial, Juan Barnes testified that Stafford's vehicle passed his vehicle about a half mile before the intersection where the accident occurred. Barnes testified that Stafford

was speeding, weaving in and out of traffic, and almost collided with a motorcycle after passing Barnes. According to Barnes, Stafford was driving dangerously, and Barnes was concerned that Stafford was "going to kill somebody." Similarly, Kari McPherson testified by deposition that Stafford passed her shortly before the accident occurred. McPherson testified that Stafford switched lanes very quickly to get around her and that her automobile shook as he passed her. She estimated that Stafford's vehicle was traveling at least 90 miles per hour; the speed limit on the road was 55 miles per hour. As Stafford drove toward the intersection, he drove over a hillcrest approximately 800 feet from the intersection; until topping the hillcrest, Stafford's view of the intersection was obstructed by the hillcrest. Before reaching the hillcrest, Stafford drove past a sign stating that the "RIGHT LANE MUST TURN RIGHT" at the upcoming intersection.

To the south of Stafford, Brian arrived at the intersection traveling west on Sandhill Road. At the time, there was a stop sign at the intersection controlling the west-bound traffic traveling on Sandhill Road. At trial, Brian testified that he stopped his Honda Ridgeline truck at the stop sign. To Brian's right were three south-bound lanes of traffic

on South College Street. From the perspective of a driver traveling south on South College Street, there is a left-turn lane that leads traffic left, or east, onto Sandhill Road. The middle lane is a flow-through lane that takes traffic south past the intersection. On the right, there is a mandatory right-turn lane that takes traffic onto the street on the opposite side of the intersection from where Brian was stopped. Brian testified that, when he attempted to cross the intersection, there were no vehicles in the middle flow-through lane and the left-turn lane to his right. He testified that, when checking traffic to his right, his sight was directed toward the two lanes that contained traffic that would cross his path, i.e., the flow-through lane and the left-turn lane. Brian testified that, although he never saw Stafford's vehicle, he concluded that it must have been in the mandatory right-turn lane as Brian began to cross the intersection because the vehicle was not in the other two lanes to his right. As Brian attempted to cross the intersection, his vehicle was T-boned by Stafford's vehicle, causing permanent injury to Brian. The collision occurred in the pass-through lane. Pam Stirling, an accident-reconstruction expert, testified at trial that Stafford's vehicle was

traveling between 69-78 miles per hour when it collided with Brian's vehicle. As noted, the speed limit was 55 miles per hour.

On appeal, State Farm first argues that the trial court erred by giving the jury an instruction on the doctrine of subsequent negligence. The doctrine of subsequent negligence, also known as the last-clear-chance doctrine, is a method of establishing liability despite a plaintiff's contributory negligence. Dees v. Gilley, 339 So. 2d 1000, 1002 (Ala. 1976). That is, a plaintiff's contributory negligence is not a defense to a defendant's subsequent negligence. Id.

> "The elements of proof of subsequent negligence are: (1) that the plaintiff was in a perilous position; (2) that the defendant had knowledge of that position; (3) that, armed with such knowledge, the defendant failed to use reasonable and ordinary care in avoiding the accident; (4) that the use of reasonable and ordinary care would have avoided the accident; and (5) that plaintiff was injured as a result. Treadway v. Brantley, 437 So. 2d 93 (Ala. 1983)."

Zaharavich v. Clingerman, 529 So. 2d 978, 979 (Ala. 1988). State Farm first argues that there is no evidence indicating that Stafford knew that Brian was in a dangerous position. State Farm also argues that, even if Stafford knew that Brian was in a dangerous position, "there is no indication that a sufficient amount of time passed in which to allow a preventative effort" by Stafford. State Farm's brief at 15. That is, State

Farm seems to argue that, due to the alleged lack of time between discovering the peril and the accident, Stafford could not have reasonably avoided the accident. Thus, State Farm argues that the trial court erred by giving an instruction on subsequent negligence.

