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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2071

Marjorie Lambert,
Appellant,

vs.

Munir Abid,
Defendant,

Claude Theodore Anderson,
Respondent.

Filed August 17, 2010
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-CV-07-4412

John M. Gearin, John M. Gearin, P.A., Zachary A. Longsdorf, Longsdorf Law Firm, P.L.C., Oakdale, Minnesota (for appellant)

Richard J. Kruger, Edina, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Marjorie Lambert was injured in a three-car accident on Interstate Highway 35E in St. Paul. The car in which she was a passenger was struck from behind by a car driven by Munir Abid, which then was struck from behind by a sport-utility vehicle driven by Claude Theodore Anderson. After a trial on Lambert's negligence claim against Anderson, a Ramsey County jury found that Anderson was not negligent. On Lambert's appeal, we conclude that the district court did not err by admitting Abid's and Anderson's testimony that there was black ice on the road surface or by denying Lambert's post-trial motion for judgment as a matter of law or a new trial. Therefore we affirm.

FACTS

The automobile accident at issue in this case occurred on February 8, 2007, at approximately 8:00 a.m. Lambert's husband was driving in the center lane of southbound traffic on I-35E during rush-hour traffic. As vehicles in front of the Lamberts slowed and came to a stop, Lambert's husband stopped as well. But after he stopped, Abid's car struck the Lamberts' car from behind. After the Lamberts' car and Abid's car stopped, Abid's car was struck by an SUV driven by Anderson. That impact caused Abid's vehicle to strike the Lamberts' car a second time. Lambert alleged that, as a result of the collisions, she was injured and required a hip replacement.

In October 2007, Lambert commenced this negligence action against Abid and Anderson. Lambert's claim against Abid was dismissed after she entered into a settlement agreement with him. Lambert's claim against Anderson went to trial in June 2009.

At trial, Abid testified (by way of a videotaped deposition) that he believed that there was black ice on the road that morning. He testified that he engaged his vehicle's anti-lock braking system when he tried to stop but that there "must have been" black ice because he could not stop. Abid testified that he did not get out of his car while the accident was being investigated.

Anderson also attributed his inability to stop to black ice. He testified that he applied the brakes to try to stop his vehicle and that the anti-lock braking system engaged but that the car did not slow down. He testified that he told a state trooper that the car would not stop but that he did not recall if he specifically told her about black ice. He also testified that he did not verify that there was black ice on the road.

Sergeant Kelly A. Collins of the Minnesota State Patrol testified that neither Anderson nor Abid told her that they were unable to stop due to icy road conditions. Sergeant Collins testified that her accident report noted road conditions as "dry." She admitted, however, that she did not walk to the center lane, where the accident occurred, and that the vehicles involved in the accident had moved to the shoulder of the road by the time she arrived. Sergeant Collins concluded that the collisions occurred because Abid and Anderson were following too closely and driving at an excessive speed. Anderson did not disagree with Trooper Collins's conclusion that he was driving too fast for conditions and following too closely.

The jury found that Anderson was not negligent in the operation of his vehicle. Lambert moved for judgment as a matter of law and requested that the district court find that Anderson was negligent. In the alternative, Lambert sought a new trial. The district

court denied Lambert's post-trial motion and entered judgment for Anderson. Lambert appeals.

D E C I S I O N

Lambert raises three issues on appeal: (1) whether the district court erred by admitting the testimony of Abid and Anderson concerning black ice; (2) whether the district court erred by denying her motion for judgment as a matter of law; and (3) whether the district court erred by denying her alternative motion for a new trial. We will begin by analyzing the evidentiary issue because it informs our analysis of the other issues.

I. Evidentiary Rulings

Lambert argues that the district court erred by admitting into evidence Abid's and Anderson's testimony that they believed that black ice was on the road and caused the accident. More specifically, Lambert argues that Anderson's testimony and Abid's testimony concerning black ice lacked foundation because neither witness established that he had personal knowledge of the existence of black ice.

