An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-276

No. COA21-494

Filed 19 April 2022

Mecklenburg County, No. 19-CVS-18168

JULIE KLAPP, Plaintiff,

v.

RANDALL BUCK, Defendant.

Appeal by Plaintiff from judgment entered 14 May 2021 by Judge Donnie Hoover in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 March 2022.

Johnson & Groninger, PLLC, by Helen S. Baddour and Ann Groninger, for Plaintiff-Appellant.

McAngus Goudelock & Courie, PLLC, by John P. Barringer and Sharon Suh, for Defendant-Appellee.

DILLON, Judge.

¶ 1 Plaintiff Julie Klapp ("Plaintiff") appeals from a judgment entered for Defendant Randall Buck ("Defendant") on her negligence claim.

¶ 2 Plaintiff filed this action seeking damages resulting from a traffic accident at an intersection in Mooresville in which the car driven by Defendant collided with Plaintiff, who was riding her bicycle. The jury found Defendant to be negligent.

However, the jury also found Plaintiff to be contributorily negligent. Accordingly, the jury's verdict was in favor of Defendant, and judgment was entered accordingly. Plaintiff timely appealed.

I. Issue on Appeal

¶ 3 During the trial, Plaintiff moved for a directed verdict on the contributory negligence issue, contending there was no evidence to support the defense. The trial court denied her motion. The jury was, therefore, instructed on the issue of Plaintiff's contributory negligence. After the jury returned its verdict denying Plaintiff's claim based on the conclusion that she was contributorily negligent, Plaintiff moved for judgment notwithstanding the verdict ("JNOV"). But, again, the trial court denied her motion and entered judgment for Defendant. On appeal, Plaintiff argues that the trial court erred in denying her motions.

¶ 4 The key issue before us is whether there was sufficient evidence from which the jury could find Plaintiff to be contributorily negligent. Indeed, a motion for a directed verdict "raises the question of whether the evidence is sufficient to go to the jury." *Murdock v. Ratliff*, 310 N.C. 652, 667, 314 S.E.2d 518, 526 (1984). And in reviewing a motion for directed verdict, "all the evidence in favor of the non-movant must be deemed true, all conflicts in the evidence must be resolved in favor of the non-movant, and the non-movant is entitled to every inference reasonably to be drawn in his favor." *Id.* at 667-68, 314 S.E.2d at 527. Similarly, a motion for JNOV

is reviewed under the same standard. *Best v. Duke Univ.*, 337 N.C. 742, 749, 448 S.E.2d 506, 510 (1994).

¶ 5 The evidence when viewed in the light most favorable to Defendant showed that Defendant's car collided with the side of Plaintiff's bicycle as Defendant was attempting a left turn and while Plaintiff was traveling straight through the intersection. Specifically, the evidence showed as follows:

¶ 6 In the early morning on 13 September 2016, Plaintiff was riding her bicycle southbound on Mecklenburg Highway. She had a white blinking light on the front of her bicycle, a red light on the back of her bicycle, and a red blinking light attached to the back of her jersey. Defendant was driving his car traveling northbound on Mecklenburg Highway.

¶ 7 Defendant arrived at Mecklenburg Highway's intersection with Fairview Road, intending to make a left turn onto Fairview Road. He stopped in the left-turn lane, as the light was red.

¶ 8 There were vehicles stopped at the red light coming from the opposite direction, traveling southbound and intending to travel straight. Plaintiff also approached the intersection in a southbound direction intending to proceed straight. As she approached the intersection, Plaintiff was traveling slightly uphill. As she reached the intersection behind the stopped cars, the light turned green. She, therefore, rose from her seat to increase her speed up the incline into the intersection.

¶ 9 Plaintiff saw Defendant move into the intersection intending to make a left turn. Defendant yielded to the vehicles in front of Plaintiff. Though Defendant continued to proceed towards Plaintiff's lane of travel, Plaintiff assumed Defendant would yield to her. But when Plaintiff was in the intersection, Defendant did not stop and collided with the side of Plaintiff's bicycle. Defendant did not see Plaintiff's bicycle until immediately before the impact.

II. Analysis

¶ 10 To prove contributory negligence, a defendant must show: "(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." *Construction Co. v. R. R.*, 184 N.C. 179, 180, 113 S.E. 672, 673 (1922).

¶ 11 Our Supreme Court, however, has noted that a plaintiff is "not required to anticipate that the defendant [will] be negligent" in the context of a motor vehicle accident. *Cicogna v. Holder*, 345 N.C. 488, 489, 480 S.E.2d 636, 637 (1997). Further, while a plaintiff has a duty to take due care on the road, "he is entitled to assume, *even to the last moment*, that [another] driver . . . will comply with the law and stop before [illegally] entering" the highway or intersection. *Snider v. Dickens*, 293 N.C. 356, 358, 237 S.E.2d 832, 834 (1977) (emphasis in original).

¶ 12 This case is remarkably similar to *Daisy v. Yost*, 250 N.C. App. 530, 794 S.E.2d 364 (2016), in which we reversed the denial of a directed verdict on the issue of

contributory negligence. As in this case, in *Daisy* the defendant and plaintiff were traveling in opposite directions, and the defendant struck the side of the plaintiff's vehicle as the defendant was making a left turn and the plaintiff was already in the intersection traveling straight. *Id.* at 531, 794 S.E.2d at 365-66. We found in that case that there was no more than a scintilla of evidence that the plaintiff was contributorily negligent and, therefore, reversed the judgment that had been entered for the defendant and remanded the matter for entry of judgment for the plaintiff in the amount of the damages which had been stipulated to by the parties. *Id.* at 534, 794 S.E.2d at 367.

¶ 13 We conclude the same here as in *Daisy*. We conclude there was no more than a scintilla of evidence that Plaintiff was contributorily negligent. Our conclusion might be different had Plaintiff run into Defendant. But Plaintiff was already occupying her lane of travel when Defendant crossed into the intersection. We, therefore, reverse the judgment entered by the trial court.

¶ 14 However, unlike in *Daisy*, the parties have not stipulated as to the amount of damages. Accordingly, it is appropriate that the matter be remanded for a trial on the issue of damages. *See Ellis v. Whitaker*, 156 N.C. App. 192, 196-97, 576 S.E.2d 138, 141 (2003) (remanded for the sole issue of damages where the jury had already found the defendant to be negligent but where the trial court erroneously allowed the jury to deny the plaintiff's claim based on the defense of contributory negligence).

III. Conclusion

¶ 15 There was not sufficient evidence to submit the issue of contributory negligence to the jury. And because the jury's finding as to Defendant's negligence was proper, we reverse the trial court's judgment and remand for a trial on the issue of damages only.

REVERSED AND REMANDED.

Judges HAMPSON and WOOD concur.

Report per Rule 30(e).