Rule 51, Ala. R. Civ. P., provides, in pertinent part:

> "No party may assign as error the giving or failing to give a written instruction, or the giving of an erroneous, misleading, incomplete, or otherwise improper oral charge unless that party objects thereto before the jury retires to consider its verdict, stating the matter objected to and the grounds of the objection."

Thus, to preserve its argument that the trial court erred by giving the subsequent-negligence charge, State Farm was required to have "(1) objected before the jury retired to consider its verdict; (2) stated the matter that [it] was objecting to; and (3) supplied the grounds for [the] objection." Ware v. Timmons, 954 So. 2d 545, 558 (Ala. 2006).

At the charge conference, the theory of subsequent negligence was first mentioned by the Woods' attorney in response to the trial court's stating that it would charge the jury on the affirmative defense of contributory negligence:

> "THE COURT: So I am going to give [the charge on contributory negligence].

> "[THE WOODS' ATTORNEY]: Okay. And then the subsequent negligence [charge], because contributory negligence is not a defense to subsequent negligence.
>
> "THE COURT: Well, that's the one you had that I really didn't understand. I thought that was pretty confusing.
>
> "[ONE OF STATE FARM'S ATTORNEYS]: Judge, that's actually what I was going to bring up.
>
> "MS. WOOD: Okay. Do you want me to talk about the elements of subsequent negligence first and then we can figure out …."

The trial court then located the proposed charge on subsequent negligence and explained its confusion regarding the charge:

> "THE COURT: I guess what -- what my problem is, you know, we haven't heard from Stafford. So … here are the elements. The plaintiff was in a perilous position. Okay. Well, that's fine. Two, the defendant had actual knowledge that the plaintiff was in a position of danger. Three, the defendant, with such knowledge, negligently failed to use reasonable and ordinary care in avoiding the accident.
>
> "[THE WOODS' ATTORNEY]: He --
>
> "THE COURT: So we don't we don't -- know what he knew.
>
> "[THE WOODS' ATTORNEY]: He was facing the direction of … the cross over; he was facing it.
>
> "THE COURT: Yes, but --
>
> "[THE WOODS' ATTORNEY]: And there is evidence that Brian was crossing.

"THE COURT: Well … how do we know --

"[THE WOODS' ATTORNEY]: Because he was facing that direction.

"THE COURT: … I guess I will give it, but I mean, the same thing, you know -- you know, if -- if you are asking -- you know, we haven't heard from him, we are asking for this charge. I guess you can infer he was facing -- I mean, he clearly was facing that direction. Now, whether or not he had his eyes closed or not, I don't know."

Immediately after the above exchange, one of State Farm's attorneys commented on the proposed subsequent-negligence charge:

"[STATE FARM'S ATTORNEY]: Well, I guess -- Your Honor, how can -- if they are alleging he was negligent and subsequently negligent -- I mean -- I mean, it's the same thing as negligence. I mean, that that's their whole case, is that they allege that Stafford was negligent. So now they are asking for the --

"THE COURT: Well --

"(Parties talking at the same time.)

"[STATE FARM'S ATTORNEY]: -- charge of negligence and subsequent negligence. It -- it seems redundant to me.

"[THE WOODS' ATTORNEY]: No, it's -- the contributory negligence defense does not apply to subsequent negligence.

"THE COURT: Yes, but I mean -- I will give it[, i.e., the charge on subsequent negligence] …."

(Emphasis added.)

After the trial court charged the jury and before the jury retired to consider the case, the trial court asked State Farm's attorneys if they had any objections, and one of State Farm's attorneys replied: "We will just renew our objections."