"A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony." Minn. R. Evid. 602. As the comment to the rule explains, "Testimony simply is not relevant unless the witness testifies from firsthand knowledge." Minn. R. Evid. 602, 1977 comm. cmt. Lambert assumes that the testimony about black ice was lay opinion testimony, which is governed by a rule that states:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinion or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Minn. R. Evid. 701. We apply an abuse-of-discretion standard of review to evidentiary rulings concerning foundation. *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994).

In this case, Abid and Anderson testified based on their perceptions of how their respective vehicles reacted when they attempted to stop. Both witnesses believed that there was black ice on the roadway. Abid testified that his anti-lock braking system activated and that there "must have been" black ice on the road or he would have stopped before hitting Lambert's car. Anderson testified that his brakes did not slow his car at all and that his "assumption was there was black ice." Each witness's testimony is rationally based on his perception of the accident. This is the type of "personal knowledge" that is required to establish foundation under rule 602. Lambert contends that Abid's and Anderson's testimony is "based on speculation and conjecture" because neither driver inspected the road for black ice. But an inspection of that type is unnecessary to establish foundation because each witness had other bases for his belief that there was black ice on the road.

Lambert relies on *Gerster v. Special Adm'r for Estate of Wedin*, 294 Minn. 155, 199 N.W.2d 633 (1972), in which a fire marshal testified that an apartment fire probably was caused by careless cigarette smoking. *Id*. at 159, 199 N.W.2d at 635. The supreme court

held that there was no foundation for the testimony because, first, the fire marshal was not present at the apartment when the fire started and, second, there was no evidence that cigarettes, remains of cigarettes, matches, or related objects were found in the apartment. *Id*. at 160, 199 N.W.2d at 636. The present case is distinguishable from *Gerster* because Abid and Anderson were present at the scene of the accident and involved in the accident.

Lambert cites additional cases in which testimony was held to be inadmissible due to a lack of personal knowledge. Each case, however, is distinguishable. In *Bisbee v. Ruppert*, 306 Minn. 39, 235 N.W.2d 364 (1975), the supreme court affirmed the district court's exclusion of the testimony of a witness who admitted that his view of an accident was obstructed. *Id*. at 43-44, 235 N.W.2d at 368. Similarly, in *Holweger v. Great N. Ry. Co.*, 269 Minn. 83, 130 N.W.2d 354 (1964), the supreme court affirmed the district court's exclusion of testimony about the defective nature of a railroad part on the ground that the witness never had seen or operated the part or knew anything about the conditions present when the part failed. *Id*. at 95, 130 N.W.2d at 362. In both of these cases, the witness did not see the events about which he was called to testify or simply was not present. Those cases are different from the present cases because Abid and Anderson were at the accident scene. The other cases cited by Lambert are distinguishable for the same essential reason. *See Muehlhauser v. Erickson*, 621 N.W.2d 24, 28-29 (Minn. App. 2000) (holding that district court properly excluded opinion testimony about what may have occurred in accident because witness testified he had not seen everything); *Dahlbeck v. DICO Co.*, 355 N.W.2d 157, 165-66 (Minn. App. 1984) (holding that district court properly excluded lay opinion testimony regarding causation because witness was not present at accident), *review*

denied (Minn. Feb. 6, 1985); *Koehnle v. M.W. Ettinger, Inc.*, 353 N.W.2d 612, 615 (Minn. App. 1984) (holding that district court properly excluded lay opinion testimony regarding speed of vehicle at impact because witness testified she did not see impact). Furthermore, the cases cited by Lambert arise from a different procedural posture; in each case, the trial court excluded the proffered testimony, and the appellate court affirmed. In this case, Lambert is seeking to reverse the district court's ruling admitting testimony.

Thus, the district court did not err by admitting Anderson's and Abid's testimony concerning their belief that black ice was on the surface of the road and caused the accident.

II. Motion for Judgment as a Matter of Law

Lambert also argues that the district court erred by denying her post-trial motion for judgment as a matter of law pursuant to Minn. R. Civ. P. 50.02.

