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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-767

Filed 5 March 2024

Beaufort County, No. 20CVS1024

COLBY REEF CURLINGS, Plaintiff,

v.

JOHNNIE MARVIN IRELAND and NATIONWIDE PRODUCE, INC., Defendants.

Appeal by plaintiff from judgment entered 2 December 2022 by Judge Jeffery B. Foster in Beaufort County Superior Court. Heard in the Court of Appeals 24 January 2024.

*Ricci Law Firm, P.A., by Bonnie F. Pierce and Meredith S. Hinton, for plaintiff-appellant.*

*Cozen O'Connor, by Travis Ray Joyce and Charles A. Kinney, for defendants-appellees.*

GORE, Judge.

In this case, plaintiff Colby Reef Curlings brought a negligence action against defendants Johnnie Marvin Ireland and Nationwide Produce, Inc. Plaintiff sought to recover damages for personal injuries he sustained during a motor vehicle collision that occurred on 5 June 2019. Defendants asserted several defenses in their Answer,

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mainly that plaintiff was contributorily negligent in causing his injuries, and that plaintiff alleged insufficient facts to support gross negligence and/or punitive damages. At trial, the jury ultimately returned a verdict for defendants.

We first note that plaintiff's brief does not contain, under an appropriate heading or elsewhere, "[a] statement of the grounds for appellate review . . . [with] citation of the statute or statutes permitting appellate review." N.C.R. App. P. 28(b)(4). Plaintiff's timely filed written notice of appeal designates a final judgment of the Superior Court, Beaufort County. As such, this Court would have jurisdiction under N.C.G.S. § 7A-27(b)(1) (2022).

Plaintiff presents two issues on appeal: (1) whether the trial court erred by admitting opinion evidence from Trooper Locklear—the primary law enforcement officer who responded to the motor vehicle collision—about the location of the collision; and (2) whether plaintiff was prejudiced as a result. Upon review, we discern no error in the trial court's judgment.

**I.**

Trial counsel for defendants called Trooper Locklear to the stand to testify about his observations and perceptions at the scene of the accident. Trooper Locklear testified that he took photographs and measurements at the scene, and that he perceived gouge marks in the westbound lane of travel, but none in the eastbound lane. He also spoke to defendant Ireland.

Trooper Locklear prepared a crash report that was entered into evidence,

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without objection from plaintiff's counsel, and published to the jury. The crash report contains a narrative that states, in pertinent part, "Vehicle 1 [plaintiff] was traveling east NC 33. Vehicle 2 [defendant Ireland] was traveling west NC 33. Vehicle 1 [plaintiff] traveled left of center striking Vehicle 2 [defendant]." The diagram in the report also depicts plaintiff's vehicle crossing the center line and entering defendant's lane of travel when the collision occurred. Prior to Locklear's trial testimony, plaintiff's counsel submitted a Motion in Limine regarding the admittance of the trooper's crash report. Plaintiff argued the report would confuse the jury, and that the entirety of the report (including the diagram) was inadmissible lay opinion testimony. The trial court ruled the crash report could be admitted as a business record under N.C. R. Evid. 803(6).

On cross-examination, plaintiff's counsel asked Trooper Locklear about a specific photograph (Exhibit 10-H, which was admitted into evidence without objection) of a broken axle on defendant Ireland's trailer, and whether he concluded that the damage occurred due to the impact with plaintiff's Honda. Trooper Locklear confirmed that conclusion. Plaintiff's counsel then questioned Trooper Locklear about the narrative in his report, and whether it was "based on what Mr. Ireland told you had occurred." Trooper Locklear testified the narrative was based on physical evidence he observed at the scene, including gouge marks, which would indicate "the area of impact."

Outside the presence of the jury, defendants' counsel argued that plaintiff's

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line of questioning had exceeded “generic representations of what [Trooper Locklear] . . . observed and . . . goes into him investigating the crash scene as an expert[.]” Counsel for defendants further argued that plaintiff’s counsel had “opened the door on the axle photo” and “when she went and asked [Trooper Locklear] . . . about the narrative.” The trial court agreed with defendants that plaintiff’s questioning went “beyond the scope of what you told me that you wanted to limit it to[,] and I think that gets into an expert opinion.” Plaintiff’s counsel re-asserted her position that Trooper Locklear is “not an accident reconstruction expert . . . .” The trial court agreed that Trooper Locklear was not tendered as an expert, but stated its rationale for allowing defendants to elicit further testimony:

THE COURT: I understand that, but you . . . have opened the door that entitles . . . [the defense] to cross-examine on what . . . those impressions and opinions are based on and then if he gets into the measurements and the marks and stuff I think — I think that’s fair game.

[COUNSEL FOR PLAINTIFF]: Would it be just limited to his opinion as to the axle?