The record indicates that State Farm's attorney was confused about the nature and import of the subsequent-negligence doctrine. At most, she objected to the subsequent-negligence charge on the ground that it was "redundant." However, on appeal, State Farm does not argue that ground. Rather, State Farm argues that the subsequent-negligence charge should not have been given because, State Farm says, there was insufficient evidence to support that charge. Specifically, State Farm argues that there was no evidence indicating that Stafford knew that Brian was in a dangerous position and that, even if Stafford did know that Brian was in a dangerous position, "there is no indication that a sufficient amount of time passed in which to allow a preventative effort" by Stafford. State Farm's brief at 15. Regarding that first point, State Farm observes that Stafford did not testify, and it argues that "there is no indication as to what Stafford may have observed, seen, felt, heard, or

thought immediately prior to or at the time of impact." Id. at 14. Thus, that part of State Farm's argument echoes concerns raised by the trial court during the charge conference, as noted above. However, as the Woods note in their brief, State Farm never objected to the subsequent-negligence charge on the ground now asserted on appeal before that charge was given to the jury.

As noted, Rule 51 provides that "[n]o party may assign as error … the giving of an erroneous … or otherwise improper oral charge unless that party objects thereto before the jury retires to consider its verdict, stating the matter objected to and the grounds of the objection." In its reply brief, State Farm contends that it properly objected to the subsequent-negligent charge on the ground now argued on appeal, stating that the issue was "debated extensively amongst counsel" at the charge conference. State Farm's reply brief at 6. However, the above-quoted dialogue indicates that State Farm never actually objected to the charge on the ground State Farm now asserts on appeal. Instead, the trial court sua sponte raised a concern about the appropriateness of the charge, and State Farm later fashioned an argument based on that concern after the jury had returned its verdict. State Farm seems to

imply that the trial court's sua sponte contemplations about the charge were sufficient to preserve State Farm's argument on appeal. However, State Farm cites no caselaw supporting that position. The plain text of Rule 51 expressly requires that a party object and state the grounds for the objection, and "the failure to do so prevents appellate review of the alleged error." McElmurry v. Uniroyal, Inc., 531 So. 2d 859, 860 (Ala. 1988). State Farm waived its argument challenging the subsequent-negligence charge by not timely raising the argument.[2]

Next, State Farm argues that the trial court erred by allowing the wantonness claim to go to the jury because, State Farm says, there is insufficient evidence to support that claim. As they did regarding the subsequent-negligence issue, the Woods argue that State Farm did not preserve this argument because, the Woods say, State Farm did not

[2]After the jury retired to consider the verdict, one of State Farm's attorneys stated: "We will take exception to the wantonness charges and then there was the charge about subsequent negligence. I think that was the other one that we raised an objection to earlier." As noted, State Farm, at most, may have earlier objected to the subsequent-negligence charge on the ground that it was redundant; at any rate, the objection to the charge after the jury retired was untimely under Rule 51. In its postjudgment motion, State Farm did argue that the subsequent-negligence charge was unsupported by the evidence; however, by that point, the argument had already been waived under Rule 51.

specifically object to the proposed wantonness charge at the charge conference. However, we conclude that State Farm's wantonness argument was preserved for appeal. Although the point is not always clear in State Farm's argument, State Farm argues that the trial court erred by not entering a JML under Rule 50, Ala. R. Civ. P., on the wantonness claim. See State Farm's brief at 9-10 (discussing the standard for reviewing a ruling on a motion for a JML). That argument is a different type of argument than State Farm's first argument concerning the propriety of a jury instruction on the Woods' theory of subsequent negligence. Under Rule 50, to preserve its argument that the trial court should have entered a JML on the wantonness claim on the ground of insufficient evidence, State Farm was required to (1) move for a JML at the close of all the evidence on that ground and (2) renew that motion in a postjudgment motion. Rule 50; Committee Comments on 1973 Adoption of Rule 50; and Cook's Pest Control, Inc. v. Rebar, 28 So. 3d 716, 722 (Ala. 2009). State Farm followed that procedure in this case and thus preserved its argument for appeal. The Woods argue that Rule 51 controls this issue, as they did regarding the subsequent-negligence charge. However, the issue whether State Farm preserved its argument

that the trial court erred by not entering a JML on the wantonness claim is controlled by Rule 50, not the procedure under Rule 51. See Complete Cash Holdings, LLC v. Powell, 239 So. 3d 550, 556 n.7 (Ala. 2017) (discussing the distinction between a challenge to a ruling on a JML motion under Rule 50 and a challenge that invokes Rule 51); and Cook's Pest Control, 28 So. 3d at 722-23 (same). State Farm preserved its argument regarding the wantonness claim.