Judgment as a matter of law "should be granted: 'only in those unequivocal cases where (1) in the light of the evidence as a whole, it would clearly be the duty of the [district] court to set aside a contrary verdict as being manifestly against the entire evidence, or where (2) it would be contrary to the law applicable to the case.'" *Jerry's Enters., Inc., v. Larkin, Hoffman, Daly & Lindgren, Ltd*., 711 N.W.2d 811, 816 (Minn. 2006) (quoting *J.N. Sullivan & Assocs., Inc. v. F.D. Chapman Constr. Co*., 304 Minn. 334, 336, 231 N.W.2d 87, 89 (1975)). In reviewing a denial of a motion for judgment as a matter of law, "we view the evidence in the light most favorable to the prevailing party." *Bahr v. Boise Cascade Corp*., 766 N.W.2d 910, 919 (Minn. 2009). We apply a *de novo* standard of review. *Id*.

In Minnesota, drivers owe others a duty of care while operating motor vehicles. Minn. Stat. § 169.14, subd. 1 (2008); *Schubitzke v. Minneapolis, St. Paul & Sault Ste. Marie R.R.*, 244 Minn. 156, 160, 69 N.W.2d 104, 107 (1955) (stating that standard of care is that of reasonably prudent person under similar circumstances). A violation of a traffic law is *prima facie* evidence of negligence. Minn. Stat. § 169.96(b) (2008). "[T]he prima facie case so established must prevail against the violator in the absence of countervailing evidence showing a statutory or other reasonable ground for such violation." *Simon v. Carroll*, 241 Minn. 211, 215, 62 N.W.2d 822, 826 (1954).

Lambert contends that she proved negligence as a matter of law because Anderson admitted at trial that he was driving too fast for conditions and was following too closely. She contends that Anderson admitted to violating two traffic laws, Minn. Stat. § 169.14, subd. 1,[1] and Minn. Stat. § 169.18, subd. 8 (2008).[2] But a violation of a traffic law is merely *prima facie* evidence of negligence. The statute on which Lambert primarily relies is clear in stating that a violation of a traffic law is not conclusive evidence of negligence: "In all civil actions, a violation of any of the provisions of this chapter, by either or any of the parties to such action or actions *shall not be negligence per se* but shall be prima facie evidence of negligence only." Minn. Stat. § 169.96(b) (emphasis added). In this case, the district court properly instructed the jury that "the violation of a traffic law is negligence

[1]This section prohibits driving "at a speed greater than is reasonable and prudent under the conditions." Minn. Stat. § 169.14, subd. 1. It requires a driver to restrict speed "as may be necessary to avoid colliding with any . . . vehicle" and to "use due care." *Id*.

[2]This section requires that a driver "not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the conditions of the highway." Minn. Stat. § 169.18, subd. 8(a).

unless there is evidence tending to show that the person had a reasonable excuse or justification for breaking the law." (Emphasis added.)

On that issue -- whether Anderson "had a reasonable excuse or justification for breaking the law" -- the jury was entitled to rely on Anderson's testimony that black ice on the road prevented him from stopping. Anderson's testimony on that point was corroborated by Abid's testimony. Whether a driver is negligent in a rear-end collision is generally an issue for the jury, *Ryan v. Griffin*, 241 Minn. 91, 94-95, 62 N.W.2d 504, 507 (1954), as is the more specific question whether a driver acted reasonably in bad weather, *Brager v. Coca-Cola Bottling Co.*, 375 N.W.2d 884, 887 (Minn. App. 1985). As the supreme court has explained, "while a rear-end collision may suggest negligence, it does not dictate it. When the attendant facts and circumstances indicate that there may be reasonable excuse or justification to explain the collision, the question is for the jury." *Langseth v. Bagan*, 298 Minn. 519, 520, 213 N.W.2d 334, 335 (1973). Consequently, "evidence of skidding on a slippery road, standing alone, is not enough to establish negligence." *Svercl v. Jamison*, 252 Minn. 8, 9, 88 N.W.2d 839, 841 (1958). Consistent with these principles, the supreme court consistently has upheld juries' findings in rear-end collision cases that defendants were not negligent because the road was icy or wet. *See, e.g.*, *Langseth*, 298 Minn. at 520, 213 N.W.2d at 335; *Tibbetts v. Nyberg*, 276 Minn. 431, 434, 150 N.W.2d 687, 689 (1967); *Gran v. Dasovic*, 275 Minn. 415, 419-20, 147 N.W.2d 576, 579-80 (1966); *Connaker v. Hart*, 275 Minn. 289, 291-92, 146 N.W.2d 607, 609-10 (1966).

