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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-127

Filed 19 March 2024

Rowan County, No. 21 CVS 180

LAURA HEATHER STROUPE, Plaintiff,

v.

JANE N. WOOD, Defendant.

Appeal by Plaintiff from order entered 1 July 2022 by Judge Timothy G. Gould in Rowan County Superior Court. Heard in the Court of Appeals 19 September 2023.

Michael Doran for plaintiff-appellant.

Caudle & Spears, P.A., by Daniel M. Nunn and Casey F. Cogburn, for defendant-appellee.

MURPHY, Judge.

When ruling on a motion for directed verdict, the trial court must consider all evidence in the light most favorable to the non-moving party, resolving all controversies in the non-movant's favor. The trial court must consider sufficiency of the evidence to justify submission of a plaintiff's contributory negligence to the jury in a similar light, disregarding the plaintiff's evidence entirely, except where beneficial to the defendant. The trial court properly concluded that there was more

than a scintilla of evidence to support Defendant's prima facie case for contributory negligence and that sufficient evidence of Plaintiff's contributory negligence was presented to submit each of Defendant's six contentions of contributory negligence to the jury. In absence of error, Defendant's case for contributory negligence was properly submitted to the jury, and we do not disturb the jury's verdict.

BACKGROUND

On 17 March 2015, Plaintiff Laura Heather Stroupe and Defendant Jane N. Wood were involved in an automobile collision. Prior to the collision, Plaintiff was traveling southbound on W. Jake Alexander Boulevard, and Defendant was traveling northbound on W. Jake Alexander Boulevard. Plaintiff approached the intersection of W. Jake Alexander Boulevard and Mooresville Road in her vehicle. As Plaintiff continued driving straight in the rightmost southbound lane of the intersection, Defendant turned from the northbound left turn lane onto Mooresville Road. The two vehicles collided in the southbound lane of W. Jake Alexander Boulevard. The collision occurred between Plaintiff's front driver's side and Defendant's front passenger's side. The collision caused Plaintiff's air bags to deploy, caused severe damage to Plaintiff's vehicle, and necessitated Plaintiff's emergency transportation by ambulance to a hospital.

On 13 March 2018, Plaintiff filed a complaint seeking compensatory damages for the personal injuries and property damage which occurred as a result of the automobile accident. However, Plaintiff filed a voluntary dismissal of this cause

without prejudice on 10 February 2020 and initiated the current action on 1 February 2021. On 12 April 2021, Defendant filed her answer to Plaintiff's complaint, in which she denied the allegations regarding her liability for the collision and raised the defense of Plaintiff's contributory negligence.

On 23 May 2022, a jury trial began. At trial, Plaintiff testified that she had a green light immediately preceding the collision. After Plaintiff presented her evidence, both parties moved for a directed verdict; however, the trial court denied each of these motions. Thus, Defendant presented her evidence, during which she testified that she had a green arrow immediately preceding the collision. After Defendant presented her evidence, both parties again moved for a directed verdict, but the trial court again denied both parties' motions.

The trial court held a jury charge conference between the parties outside of the presence of the jury, during which Plaintiff objected to proposed jury instructions on each of Defendant's six contentions of contributory negligence. On 27 May 2022, the trial court submitted the matter to the jury to determine Defendant's negligence, Plaintiff's contributory negligence, and damages. The trial court gave instructions on each of Defendant's six contentions of Plaintiff's contributory negligence: "failing to use ordinary care by failing to keep a reasonable lookout[.]" "failing to use ordinary care by failing to keep her vehicle under proper control[.]" "violating a safety statute by operating her vehicle on a highway without decreasing speed to avoid a collision[.]" "violating a safety statute by failing to comply with an erected traffic control signal[.]"

“violating a safety statute by operating her vehicle at a speed in excess of that which was reasonable and prudent under the circumstances[,]” and “violating a safety statute by failing to yield the right of way to [Defendant] who had already entered and had control of the intersection.” Later that day, the jury returned a verdict of negligence for both parties.