Although State Farm has preserved its argument that there was insufficient evidence to support sending the wantonness claim to the jury, State Farm has not presented a sufficient record allowing us to review that issue. Among other things, State Farm challenges aspects of the deposition testimony of McPherson, a driver who allegedly witnessed the accident. State Farm contends that there are inconsistencies between McPherson's affidavit testimony and her deposition testimony and that, while being cross-examined during her deposition, she recanted some of her testimony made earlier in the deposition. McPherson's affidavit was not admitted into evidence at trial. A video of McPherson's deposition testimony was shown to the jury at trial, but that testimony was not transcribed by the court reporter. Although the deposition testimony was

shown to the jury, a copy of the video was not actually admitted into evidence. The Woods moved the trial court to admit a transcript of McPherson's deposition testimony, but the trial court declined to admit the transcript; State Farm objected to the Woods' motion to admit the transcript of the deposition. The record does contain an excerpt from McPherson's deposition attached to a motion for a partial summary judgment submitted by the Woods. Thus, this Court does have access to some of the testimony that the jury saw. However, only a portion of the deposition testimony was attached to the summary-judgment motion, and it does not include State Farm's cross-examination of McPherson. The record also contains two pages of deposition testimony taken from State Farm's cross-examination of McPherson; those two pages were attached to a motion in limine filed by the Woods. In its appellate briefs, State Farm relies on a short excerpt from its cross-examination during the deposition, and that short excerpt was read to Pam Stirling, the Woods' expert witness, while she was being cross-examined at trial.[3]

[3]The excerpt read to Stirling reflected McPherson's agreement with this statement posed to her during her deposition: "So it's accurate you don't remember anything that happened from when [Stafford's vehicle]--you didn't see anything that happened between the time that [Stafford's vehicle] left your line of sight until the point of impact. Is that correct?"

State Farm's argument regarding McPherson's testimony is material to its argument that there is insufficient evidence to support a finding of wantonness. However, we do not have a complete transcript of the deposition testimony before us, and we do not have a copy of the video viewed by the jury. Thus, we do not have all the evidence that the jury considered regarding a material issue. This Court addressed a similar issue in Vaughan v. Oliver, 822 So. 2d 1163, 1170 (Ala. 2001):

> "Although the depositions of Dr. Perry, who was Oliver's vascular surgeon, and Dr. Sullivan, who was Oliver's admitting and main treating physician, were read to the jury, the court reporter did not transcribe the in-court reading of the deposition testimony of either doctor. No party admitted the depositions themselves into evidence or filed the depositions with the court. Therefore, the jury and the trial court had evidence before them not included in the record on appeal. 'Where all the evidence is not in the record, it will be presumed that the evidence was sufficient to sustain the verdict or judgment.' Berryhill v. Mutual of Omaha Ins. Co., 479 So. 2d 1250, 1251 (Ala. 1985). See also Smith v. Smith, 596 So. 2d 1 (Ala. 1992); Eubanks & Eubanks, Inc. v. Colonial Pacific Leasing, 757 So. 2d 437 (Ala. Civ. App. 1999); Cofer v. Town of Good Hope, 655 So. 2d 1028 (Ala. Civ. App. 1995); Jones v. Jones, 603 So. 2d 1109 (Ala. Civ. App. 1992)."

In this case, the jury considered evidence that we do not have before us on appeal, i.e., parts of McPherson's deposition testimony. "[T]he burden is on the appealing party to insure that an adequate record is available for review on appeal." Ex parte Olson, 472 So. 2d 437, 438 (Ala.

1985). "'Where all the evidence is not in the record, it will be presumed that the evidence was sufficient to sustain the verdict or judgment.'" Vaughan, 822 So. 2d at 1170 (quoting Berryhill v. Mutual of Omaha Ins. Co., 479 So. 2d 1250, 1251 (Ala. 1985)). Accordingly, we must presume that there was evidence to support the trial court's decision to deny the motion for a JML and the jury's verdict, and the judgment on the verdict is due to be affirmed in this regard.[4]

Although the judgment as to this issue is due to be affirmed on the above-discussed ground, we note that, regardless, State Farm's wantonness argument is without merit.

