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NO. COA 13-258
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

SHEENA MOODY WARD,
Plaintiff,

v.

Wake County
No. 11 CVD 4051

LUIS ENRIQUE CARMONA,
Defendant/Third-Party
Plaintiff,

v.

JUSTIN MICHAEL WARD,
Third-Party Defendant

Appeal by plaintiff and third-party defendant from judgment entered 6 August 2012 and order entered 9 August 2012 by Judge Christine M. Walczyk in Wake County District Court. Heard in the Court of Appeals 26 August 2013.

E. Gregory Stott for plaintiff-appellant and third-party defendant-appellee.

Orlando L. Rodriguez for defendant/third-party plaintiff-appellee.

HUNTER, JR., Robert N., Judge.

Sheena Moody Ward ("Plaintiff") appeals from judgment entered 6 August 2012 and order entered 9 August 2012 in Wake

County District Court. The 6 August 2012 judgment dismissed Plaintiff's claim with prejudice upon a jury verdict finding both defendant and third party defendant negligent. The 9 August 2012 order denied Plaintiff's motion for a new trial. Plaintiff argues: (i) the jury's verdict was contrary to the greater weight of the evidence and the law; (ii) the jury's verdict was inconsistent and therefore erroneous as a matter of law; (iii) the judgment was erroneous because it was based upon an erroneous verdict; and (iv) the trial court erred in denying Plaintiff's motion for a new trial. Upon review, we find no error.

I. Factual & Procedural History

Justin Michael Ward ("Justin" or "Third Party Defendant") lives in Raleigh with his mother, Plaintiff. On 5 January 2011, Justin was driving Plaintiff's 1991 Mercedes sedan when he was in an accident with a van driven by Luis Enrique Carmona ("Defendant"). At about 3:00 P.M., Justin drove with his friend Joey Love ("Joey") to Village Grill to pick up their friend Meredith Vehik ("Meredith"). Third Party Defendant drove Joey and Meredith to Duffy's Restaurant and Tavern, where Justin drank a beer, and then to Brown's Billiards ("Brown's"), where

he had another beer. At 5:40 P.M., he left Brown's to take Meredith to her home.

Shortly after leaving Brown's, Justin turned right onto Spring Forest Road in Raleigh. He drove east on Spring Forest Road toward the intersection with Departure Drive.

Departure Drive runs north and south across Spring Forest Road. Spring Forest Road is straight and mostly level for over 100 yards before and after the intersection. It has two through lanes and one left turn lane on both its east and west bound sides. At the intersection, both sides of Spring Forest Road have a traffic signal. The signals are synchronized so that green lights are exhibited to motorists on Spring Forest Road when red lights are shown to motorists on Departure Drive, and vice versa. Each side also has a green turn arrow to indicate right-of-way for left turns. When the traffic signal displays a green circular signal but the left turn arrow is not lit, drivers turning left must yield to oncoming traffic on Spring Forest Road.

Justin testified to the following at trial. He was traveling eastbound on Spring Forest Road and intended to turn left onto Departure Drive. As he approached the intersection, the traffic signal displayed a green circular signal, but the

left turn arrow was not lit. Justin drove into the left turn lane and put on his left turn signal. He continued into the intersection and then stopped. Justin waited for a break in westbound traffic to allow a left turn onto Departure Drive. His view of westbound traffic on Spring Forest Road was unobstructed.

As Justin waited for a chance to turn left, the Spring Forest Road traffic signal turned red. To prevent his vehicle from impeding traffic traveling on Departure Drive, Justin believed he needed to complete his turn onto Departure Drive and continue through the intersection. He saw one vehicle traveling in the opposite direction on Spring Forest Road stop at the intersection. He did not see any other vehicles traveling westbound on Spring Forest Road. Justin started to turn left onto Departure Drive. His vehicle was hit immediately by a 1999 Plymouth van, driven by Defendant, that was headed west on Spring Forest Road. Justin's vehicle spun 270 degrees counterclockwise into the middle of the intersection. The front end of the vehicle was crumpled and the passenger door was bent. Justin alleged he suffered serious and permanent bodily injuries in the accident.

