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NO. COA01-1575

NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2002

BARBARA HOOD, TRINA BARRINO,
and CHRISTINE LINDSEY,
Plaintiffs-Appellants,

Union County
Nos. 99 CVS 1372
99 CVS 1373
99 CVS 1374

v.

RUSSELL STUART EDWARDS,
Defendant-Appellee.

Appeal by plaintiffs from judgments entered 19 July 2001 and order entered 9 October 2001 by Judge Sanford L. Steelman, Jr., in Union County Superior Court. Heard in the Court of Appeals 11 September 2002.

Cynthia A. Brooks, for plaintiffs-appellants.

Morris, York, Williams, Surlis & Barringer, LLP, by Marc S. Gentile, for defendant-appellee.

BRYANT, Judge.

This appeal arises out of separate negligence actions filed by Barbara Hood, Trina Barrino and Christine Lindsey [collectively plaintiffs] against Russell Stuart Edwards [defendant]. The actions were later consolidated for trial. Plaintiffs alleged that defendant negligently backed his Nissan minivan up the hill of a public roadway, as their Ford Thunderbird traveled down the same roadway. According to plaintiffs, Lindsey, who was driving, had no choice but to slam on brakes and swerve to the left, causing the

vehicle to eventually flip over. Defendant contended that Lindsey's actions, not his, were the proximate cause of the accident in question and that she was contributorily negligent.

At trial, the lower court denied both plaintiffs' and defendant's motions for directed verdict made at the close of plaintiffs' evidence and at the close of all evidence. The jury returned a verdict in favor of defendant. The trial court subsequently denied plaintiffs' motions for judgment notwithstanding the verdict and for a new trial. Plaintiffs appeal.

Plaintiffs argue that the trial court erred in: I) denying plaintiffs' motion for a directed verdict and motion for JNOV on the issue of defendant's negligence; II) submitting the issue of contributory negligence to the jury; III) failing to grant a new trial; and IV) failing to require the jury to follow the court's instructions in answering the questions presented.

I.

Plaintiffs contend that the trial court erred in denying plaintiffs' motions for directed verdict and for JNOV on the issue of defendant's negligence. Specifically, plaintiffs argue that motions should have been granted because defendant was negligent per se in backing his vehicle up the roadway from the bottom of a hill. We disagree.

Because a motion for JNOV simply renews a party's earlier motion for directed verdict, the standard of review is the same and we will consider them together. See *Tomika Invs., Inc. v.*

Macedonia True Vine Pent. Holiness Ch. of God, 136 N.C. App. 493, 498, 524 S.E.2d 591, 595 (2000). It is for this Court to determine whether the evidence was sufficient to go to the jury. *Id.* at 498-99, 524 S.E.2d at 595 (citations omitted).

After the accident in question, defendant was charged with and convicted of violating N.C.G.S. § 20-154, which states, in pertinent part, "[t]he driver of a vehicle shall not back [on a public vehicular highway] unless such movement can be made with safety and without interfering with other traffic." N.C.G.S. § 20-154(a) (2001). Generally, when a statute imposes a duty on a person for the protection of others, it is a public safety statute and a violation of such a statute is negligence per se. *Gregory v. Kilbride*, ___ N.C. App. ___, ___, 565 S.E.2d 685, 692 (2002). However, N.C.G.S. § 20-154 expressly states that "[a] violation of this section shall not constitute negligence per se." N.C.G.S. § 20-154(d). Our court has previously found:

"the jury, if they find as a fact [that N.C.G.S. § 20-154] was violated, must consider the violation along with all other facts and circumstances and decide whether, when so considered, the violator has breached his common law duty of exercising ordinary care."

Blankley v. Martin, 101 N.C. App. 175, 180, 398 S.E.2d 606, 609 (1990) (quoting *Kinney v. Goley*, 4 N.C. App. 325, 332, 167 S.E.2d 97, 102 (1969)).

It is clear from the relevant statute and case law that a violation of N.C.G.S. § 20-154 is to be considered with other facts and circumstances in determining whether the actor is negligent but such violation does not constitute negligence per se. Accordingly,

plaintiffs were not entitled to directed verdicts or JNOVs based upon this argument. Therefore, the trial court did not err and this assignment of error is overruled.

II.

Plaintiffs next argue that the trial court erred in submitting the issue of Lindsey's contributory negligence to the jury because there was no evidence to support this issue.

The trial transcript reflects that the trial court asked plaintiffs' counsel during the charge conference if she had any objections to the proposed jury instructions. The attorney replied, "Nothing else, your Honor." The record does not reflect that the attorney objected to the instruction before the jury retired to consider its verdict, and it is clear that she had an opportunity to do so.