THE COURT: I don’t think so. I mean, I think . . . the other questions open it up to the measurements and the gouge marks. . . . I don’t want to throw [the door] . . . all the way open. I think I stopped it. And maybe I shouldn’t have stopped it, but in trying to be the gatekeeper for this thing, I stopped it. I’m going to let [counsel for defendants] go further and inquire about the axle though and the reasons for his opinions there and then you can object if you feel like they’ve gone too far, but I’m going to let them go for a while because I think that door is open. I think they’re entitled to pursue that — that line of questioning.

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The trial court permitted defendants to ask Trooper Locklear, over plaintiff's objections: where the area of impact was; how he made that determination; how the axle was broken; whether the impact occurred in the westbound lane of traffic; and whether plaintiff's vehicle struck defendant Ireland's vehicle in that lane of traffic. Trooper Locklear also confirmed that the diagram he prepared in the crash report was based on the conclusions that he testified to. The trial court sustained plaintiff's objection to the question, "did you draw any conclusions from that evidence that you observed on scene?"

Additionally, plaintiff's safety expert, Willaim Etheridge, passed away two weeks prior to trial. Etheridge was not an accident reconstruction expert; he was tendered by plaintiff as an expert on trucking safety procedures. Due to Etheridge's sudden passing, the trial court permitted his deposition testimony to be read into the record pursuant to North Carolina Rule of Civil Procedure 32(a)(4). Plaintiff initially wanted to admit portions of Etheridge's deposition, but upon motion by defendants, the trial court ruled that the deposition transcript would be read to the jury in its entirety (excluding a few lines about defendant Ireland being elusive) considering defense counsel would not have the opportunity to cross-examine Etheridge about any portion of his deposition. Over plaintiff's objection, the opinion of Trooper Locklear about the location of the two vehicles at the time of the crash was subsequently read into evidence as part of Etheridge's deposition, as stated by defense counsel, "The way Trooper Locklear determined the accident occurred was

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that [plaintiff] Mr. Curlings crossed the yellow line.”

## II.

Plaintiff raises the issue of whether the trial court reversibly erred by admitting opinion evidence from Trooper Locklear about the location of the collision. Plaintiff primarily contends Trooper Locklear is not qualified as an expert in accident reconstruction, and that his opinion about the precise area of impact was not admissible and should have been excluded. However, plaintiff barely acknowledges the specific evidentiary ruling at issue in this case: the trial court’s determination that plaintiff’s counsel had “opened the door” to otherwise inadmissible testimony.

In North Carolina jurisprudence, “while it is competent for an investigating officer to testify as to the condition and position of the vehicles and other physical facts observed by him at the scene of an accident, his testimony as to his conclusions from those facts is incompetent.” *State v. Wells*, 52 N.C. App. 311, 314 (1981) (citations omitted).

However, a trial court may permit otherwise inadmissible evidence to be admitted if the opposing party opens the door through cross-examination of the witness. “Opening the door” is the principle where one party introduces evidence of a particular fact and the opposing party may introduce evidence to explain or rebut it, even though the rebuttal evidence would be incompetent or irrelevant, if offered initially.

*State v. Thaggard*, 168 N.C. App. 263, 273 (2005) (citations omitted). “A trial court’s decision to admit or exclude evidence to which a party has opened the door is subject

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to review on appeal for abuse of discretion.” *State v. McKoy*, 385 N.C. 88, 97 (2023) (citation omitted). “An abuse of discretion occurs when the trial court’s ruling is so arbitrary that it could not have been the result of a reasoned decision.” *Chicora Country Club v. Town of Erwin*, 128 N.C. App. 101, 109 (1997) (quotation marks and citation omitted).

As previously discussed, the trial court determined that plaintiff’s counsel had “opened the door” to Trooper Locklear’s ultimate conclusions. The transcript reflects the trial court explicitly stated its reasoning and for allowing defense counsel to question Trooper Locklear regarding the location of the collision. On appeal, plaintiff merely reiterates the same argument about admissibility and qualification under N.C. R. Evid. 702, without any substantive discussion about the trial court’s specific evidentiary ruling, and without further application to the applicable standard of review—abuse of discretion. Upon our independent review of the record, and in the absence of any argument to the contrary appearing in plaintiff’s brief, we conclude that the trial court’s evidentiary ruling, i.e., plaintiff’s counsel had “opened the door” to otherwise incompetent and inadmissible testimony, was a well-reasoned one. Accordingly, we discern no abuse of discretion in this case and ultimately, no error in the trial court’s judgment.

In the second issue presented, plaintiff argues: “As laid out in the above arguments, both instances of Trooper Locklear’s opinion were admitted in error. [Plaintiff] therefore contends that the admission was both prejudicial and highly

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likely to influence the verdict of the jury.” Considering our determination that the trial court did not abuse its discretion in ruling that plaintiff’s counsel had “opened the door” to otherwise incompetent or inadmissible testimony, it is unnecessary to address plaintiff’s remaining argument that he was prejudiced as a result.

**III.**

For the foregoing reasons, we discern no error in the trial court’s judgment.

NO ERROR.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).