Defendant testified to the following at trial. On 5 January 2011, Defendant was driving his van from his home to his part-time job with United Parcel Service. He was driving west on Spring Forest Road at the speed limit of forty-five miles per hour. He approached the intersection with Departure Drive. He noticed Justin's vehicle in the eastbound left turn lane with its left turn signal on. When Defendant reached the intersection, the traffic signal was green. As he passed through the intersection, Justin's vehicle turned directly in front of him. Defendant turned toward the right in an attempt to avoid a collision but struck Justin's vehicle less than two seconds later.

On 15 March 2011, Plaintiff filed a complaint against Defendant in Wake County District Court. Plaintiff alleged Defendant's negligence caused the accident. Plaintiff requested the monetary value of damages to her vehicle and litigation expenses.

On 26 May 2011, Defendant filed an answer and third-party complaint against Justin. Defendant denied negligence and alleged that Justin's negligence caused the accident. Defendant made claims against Justin for contribution and indemnification.

Plaintiff filed a reply to Defendant on 31 May 2011. Third Party Defendant filed an answer and counterclaim for personal injuries against Defendant.

On 16 August 2011, all parties voluntarily agreed to stipulations. The stipulations stated that if Justin was found negligent and a proximate cause of the accident, his negligence would be imputed to Plaintiff. This result would bar any future claims brought by Third Party Defendant or Plaintiff against Defendant.

At trial, Plaintiff's counsel introduced written interrogatories taken from Defendant prior to trial. In one response, Defendant wrote "as I was approaching to the intersection, the light turned yellow when I was approximately eight (8) feet away." In response, Defendant testified at trial that the traffic signal was green as he approached the intersection, but he had assumed it turned yellow as he passed through the intersection.

Plaintiff's counsel called George Stephenson ("George") to rebut Defendant's testimony. Prior to the accident, George was traveling west on Spring Forest Road in the right lane. George testified that as he approached the intersection with Departure Drive, the traffic light was red. He came to a stop behind

another car that was stopped at the intersection. He saw a Plymouth van moving fast pass him in the left lane of westbound Spring Forest Road. The van did not slow as it entered the intersection and struck the Mercedes.

The following issues were submitted to the jury: (i) was the property of Plaintiff damaged by the negligence of Defendant; (ii) was the property of Plaintiff damaged by the negligence of Third Party Defendant; and (iii) what amount is Plaintiff entitled to recover for property damages. On 22 May 2012, the jury found that both Defendant and Third Party Defendant were negligent and that Plaintiff was not entitled to recover damages. Judgment was entered to this effect on 31 May 2012 and amended on 6 August 2012.

On 12 June 2012, Plaintiff filed a motion: (i) for a new trial pursuant to Rule 59(a)(7) of our Rules of Civil Procedure¹; and (ii) for relief from judgment pursuant to Rule 60(b).

¹ Rule 59(a)(7) allows a new trial for "[i]nsufficiency of the evidence to justify the verdict or [a] verdict . . . contrary to law" N.C. R. Civ. P. 59(a)(7).

Plaintiff's motion provides the following reasons for a new trial: (i) the verdict is inappropriate; (ii) the verdict is inconsistent and contrary to case law; and (iii) the verdict is contrary to the greater weight of the evidence presented at trial.

Plaintiff's motion was denied on 9 August 2012. Plaintiff filed notice of appeal on 31 August 2012.

II. Jurisdiction & Standard of Review

This Court has jurisdiction to hear the instant case pursuant to N.C. Gen. Stat. § 7A-27(c) (2011). A party must file and serve notice of appeal "within thirty days after entry of judgment." N.C. R. App. P. 3(c)(1). If a party makes a timely motion for relief under Rule 59 of the Rules of Civil Procedure, "the thirty day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion." N.C. R. App. P. 3(c)(3).