Lambert relies on *Peterson v. Truelson*, 249 Minn. 530, 83 N.W.2d 236 (1957), in arguing that the jury was required to adopt Trooper Collins's testimony by finding that there was no black ice on the road. *See id*. at 536, 83 N.W.2d at 240. In *Peterson*, which also involved a three-vehicle collision, the supreme court held that the defendant was entitled to judgment as a matter of law. *Id*. at 537-39, 83 N.W.2d at 241. The supreme court stated that a "jury may not be permitted to disregard all the positive, unimpeached evidence in the case and draw an inference contrary to all such evidence based on . . . mere supposition." *Id*. at 536, 83 N.W.2d at 240. But *Peterson* is factually distinguishable. The driver who allegedly was negligent testified that he acted in conformity with the standard of care, and there was no evidence to contradict him. *Id*. at 535, 83 N.W.2d at 239-40. Here, there is conflicting evidence as to whether Anderson had an excuse or justification for failing to stop. The jury was not obligated to believe Trooper Collins's testimony over Abid's and Anderson's testimony. Rather, the jury was free to find that black ice caused the accident. We cannot say that the jury's verdict is "manifestly against the entire evidence." *Jerry's Enters., Inc.*, 711 N.W.2d at 816 (quotation omitted).

Thus, the district court did not err by denying Lambert's motion for judgment as a matter of law.[3]

[3]Lambert also argues that fault should be apportioned equally between the defendants. Because we conclude that the district court did not err by denying her motion for judgment as a matter of law, we need not address her argument concerning allocation of fault.

III. Motion for New Trial

Lambert also argues that the district court erred by denying her alternative motion for a new trial.

Lambert's argument implicates rule 59.01 of the Minnesota Rules of Civil Procedure, which "establishes the causes for which a court may grant a new trial and limits the grounds for a new trial to those causes." *Clifford v. Geritom Med., Inc.*, 681 N.W.2d 680, 686 (Minn. 2004). One ground for a new trial is that "[t]he verdict . . . is not justified by the evidence, or is contrary to law." Minn. R. Civ. P. 59.01(g). "Whether the verdict is justified by the evidence presents a factual question and the district court may properly weigh the evidence." *Clifford*, 681 N.W.2d at 687. In deciding whether to grant a new trial on the basis that the evidence does not justify the verdict, a district court must look to "whether the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence, or acted under some mistake." *Id.* (quotation omitted). "This cause vest[s] the broadest possible discretionary power in the trial court." *Id*. (alteration in original) (quotation omitted). This court reviews a district court's decision whether to grant a motion for a new trial for an abuse of that broad discretion. *Id.* Because a district court is in a better position "to assess whether the evidence justifies the verdict," an appellate court "usually defer[s] to that court's exercise of the authority to grant a new trial." *Id.*

Lambert contends that she is entitled to a new trial because "there is no competent evidence to support the jury's verdict." As discussed above in part II, the evidence is sufficient to allow the jury to find that Anderson was not negligent because there was

black ice on the road, which provided him with a justification for his failure to stop his vehicle. *Simon*, 241 Minn. at 215, 62 N.W.2d at 826. Our review of the evidence does not indicate that "the jury failed to consider all the evidence, or acted under some mistake." *Clifford*, 681 N.W.2d at 687 (quotation omitted).

Thus, Lambert has failed to persuade us that the district court abused its broad discretion by denying her alternative motion for a new trial.

Affirmed.