FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1183

CHRISTINE ANN CRIME,

Appellant,

v.

JOHN LOONEY,

Appellee.

On appeal from the Circuit Court in Duval County.
Bruce Anderson, Judge.

November 24, 2021

PER CURIAM.

The trial court erred by interpreting the judicially created rear-end presumption in vehicle collision cases to defeat Appellant's claim of comparative fault. Because there was admissible evidence that Appellant was not the sole cause of the accident, the presumption should have "vanishe[d] and los[t] its legal effect." *Birge v. Charron*, 107 So. 3d 350, 359 (Fla. 2012). The presumption "is not an alternate means of tort recovery in derogation of Florida's well-established system of recovery based on comparative negligence." *Id.* at 361. The trial court also erred in finding that a comparative fault defense was unavailable to Appellant because she could not specifically identify the nonparty she sought to allocate fault to. Section 768.81(3)(a)1., Florida Statutes (2019), states that a defendant need only "describe the

nonparty as specifically as practicable" when the nonparty's identity is not known. The cases relied on by the trial court in reaching a different conclusion were decided before this language was added to section 768.81. Appellee concedes, and we agree, that the errors require a new trial on liability.

Appellant also asks us to remand for a new trial on damages, claiming that the issues of liability and damages were "inextricably intertwined." *R.J. Reynolds Tobacco Co. v. Prentice*, 290 So. 3d 963, 967 (Fla. 1st DCA 2019). Appellee argues we are bound by *Nash v. Wells Fargo Guard Services, Inc.*, 678 So. 2d 1262, 1263 (Fla. 1996) which held "a reversal precipitated by [comparative fault] errors does not affect the determination of damages." However, in *Nash*, the parties had put on their entire case before the trial court denied their motion to include a nonparty on the verdict form for the purposes of a comparative fault determination. Here, the decision was made at the beginning of the proceeding and affected its entirety. We agree with Appellant that fairness demands reversal of the damages award and therefore remand for a new trial on both issues.

REVERSED and REMANDED.

B.L. THOMAS, NORDBY, and LONG, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Matthew J. Conigliaro of Carlton Fields, P.A., Tampa; William C. Gula and Skyler B. Trettis of Vernis & Bowling of St. Petersburg, P.A., St. Petersburg; and Jeffrey A. Cohen and Paul L. Nettleton of Carlton Fields, Miami, for Appellant.

Rebecca Bowen Creed of Creed & Gowdy, P.A., Jacksonville; and Frank F. Fernandez of The Fernandez Firm, Tampa, for Appellee.