In the instant case, Plaintiff filed a timely Rule 59 motion. Plaintiff's motion was denied on 9 August 2012. She filed timely notice of appeal on 31 August 2012.

"There was sufficient evidence, in law, to support the finding of the jury, and when this is the case and it is claimed that the jury have given a verdict against the weight of all the evidence, the only remedy is an application to the trial judge to set aside the verdict for that reason." *Pender v. N. State Life Ins. Co.*, 163 N.C. 98, 101, 79 S.E. 293, 294 (1913). "We will not review [the trial judge's] ruling upon such a motion,

except where it clearly appears that there has been a gross abuse of his discretion." *Id.*

"We cannot interfere with the jury in finding facts upon evidence sufficient to warrant their verdict." *West v. Atl. Coast Line R.R. Co.*, 174 N.C. 125, 130, 93 S.E. 479, 481 (1917).

"[A]n appellate court's review of a trial judge's discretionary ruling either granting or denying a motion to set aside a verdict and order a new trial is strictly limited to the determination of whether the record affirmatively demonstrates a manifest abuse of discretion by the judge." *Worthington v. Bynum*, 305 N.C. 478, 482, 290 S.E.2d 599, 602 (1982).

III. Analysis

To establish negligence in North Carolina, a party must show: "(1) a legal duty; (2) a breach thereof; and (3) injury proximately caused by the breach." *Bridges v. Parrish*, ___ N.C. ___, ___, 742 S.E.2d 794, 796 (2013) (quoting *Stein v. Asheville City Bd. of Educ.*, 360 N.C. 321, 328, 626 S.E.2d 263, 267 (2006)). Where a plaintiff fails "to exercise due care for his or her own safety, such that the plaintiff's failure to exercise due care is a proximate cause of his or her injury," their negligence is contributory. *Love v. Singleton*, 145 N.C. App. 488, 491-92, 550 S.E.2d 549, 551 (2001) (quotation marks and

citation omitted). Contributory negligence acts "as a complete bar to a plaintiff's recovery." *Id.*

"It is the jury's function to weigh the evidence and to determine the credibility of witnesses." *Anderson v. Hollifield*, 345 N.C. 480, 483, 480 S.E.2d 661, 664 (1997). "In weighing the credibility of the testimony, the jury has the right to believe any part or none of it." *Brinkley v. Nationwide Mut. Ins. Co.*, 271 N.C. 301, 305, 156 S.E.2d 225, 228 (1967). A jury verdict should be set aside on the weight of the evidence only in "exceptional situations where the verdict is contrary to the evidence presented and will result in a miscarriage of justice." *In re Will of Buck*, 350 N.C. 621, 628, 516 S.E.2d 858, 862 (1999).

Plaintiff first argues that the jury's verdict was contrary to the greater weight of the evidence. Upon review, we find there was sufficient evidence to support a finding that both Defendant and Third Party Defendant were negligent.

There was sufficient evidence to support the jury's finding that Defendant was negligent. Defendant testified that he was driving and that he struck Plaintiff's car. George testified that Defendant entered the intersection after the traffic signal had turned red. Defendant concedes in his brief that there was

sufficient evidence to present the jury with the question of his negligence.

There was also sufficient evidence for the jury to find Third Party Defendant negligent. Justin testified that before he began his turn, the traffic signal turned red. He testified that his view of oncoming traffic on westbound Spring Forest Road was unobstructed. He also testified that his car was struck by Defendant's van immediately after Justin began his left turn. Defendant testified he was traveling at forty-five miles per hour and was entering the intersection when Third Party Defendant began his turn. Defendant estimated Third Party Defendant began his turn less than two seconds before the accident.

Drivers approaching an intersection have a duty "to maintain a lookout and to exercise reasonable care under the circumstances." *Hyder v. Asheville Storage Battery Co.*, 242 N.C. 553, 557, 89 S.E.2d 124, 128 (1955). Failure to do so "is likely to endanger the safety of persons and property." N.C. Gen. Stat. § 20-4.23(a)(2) (2011).

