STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH MOFFAT, Individually and as Personal Representative of the Estate of RUSSELL MOFFAT, Deceased,

Plaintiff-Appellant,

v

CHARLES A. WISELEY, RONALD N. WEISER, and McKINLEY ASSOCIATES, INC.,

Defendants-Appellees.

UNPUBLISHED
December 13, 2005

No. 256775
Washtenaw Circuit Court
LC No. 01-000489-NI

Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

In this wrongful death action arising out of an automobile accident, plaintiff appeals as of right from a judgment of no cause of action entered in favor of defendants. Plaintiff contends that the jury's verdict was against the great weight of the evidence, so the trial court erred in denying plaintiff's motion for a new trial. We disagree and affirm.

Defendant Charles Wiseley was driving northbound on Maple Road in the course of running errands for his employer, Ronald Weiser, when a southbound vehicle driven by Elaine Maher made an illegal u-turn, crossed the double yellow line, and collided with defendant's truck. As a result of the collision, defendant's truck slid and collided with decedent Russell Moffat's van, which was parked on the side of the road. Defendant's truck also collided with Moffat, who was standing behind the van at the time of the accident. Moffat died as a result of the injuries he sustained. A jury found that defendant was not negligent, so the trial court entered a judgment of no cause of action and subsequently denied plaintiff's motion for a new trial.

We review a trial court's denial of a motion for a new trial for an abuse of discretion. *Campbell v Sullins*, 257 Mich App 179, 193; 667 NW2d 887 (2003). Further, we give substantial deference to the trial court's conclusion that the verdict was not against the great weight of the evidence. *Id*. Thus, we will overturn the verdict "only when it was manifestly against the clear weight of the evidence." *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999), quoting *Watkins v Manchester*, 220 Mich App 337, 340; 559 NW2d 81 (1996). Plaintiff alleges that the jury verdict was against the great weight of the

evidence because defendant was driving in excess of the posted speed limit, and he failed to rebut the presumption of negligence created by his excessive speed. We disagree.

To state a claim of negligence, plaintiff must prove the "traditional" elements, namely, a duty owed by the defendant, a breach of that duty by the defendant, and an injury caused by that breach. See *Henry v Dow Chemical Co,* 473 Mich 63, 71-72; 701 NW2d 684 (2005). "Duty" is a legally recognized obligation "to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm." *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). The jury generally decides "the *specific* standard of care that should have been exercised by a defendant in a given case" and whether defendant's conduct fell below that. *Case v Consumers Power Co,* 463 Mich 1, 7; 615 NW2d 17 (2000) (emphasis in original). Violation of a statute can be prima facie evidence of negligence. *Vander Laan v Miedema,* 385 Mich 226, 231; 188 NW2d 564 (1971). Driving in excess of the posted speed limit may lead to an inference of negligence. *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996). However, "a presumption of negligence may be rebutted with a showing of an adequate excuse or justification under the circumstances." *Dep't of Transportation v Chrsitensen,* 229 Mich App 417, 420; 581 NW2d 807 (1998).

The posted speed limit in the area was forty-five miles an hour. Defendant testified that he was traveling at thirty-five to forty-five miles an hour. An accident reconstructionist testified that defendant was traveling a minimum of fifty-four miles per hour at the time of the accident. The traffic investigator testified that defendant could have been traveling at anywhere from forty-three to fifty-seven miles an hour, although the lowest speed was "highly unlikely." The investigator and another reconstructionist agreed that the accident would not have occurred if Maher had not made the illegal u-turn and crossed the center line into the path of defendant's truck. Defendant and the traffic investigator testified that defendant had no reason to anticipate the u-turn, and the investigator testified that defendant's reaction was proper under the circumstances. The trial court instructed the jury that defendant had a duty to use ordinary care for the safety of Moffat and that they could infer negligence if it found defendant violated the posted speed limit. In addition to witness testimony, the parties presented the jury with a diagram and photographs of the scene of the accident.

The jury unanimously found that defendant had not been negligent. That should not be set aside if it is supported by competent evidence. *Ellsworth, supra* at 194. We will not substitute our judgment for that of the jury unless the record reveals that the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Campbell, supra* at 193. We find that the evidence could reasonably favor either party. Where there is conflicting evidence, we leave it to the jury to assess witnesses' credibility. *Rossien v Berry*, 305 Mich 693, 701; 9 NW2d 895 (1943). Here, the evidence does not preponderate so heavily against the jury's verdict of not negligent that it would be a miscarriage of justice to allow the jury's verdict to stand. A new trial is not warranted.

We briefly address plaintiff's argument regarding the "sudden emergency doctrine," which may be a defense when a collision results from a sudden emergency that is not of the defendant's own making. *Vander Laan, supra* at 231. Plaintiff argues that defendant failed to prove a sudden emergency or an excuse for speeding, so he failed to rebut the presumption of negligence. However, the jury was not instructed on this defense. Rather, the jury was presented with the more general question of whether defendant had been negligent in light of testimony

tending to show that he was probably but not certainly speeding, and in light of further testimony that he acted appropriately and could not have anticipated the event that triggered the collision. Our decision does not turn on an assessment of whether defendant satisfied the requirements of the sudden emergency doctrine. Our decision must turn on whether the jury's verdict of not negligent was against the clear weight of the evidence. We find that it was not. Rather, we find that a reasonable jury could have concluded that defendant acted as a reasonably careful person under the circumstances.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Alton T. Davis