

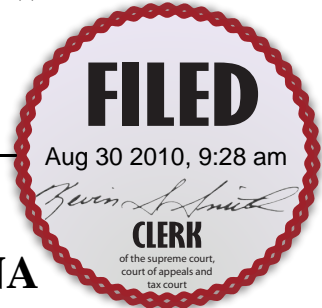
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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**IN THE
COURT OF APPEALS OF INDIANA**

ERNEST LANSFORD, III,)

Appellant-Defendant,)

vs.)

No. 71A03-1003-PL-142)

ALLSTATE INSURANCE COMPANY)
A/S/O LEE COMER,)

Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable Michael G. Gotsch, Sr., Judge
Cause No. 71C01-0711-PL-279

August 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

The Defendant Ernest Lansford, III appeals a judgment entered in favor of Allstate Insurance Company in a negligence action for property damages resulting from an automobile collision. Lansford raises the following restated issue: whether the trial court's judgment is supported by sufficient evidence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 27, 2005, Kelly Comer ("Comer") was traveling southbound on Eddy Street in South Bend, attempting to turn left onto Campeau Street. There was one lane northbound and one lane southbound on Eddy Street at that location. *Tr.* at 23. Vicky King ("King"), who was stopped northbound on Eddy in a long line of vehicles backed up from a traffic signal, allowed space for Comer to turn left. Comer began her left turn going about five miles per hour ("mph"), but sped up when she saw Lansford's truck coming northbound towards her. Lansford's truck struck Comer's vehicle in the right rear. *Id.* at 10, 19. Officer Anthony Scott of the South Bend Police Department, who investigated the accident, testified that the speed limit on Eddy was thirty mph, and he estimated that Lansford was traveling fifty mph at the time of the collision. *Id.* at 23, 28. Further, Officer Scott testified that Lansford's truck ended up 500 feet from the intersection where the collision occurred and that Comer's vehicle was still in the intersection, facing southwest. *Id.* at 25.

Comer's vehicle was insured by Allstate at the time of the collision. Allstate made a payment of \$10,799.65 to cover damages to Comer's car. Allstate then filed a complaint against Lansford claiming that his negligence caused the collision and the

damage to Comer's car. After a bench trial, the trial court rendered a judgment attributing 75% fault to Lansford and entering a judgment of \$8,099.74 for Allstate. Lansford now appeals.

DISCUSSION AND DECISION

Lansford argues that there was insufficient evidence to support the trial court's judgment in favor of Allstate, maintaining that testimony regarding the positioning of the vehicles contradicted the verdict rendered. In our review of claims tried by the bench, we will not set aside the trial court's judgment unless it is clearly erroneous. *Robinson v. Valladares*, 738 N.E.2d 278, 281 (Ind. Ct. App. 2000). Due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. *Id.* We consider the evidence most favorable to the trial court's verdict, along with all reasonable inferences to be drawn therefrom. *Id.* A judgment in favor of a party having the burden of proof will be affirmed if the evidence was such that, from it, a reasonable trier of fact could conclude that the elements of the party's claim were established by a preponderance of evidence. *Id.*

Here, the trial court found that both Comer and Lansford were at fault in the accident and that fault of each was a proximate cause of the resulting accident. Comer testified that Lansford "was coming fast." *Tr.* at 16. King testified that Lansford flew by her vehicle in his truck. *Id.* at 19. Officer Scott estimated the speed that Lansford was travelling at a rate of fifty miles per hour in an area where the speed limit was thirty miles per hour. *Id.* at 23, 28. Officer Scott also noted that testified that Lansford's truck ended up 500 feet from the intersection where the collision occurred. *Id.* at 25.

Such evidence was sufficient for the trial court to find that Lansford was travelling at an excessive rate of speed, that Lansford's excessive speed was evidence of negligence and that such speed was the primary proximate cause of the collision. Lansford has failed to show that the trial court's finding that Lansford was 75% at fault for the accident was clearly erroneous. Although Lansford contends that he was not travelling as fast as claimed and that his speed did not cause the collision, such contentions are merely requests that we re-weigh the evidence that was properly before the trial court. This we cannot do.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.