

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-707

NORTH CAROLINA COURT OF APPEALS

Filed: 21 September 2010

ADEBISI WILLIAMS

v.

Cumberland County  
No. 08 CVS 4978

DEBORAH RAINEY

Appeal by defendant from judgment entered 12 March 2009 by Judge James F. Ammons, Jr. in Cumberland County Superior Court. Heard in the Court of Appeals 4 November 2009.

*Hardison & Cochran, PLLC, by Kimberly T. Miller, for plaintiff-appellee.*

*Russ, Worth & Cheatwood PLLC, by Philip H. Cheatwood, for defendant-appellant.*

STEELMAN, Judge.

Where defendant made an evidentiary admission by pleading responsible to a citation charging her with improper use of a turn lane and failed to explain or contradict the admission, the trial court did not err by holding defendant was negligent as a matter of law. Where defendant presented no evidence that plaintiff failed to keep a proper lookout, the trial court did not err by granting plaintiff's motion for directed verdict as to her contributory negligence.

I. Factual and Procedural Background

Cliffdale Road in Fayetteville runs in a north-south direction, and has five lanes; two for northbound traffic, two for southbound traffic and one center turn lane. Regency Drive intersects Cliffdale Road from the east, forming a "T" intersection, with a stop sign facing traffic on Regency Drive. There are no driveways opposite Regency Drive on the west side of Cliffdale Road. The next intersection on Cliffdale Road headed north is Bunce Road, which is not visible from Regency Drive.

On 13 November 2007, at approximately 2:35 p.m., Adebisi Williams (plaintiff) was leaving her apartment located on Regency Drive, and was attempting to turn left onto Cliffdale Road. Northbound traffic on Cliffdale Road was completely backed up in both lanes, and was moving forward at a crawl. Vehicles in both northbound lanes of Cliffdale Road stopped, and waved plaintiff to proceed with her left turn. Plaintiff pulled out, taking care to proceed slowly as she looked for oncoming traffic in the turn lane. As her vehicle began to enter the first southbound lane of Cliffdale Road, it was struck on the driver's side where the driver's door and passenger's door meet. Plaintiff's vehicle was struck by a car operated by Deborah Rainey (defendant), which was proceeding down the center turn lane, passing the stopped northbound traffic.

On 16 May 2008, plaintiff filed this lawsuit, seeking monetary damages for personal injuries proximately caused by the alleged negligence of defendant. Defendant filed an answer asserting contributory negligence of plaintiff as an affirmative defense.

Plaintiff filed a reply asserting last clear chance. The case came on for trial before a jury at the 2 March 2009 session of Civil Superior Court for Cumberland County. At the close of all the evidence, plaintiff moved for directed verdict on the issues of defendant's negligence and plaintiff's contributory negligence. Both of these motions were granted by the trial court. The issue of whether defendant's negligence was a proximate cause of plaintiff's injuries was submitted to the jury, along with the amount of damages. The jury returned a verdict in favor of plaintiff, awarding damages of \$20,400.00. Defendant appeals.

#### II. Standard of Review

The standard of review for a trial court's ruling on a motion for directed verdict is *de novo*. *Maxwell v. Michael P. Doyle, Inc.*, 164 N.C. App. 319, 323, 595 S.E.2d 759, 762 (2004). When considering a motion for directed verdict on the issue of negligence, the evidence should be viewed in the light most favorable to the non-moving party, and that party should be given the benefit of all reasonable inferences. *Snead v. Holloman*, 101 N.C. App. 462, 464, 400 S.E.2d 91, 92 (1991).

#### III. Directed Verdict on Defendant's Negligence

In her first argument, defendant contends that the trial court erred in granting plaintiff's motion for a directed verdict on the issue of defendant's negligence. We disagree.

The General Assembly has enacted safety statutes pertaining to the operation of motor vehicles on the highways of this state. "[A] person who violates the provisions of a safety statute may be

held to be negligent as a matter of law." *Poultry Co. v. Thomas*, 289 N.C. 7, 11, 220 S.E.2d 536, 539-40 (1975). As to plaintiff's allegations of defendant's negligence, the applicable statute is N.C. Gen. Stat. § 20-146(d)(2), which provides:

(d) Whenever any street has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply.

. . . .

(2) Upon a street which is divided into three or more lanes and provides for the two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in the preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control device.

N.C. Gen. Stat. § 20-146(d)(2) (2007).

In the instant case, the center lane was clearly marked as a left-turn only lane in both directions, with solid lines on the outside of the lane, and broken lines on the inside of the lane. In the absence of a specific legislative exemption, a violation of the provisions of N.C. Gen. Stat. § 20-146(d)(2) constitutes negligence as a matter of law. *Poultry Co.*, 289 N.C. at 11, 220 S.E.2d at 539-40. Defendant was charged with improper use of a turn lane, and pled responsible to that charge in district court.

Defendant's plea of responsible to the charge of improper use of a turn lane was an evidentiary admission. *Boone v. Fuller*, 30 N.C. App. 107, 109, 226 S.E.2d 191, 193 (1976); *Camalier v.*

*Jeffries*, 113 N.C. App. 303, 312, 438 S.E.2d 427, 433 (1994), *aff'd*, 340 N.C. 699, 460 S.E.2d 133 (1995). However, the admission was not necessarily conclusive and may be explained. *Grant v. Shadrick*, 260 N.C. 674, 675, 133 S.E.2d 457, 459 (1963).