Litigants must render specific and detailed objections to a trial court's jury instructions to preserve appellate review. N.C.R. App. P. 10(b)(2). Because plaintiffs failed to preserve this argument with an objection below, they are not entitled to review of the court's decision in submitting the issue of Lindsey's contributory negligence to the jury. This assignment of error is therefore summarily overruled.

Next, plaintiffs argues that the trial court erred in not granting them a new trial. Specifically, plaintiffs contend that

the trial court should have so acted because its contributory negligence jury instruction was not supported by the evidence.¹

"The trial judge is 'vested with the discretionary authority to set aside a verdict and order a new trial whenever in his opinion the verdict is contrary to the greater weight of the credible testimony.'" *Burgess v. Vestal*, 99 N.C. App. 545, 549, 393 S.E.2d 324, 326 (1990) (quoting *Britt v. Allen*, 291 N.C. 630, 634-35, 231 S.E.2d 607, 611 (1977)). As such, we review the trial court's decision below for an abuse of discretion. See *In re Will of Buck*, 350 N.C. 621, 624, 516 S.E.2d 858, 860 (1999) (characterizing trial court's decision as to whether jury instructions were supported by evidence in context of new trial motion as discretionary and not a matter of law). We are therefore not to disturb the court's order "'unless [we are] reasonably convinced by the cold record that the trial judge's ruling probably amounted to a substantial miscarriage of justice.'" *Anderson v. Hollifield*, 345 N.C. 480, 483, 480 S.E.2d 661, 663 (1997) (citation omitted). Plaintiffs claim that the court erred in giving the jury instruction as to Lindsey's contributory negligence because there was uncontroverted expert testimony that Lindsey acted reasonably and had no other choice than to take the evasive action that she did. However, our examination of the evidence reveals that it was

¹ Plaintiffs based their motion for a new trial on several grounds, but on appeal present a general assignment of error as to the denial of a new trial and in brief argue only that the motion was improperly denied because the jury was instructed on contributory negligence where there was no evidence to support that instruction. We will therefore only address the argument properly preserved on appeal. See N.C.R. App. P. 10(a), (c)(1).

sufficient to support the jury instruction at issue. See *Stallings v. Food Lion, Inc.* 141 N.C. App. 135, 138, 539 S.E.2d 331, 333 (2000) ("When more than one interpretation of the facts is possible, the issues of negligence and contributory negligence are matters to be decided by a jury.") (citations omitted); *Roberts v. Young*, 120 N.C. App. 720, 726, 464 S.E.2d 78, 83 (1995) (noting that the court must give requested instructions if supported by the evidence).

On direct examination, plaintiffs' reconstruction expert, Dr. Lee Ellis King, testified that based upon his calculations as to the placement of the cars, the type of vehicles, the distances between the cars when Lindsey first saw defendant's minivan, the time it took her to react and other relevant factors, Lindsey acted reasonably in slamming on her brakes and turning the steering wheel when she did. According to Dr. King, had Lindsey not taken these actions, she would have hit defendant.

On cross-examination, however, Dr. King admitted that his reconstruction was based solely upon Lindsey's recollection of the minivan's location, of which she was "not sure at all." Further, defendant's testimony indicated that his minivan was even with the driveway into which he was attempting to turn. Defendant's testimony placed the minivan further back up the hill from where Dr. King had placed it in his reconstruction. Dr. King testified that if the car was moved back "everything shifts." Dr. King also admitted that if the minivan were next to the driveway, Lindsey

would have been able to see it earlier because the slope of the hill was not as great at that point.

Based on this and other relevant evidence, we conclude that there was sufficient evidence to charge the jury on the issue of Lindsey's contributory negligence. Accordingly, the trial court did not abuse its discretion in refusing to grant a new trial. This assignment of error is overruled.

III.

Finally, plaintiffs contend that the trial court erred in failing to require the jury to properly follow instructions as to questions on the jury's verdict sheet. Below, the trial court instructed the jury to answer the question of Lindsey's contributory negligence only if they answered "yes" as to defendant's negligence. Following their deliberations, the jury found that defendant was not negligent, but found Lindsey to have been contributorily negligent. According to plaintiffs, the jury's allegedly incongruent answers to the verdict sheet questions indicated its confusion as to the concept of Lindsey's contributory negligence. Plaintiffs maintain that this only reinforces their argument that the contributory negligence jury instructions should not have been given in the first place. We disagree.

Plaintiffs' argument is without merit. First, it is difficult to assess their argument as it does not contain any citation to authorities in violation of our Rules of Appellate Procedure. See N.C.R. App. P. 28(b)(6). Second, plaintiffs failed to object to

the trial court's instruction on contributory negligence and to the return of the jury's verdict. They have accordingly waived appellate review of this issue. See N.C.R. App. P. 10(b). Therefore, this assignment of error is summarily overruled.

Conclusion

Based on the foregoing, we hold that the trial court did not abuse its discretion in denying plaintiffs a new trial.

NO ERROR.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).