> "'When reviewing a ruling on a motion for a [JML], this Court uses the same standard the trial court used initially in deciding whether to grant or deny the motion for a [JML]. Palm Harbor Homes, Inc. v. Crawford, 689 So. 2d 3 (Ala. 1997). Regarding questions of fact, the ultimate question is whether the nonmovant has presented sufficient evidence to allow the case to be submitted to the jury for a factual resolution. Carter v. Henderson, 598 So. 2d 1350 (Ala. 1992). The nonmovant must have presented substantial evidence in order to withstand a motion for a [JML]. See § 12-21-12, Ala.

[4]State Farm does not directly address the principle stated in Vaughan. Rather, State Farm, in its reply brief, essentially argues that the record contains an account of that part of McPherson's testimony that State Farm believes it needs to support its argument; however, that argument sidesteps the principle in Vaughan and the cases cited in Vaughan.

> Code 1975; West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). A reviewing court must determine whether the party who bears the burden of proof has produced substantial evidence creating a factual dispute requiring resolution by the jury. Carter, 598 So. 2d at 1353. In reviewing a ruling on a motion for a [JML], this Court views the evidence in the light most favorable to the nonmovant and entertains such reasonable inferences as the jury would have been free to draw. Id.'"

Leiser v. Raymond R. Fletcher, M.D., P.C., 978 So. 2d 700, 705-06 (Ala. 2007) (quoting Waddell & Reed, Inc. v. United Invs. Life Ins. Co., 875 So. 2d 1143, 1152 (Ala. 2003)).

State Farm argues that there was insufficient evidence to send the wantonness claim to the jury. Specifically, State Farm argues that, other than the evidence of Stafford's excessive speed, there was no evidence of wantonness. Wantonness is "[c]onduct which is carried on with a reckless or conscious disregard of the rights or safety of others." § 6-11-20(b)(3), Ala. Code 1975. "We have held that wantonness involves 'the conscious doing of some act or the omission of some duty while knowing of the existing conditions and being conscious that, from doing or omitting to do an act, injury will likely or probably result.'" Lands v. Ward, 349 So. 3d 219, 229 (Ala. 2021) (quoting Ex parte Essary, 992 So. 2d 5, 9 (Ala. 2007)) (emphasis omitted).

State Farm emphasizes that, in the context of driving, "[t]his Court has held that while speed alone does not amount to wantonness, speed, coupled with other circumstances, may amount to wantonness." Hicks v. Dunn, 819 So. 2d 22, 24 (Ala. 2001). State Farm argues that "the actual evidence presented at trial was limited to a single factor -- Stafford's speed" -- and that there was no evidence of "other circumstances" in addition to speed. State Farm's brief at 16-17. However, as we will discuss below, that is not the case. The Woods contend that Stafford was speeding in the mandatory right-turn lane when he abruptly changed lanes into the flow-through middle lane, where he collided with Brian's vehicle. It is undisputed that Stafford was speeding and that the collision occurred in the flow-through lane as Brian was attempting to cross the intersection. However, State Farm challenges whether there was evidence indicating that Stafford made a lane change from the mandatory right-turn lane to the flow-through lane. In doing so, State Farm does not seem to contest that such a lane change would constitute a circumstance that, combined with unsafe speed, would support a finding of wantonness. See State Farm's brief at 17 ("Admittedly, [the] Wood[s] sought to offer an argument regarding a pre-accident lane

change by Stafford."). Indeed, evidence of an unsafe lane change in a speeding case is an additional circumstance that can support a finding of wantonness. See Hornady Truck Line, Inc. v. Meadows, 847 So. 2d 908, 916 (Ala. 2002) (indicating that, when a tractor-trailer truck that was traveling at an unsafe speed merged from one lane to another without warning, that was an additional circumstance that could support a wantonness claim).