The burden of proof on the negligence issue rested upon the plaintiff. Ordinarily, it is not permissible to direct a verdict in favor of a litigant on whom rests the burden of proof. When facts are judicially admitted and are no longer a subject of inquiry, then it is not only permissible, but it is the duty of the judge to answer the issue. The function of the jury is to ascertain the facts. They have no duty when the facts are admitted. *Chisholm v. Hall*, 255 N.C. 374, 121 S.E.2d 726 (1961).

*Smith v. Burelson*, 9 N.C. App. 611, 612, 177 S.E.2d 451, 452 (1970).

Defendant's testimony at trial did not explain away or contradict her plea of responsible to improper use of a turn lane. Rather, her testimony confirmed her negligent use of the turn lane. Defendant was employed as a teacher's assistant, but had been out of work due to surgery. The date of the accident was her first day back at work. Defendant left work with a bad headache, and became entangled in traffic on Cliffdale Road for 20-25 minutes. Frustrated with the traffic, she decided to move into the center turn lane, turn around, and go to her mother-in-law's house until the "traffic died down." Defendant intended to turn into a driveway, but overshot it. She then attempted to move back into the left lane for northbound traffic, and "tried to get over and they kept going and wouldn't let [her] in so [she] . . . made the decision to go on." Rather than waiting to merge back into

traffic, she proceeded down the center turn lane at 25-30 miles per hour, passing northbound traffic on Cliffdale Road. The vehicle she was operating struck plaintiff's vehicle at the Regency Drive intersection. At that intersection, there was no place for defendant to make a left turn. There was a guardrail on the west side of Cliffdale Road opposite Regency Drive.

Based upon defendant's responsible plea, which was an evidentiary admission, and her failure to explain or contradict the admission, the trial court properly granted plaintiff's motion for a directed verdict, even though plaintiff had the burden of proof. *Smith v. Burelson, supra.*

This argument is without merit.

#### IV. Directed Verdict on Plaintiff's Alleged Contributory Negligence

In her second argument, defendant contends that the trial court erred in granting plaintiff's motion for a directed verdict on the issue of plaintiff's contributory negligence. We disagree.

Contributory negligence is an affirmative defense under Rule 8(c) of the North Carolina Rules of Civil Procedure. N.C. Gen. Stat. § 1A-1, Rule 8(c) (2007). Defendants have the burden of proof on affirmative defenses. *Snead*, 101 N.C. App. at 465, 400 S.E.2d at 93. In order to survive a motion for a directed verdict, a defendant must present more than a scintilla of evidence in support of each element of contributory negligence. *Id.* at 464, 400 S.E.2d at 92. In order to establish that the issue of contributory negligence should be submitted to the jury, the defendant bears the burden of demonstrating: "(1) a want of due

care on the part of the plaintiff; and (2) a proximate connection between the plaintiff's negligence and the injury." *Seay v. Snyder*, 181 N.C. App. 248, 251, 638 S.E.2d 584, 587 (2007) (quoting *Whisnant v. Herrera*, 166 N.C. App. 719, 722, 603 S.E.2d 847, 850 (2004)). In cases where the evidence and all logical inferences drawn therefrom, viewed in the light most favorable to the defendant, suggest or establish contributory negligence, the issue should be submitted to the jury. *Id.* at 251-52, 638 S.E.2d at 587. However, "[e]vidence which merely raises conjecture on the issue of contributory negligence is insufficient to go to the jury." *Myrick v. Peeden*, 113 N.C. App. 638, 643, 439 S.E.2d 816, 819 (citation omitted), *disc. review denied*, 336 N.C. 781, 447 S.E.2d 426 (1994).

On appeal, defendant's only argument is that plaintiff was contributorily negligent in violating the common law duty to maintain a reasonable lookout. "It is the duty of the driver of a motor vehicle not merely to *look*, but to *keep an outlook* in the direction of travel; and he is held to the duty of seeing what he ought to have seen." *Sugg v. Baker*, 261 N.C. 579, 581, 135 S.E.2d 565, 567 (1964) (quoting *Wall v. Bain*, 222 N.C. 375, 379, 23 S.E.2d 330, 333 (1942)). At trial, plaintiff testified that she was waved through by the drivers of stopped vehicles in the northbound lane of Cliffdale Road. Plaintiff's vehicle crept forward as she looked to the right and the left. As she entered the center turn lane, she had "two or three" car lengths visibility. She never saw defendant's vehicle. Plaintiff's vehicle was struck in the middle of the vehicle, where the driver's door and passenger's door meet.

Defendant testified that she did not see plaintiff's vehicle until she was one car length away, attempted to brake, and collided with the side of plaintiff's vehicle.

It is well-established that "[o]rdinarily a person has no duty to anticipate negligence on the part of others. . . . [H]e has the right to assume and to act on the assumption that others will observe the rules of the road and obey the law." *Penland v. Green*, 289 N.C. 281, 283, 221 S.E.2d 365, 368 (1976) (citations omitted). Defendant presented no evidence that plaintiff failed to keep a proper lookout, that she could have avoided the collision, or that the accident did not occur exactly as plaintiff alleged. Based upon the evidence presented at trial, we hold that reasonable minds would not have differed on the issue of plaintiff's contributory negligence. *Snead*, 101 N.C. App. at 466, 400 S.E.2d at 93; *Myrick*, 113 N.C. App. at 644, 439 S.E.2d at 819. The trial court did not err by granting plaintiff's motion for directed verdict on the issue of plaintiff's contributory negligence.

AFFIRMED.

Judges ELMORE and HUNTER, JR., Robert N. concur.

Report per Rule 30(e).