When drivers approach a green traffic signal at an intersection they must keep "a reasonable lookout for vehicles in or approaching the intersection at excessive speed." *Hyder*,

242 N.C. at 557, 89 S.E.2d at 128. They have a duty to "anticipate and expect the presence of others." *Id.* Drivers "cannot go forward blindly even in reliance on traffic signals." *Id.* Furthermore, "[a]ny person who undertakes to drive a motor vehicle upon a highway must exercise reasonable care to ascertain that such movement can be made in safety *before he turns to the right or left from a direct line.*" *Wiggins v. Ponder*, 259 N.C. 277, 279, 130 S.E.2d 402, 404 (1963) (emphasis added); see also N.C. Gen. Stat. § 20-154(a) (2011).

Third Party Defendant concedes that he entered the intersection against a red traffic signal. However, he argues that having entered the intersection while the light was green, he was entitled to proceed through the intersection once it turned red. He cites to language from this Court that a yellow light "affords those who have entered or are entering on the green light the opportunity to proceed through the intersection before the crossing traffic is invited to enter." *Sayre v. Thompson*, 1 N.C. App. 517, 520, 162 S.E.2d 116, 118 (1968). That language applies, however, only where the driver has properly entered the intersection during a green light. "[I]f faced with a green light a driver is warranted in moving into the intersection, *unless the circumstances are such as to*

indicate caution to one of reasonable prudence." *Id.* at 519, 162 S.E.2d at 118 (emphasis added). In the present case, as Third Party Defendant was required to yield to oncoming traffic, the jury could have found that Third Party Defendant was negligent in entering the intersection at a time when he could not properly complete his turn. The jury may also have found that Third Party Defendant was negligent in turning in front of Defendant without keeping a proper lookout. *Id.* at 520, 162 S.E.2d at 118 ("[T]he duty rests upon [the driver] to maintain a reasonable and proper lookout for other vehicles *in or approaching* the intersection."); see also *Hyder*, 242 N.C. at 557, 89 S.E.2d at 128. There was sufficient evidence to support an inference by the jury that Third Party Defendant was negligent.

Prior to trial, all parties agreed to a stipulation that if Third Party Defendant was found negligent and a proximate cause of the accident, his negligence would be imputed to Plaintiff. Consequently, sufficient evidence was presented to support the jury's finding that Plaintiff is barred from recovery due to contributory negligence.²

² We note that in a case with similar facts, this Court found both parties contributorily negligent as a matter of law. See *Dawkins v. Benton*, 16 N.C. App. 58, 190 S.E.2d 853 (1972). Our

Plaintiff next contends that the jury's verdict was inconsistent and therefore erroneous as a matter of law. Upon review, we find the jury's verdict was consistent.

Plaintiff and Defendant make competing claims as to the color of the traffic signal at the time Defendant entered the intersection. However, the jury's verdict aligns with a consistent view of the evidence. Third Party Defendant concedes the traffic signal was red when he entered the intersection. As both parties were driving in opposite directions on the same road, it is entirely consistent for the jury to find that Defendant entered the intersection after his traffic signal turned red and that Plaintiff either negligently entered the intersection on a green circular signal when he could not complete the turn or failed to keep a proper lookout. Thus, a finding that both parties were negligent is consistent and supported by sufficient evidence.

Plaintiff next argues the judgment was erroneous because it was based upon an erroneous verdict. Because we find the jury's findings were supported by sufficient evidence and consistent, we decline to set aside the trial court's judgment.

standard for evidence of negligence is lower in the present case, as we only have to find evidence sufficient to warrant a jury verdict.

For similar reasons, we decline to set aside the trial court's order denying Plaintiff's motion for a new trial.

IV. Conclusion

For the reasons discussed above, we find

NO ERROR.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).