State Farm notes that there was no direct, eyewitness testimony that Stafford changed lanes shortly before the accident occurred. However, there was circumstantial evidence from which the jury could have concluded that Stafford moved from the mandatory right-turn lane to the flow-through lane shortly before the accident occurred. "'"'"Circumstantial evidence is in nowise considered inferior evidence and is entitled to the same weight as direct evidence provided it points to [establishing the fact sought to be proved]."'"'" Wiggins v. Mobile Greyhound Park, LLP, 294 So. 3d 709, 723 (Ala. 2019) (citations omitted); see also Bell v. Colony Apartments Co., 568 So. 2d 805, 810-11 (Ala. 1990) ("A fact is established by circumstantial evidence if it can be reasonably inferred from the facts and circumstances adduced."). Brian testified

that, when he attempted to cross the intersection, there were no vehicles in the flow-through lane and the left-turn lane to his right. He testified that, when checking traffic to his right, his sight was directed toward the two lanes that contained traffic that would cross his path, i.e., the flow-through lane and the left-turn lane. Brian testified that, although he never saw Stafford's speeding vehicle, he concluded that it must have been in the mandatory right-turn lane as Brian began to cross the intersection because the vehicle was not in the other two lanes to his right. As noted, it is undisputed that Stafford's vehicle collided with Brian's vehicle in the pass-through lane. Brian's testimony was evidence from which the jury could have concluded that Stafford suddenly changed lanes very shortly before the accident. That evidence, combined with evidence of speeding, is evidence supporting a claim of wantonness. Hornady Truck Line, 847 So. 2d at 916.

Furthermore, besides evidence of the lane change, there were additional circumstances that, when combined with Stafford's speed, support a claim of wantonness. Before the accident occurred, Stafford drove past an intersection-crossing warning sign indicating that he was approaching an intersection. Before he drove over the hillcrest on the

way to the intersection, he drove past a regulatory traffic sign, i.e., a sign that must be obeyed, see Alabama Driver's Manual, which was admitted into evidence, stating that the "RIGHT LANE MUST TURN RIGHT" at the upcoming intersection. At around that point, Stafford's view of the upcoming intersection was blocked by the hillcrest. Further along the road, beyond the hillcrest, the word "ONLY" and an arrow pointing right were painted on the mandatory right-turn lane. Although, as State Farm notes, there is no direct evidence of what Stafford was aware of as he drove toward the intersection, "'"knowledge may be proved by showing circumstances from which the fact of knowledge is a reasonable inference; it need not be proved by direct evidence."'" Hicks, 819 So. 2d at 24 (citations omitted). Ignoring traffic warning signs and the existence of a hillcrest obscuring a driver's view of an upcoming intersection are additional factors that can combine with speed to elevate a driver's conduct from negligence to wantonness. See Hicks, 819 So. 2d at 25 (stating that there was evidence supporting a wantonness claim when "the jury could have found that Dunn was driving much faster than the posted speed limit," "that he was not paying attention to the road," and "that he did not slow his speed despite the construction signs and his

knowledge that a restaurant into which patrons would likely be turning was on the other side of the hill he was cresting, obscured from his view").

In sum, there was evidence of "additional circumstances" in addition to Stafford's speeding sufficient to support sending the wantonness claim to the jury. Primarily, there was evidence from which the jury could have concluded that Stafford moved from the mandatory right-turn lane into the flow-through lane very shortly before the collision with Brian's vehicle. Further, there was evidence from which the jury could have concluded that Stafford was made aware of the upcoming intersection by an intersection-crossing warning sign, that Stafford saw that his view of the intersection was initially blocked by a hillcrest, and that Stafford was warned by a traffic sign and road markings that he was driving in a mandatory right-turn lane.

For all the foregoing reasons, State Farm has failed to establish that the trial court erred by not setting aside its judgment entered on the jury's verdict, and we affirm the judgment.

AFFIRMED.

Parker, C.J., and Shaw, Mendheim, and Mitchell, JJ., concur.