STATE OF MICHIGAN

COURT OF APPEALS

KATHRYN WOODS SARKISIAN and SARKIS SARKISIAN,

Plaintiffs-Appellees,

v

LYNDA LUE MORAN and EDWARD GROVER MORAN,

Defendants-Appellants.

UNPUBLISHED
March 10, 1998

No. 195148
Oakland Circuit Court
LC No. 92-426722-NI

Before: McDonald, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendants appeal from the trial court's order granting plaintiffs a judgment notwithstanding the verdict (JNOV) on the issue of liability and a new trial on the issue of damages. We reverse the trial court's order.

This action arose out of an automobile accident at the intersection of an arterial and subordinate roadway between plaintiff Kathryn W. Sarkisian (plaintiff) and defendant Lynda L. Moran (defendant). Neither plaintiff nor defendant was faced with a traffic control device as they approached the intersection. Plaintiff alleged that defendant's negligence in operating her vehicle proximately caused plaintiff to suffer a ruptured disc in her neck. After a jury trial, the jury returned a verdict of no cause for action. Plaintiffs subsequently moved for a JNOV. The trial court granted plaintiffs' motion as to liability because it found there was clear evidence of defendant's liability.

Defendants argue the trial court erred in granting plaintiffs' motion for JNOV. We agree. In reviewing the trial court's decision on a motion for JNOV, this Court views the evidence and all the legitimate inferences that may be drawn in the light most favorable to the nonmoving party. If reasonable jurors could honestly have reached different conclusions, it is improper for the trial court or this Court to substitute its judgment for that of the jury. *Pakideh v Franklin Mortgage*, 213 Mich App 636, 639; 540 NW2d 777 (1995).

Defendants first contend the trial court erred in reversing the jury's finding that defendant was not negligent. We agree. Negligence is ordinarily a question of fact for the jury to decide. *Oppenheim v Rattner*, 6 Mich App 554, 558; 149 NW2d 881 (1967); see also *Kubasinski v Johnson*, 46 Mich App 287, 288; 208 NW2d 74 (1973). Automobile drivers have a duty to drive in a safe and prudent manner. *Roberts v Vaughn*, 214 Mich App 625, 632; 543 NW2d 79 (1995). Moreover, in this case, the jury was instructed pursuant to MCL 257.652; MSA 9.2352 that defendant, as the driver on the subordinate roadway, was obligated to come to a full stop on Oneida and yield the right of way to vehicles approaching on Nakomis. Defendant testified that she stopped at the intersection at Nakomis and Oneida, but that it was difficult for her to see traffic approaching from the right. She claimed that after making her initial stop, she entered into the intersection slightly, again looked for approaching traffic and, not observing any oncoming traffic, started to move across the intersection. It was at this time that she first observed plaintiff's car approaching the intersection going "rather fast." Defendant testified that she applied the brakes, but plaintiff's car collided with hers. That defendant did not ultimately yield the right of way was not dispositive of her negligence. *Vsetula v Whitmyer*, 187 Mich App 675, 682; 468 NW2d 53 (1991). Based on defendant's testimony, reasonable minds could have honestly differed as to whether she exercised due care under the circumstances. Accordingly, the trial court erred in substituting its judgment for the jury's. *Pakideh*, *supra* at 639.

Defendants also argue the trial court erred in implicitly resolving the issues concerning causation, serious impairment of body function, and plaintiff's comparative negligence against defendant by determining that only the damages issue would be tried at a later date. We need not consider whether the trial court erred in making these determinations because we find that the trial court erred in granting plaintiff's motion for JNOV on the issue of defendant's negligence. However, we note that we would find that these issues rightfully belonged to the jury because there was evidence on these issues from which reasonable jurors could have reached different conclusions.

Reversed and remanded for reinstatement of the judgment of no cause for action. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Henry William Saad
/s/ Michael R. Smolenski