On 6 June 2022, the trial court entered a judgment dismissing Plaintiff’s claims against Defendant with prejudice and ordering each party to bear her own costs. On the same day, Plaintiff filed her *Motion for Judgment Notwithstanding the Verdict and For a New Trial*. The trial court denied Plaintiff’s motions on 1 July 2022. Plaintiff timely appealed.

ANALYSIS

On appeal, Plaintiff argues that the trial court erred by (A) denying Plaintiff’s motions for directed verdict and judgment notwithstanding the verdict (“JNOV”) and (B) instructing the jury on Defendant’s six contentions of Plaintiff’s contributory negligence.

A motion for JNOV “is simply a renewal of a party’s earlier motion for directed verdict[.]” *Ellis v. Whitaker*, 156 N.C. App. 192, 194 (2003) (citing *Kearns v. Horsley*, 144 N.C. App. 200, 207, *disc. rev. denied*, 354 N.C. 573 (2001)) (marks omitted). Accordingly, “the standard of review for a JNOV is the same as that for a directed verdict,” *Kearns*, 144 N.C. App. at 207 (quoting *Tomika Invs., Inc. v. Macedonia True Vine Pentecostal Holiness Church of God, Inc.*, 136 N.C. App. 493, 498 (2000)), and

we review the orders denying Plaintiff's motions for directed verdict and JNOV together.

A. Motions for Directed Verdict and JNOV

We review a trial court's ruling on a motion for directed verdict de novo, *Keith v. Health-Pro Home Care Servs.*, 381 N.C. 443, 455 (2022), to determine whether,

in the light most favorable to the non-movant, taking the evidence supporting the non-movant's claims as true with all contradictions, conflicts and inconsistencies resolved in the non-movant's favor so as to give the non-movant the benefit of every reasonable inference . . . there is more than a scintilla of evidence to support the non-movant's prima facie case.

Ellis v. Whitaker, 156 N.C. App. 192, 194-95 (2003). "This is a high standard for the moving party[.]" *Id.* at 195. Our standard of review for a Judgment Notwithstanding the Verdict is the same, as "[a] motion for JNOV 'is simply a renewal of a party's earlier motion for directed verdict[.]'" *Id.* at 194.

We have previously held that "[a] directed verdict is rarely appropriate on the issue of contributory negligence." *Stallings v. Food Lion, Inc.*, 141 N.C. App. 135, 138 (2000). Under our caselaw, "[c]ontributory negligence is negligence on the part of the plaintiff which joins, simultaneously or successively, with the negligence of the defendant . . . to produce the injury of which the plaintiff complains." *Seay v. Snyder*, 181 N.C. App. 248, 251 (2007). In such cases, the "application of the prudent man test, or any other applicable standard of care, is generally for the jury." *Smith v. Wal-Mart Stores*, 128 N.C. App. 282, 285 (1998) (quoting *Taylor v. Walker*, 320 N.C. 729,

734 (1987)); *see also Maye v. Gottlieb*, 125 N.C. App. 728, 730 (1997) (“[C]ontributory negligence is ordinarily a jury question rather than an issue decided as a matter of law.”). “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.” *Stallings*, 141 N.C. App. at 138. For the issue of a plaintiff’s contributory negligence to be presented to the jury, a defendant must demonstrate “(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.” *Whisnant v. Herrera*, 166 N.C. App. 719, 722 (2004). “If there is more than a scintilla of evidence supporting each element of [contributory negligence], the motion for directed verdict should be denied.” *See Snead v. Holloman*, 101 N.C. App. 462, 464 (1991).

Plaintiff argues that Defendant failed to meet her burden, as “there was not more than a scintilla of evidence that Plaintiff was negligent in a manner that contributed to the collision[.]” and, therefore, Plaintiff contends that the trial court erred by denying her motions for directed verdict and JNOV. In support of her argument, Plaintiff emphasizes Defendant’s testimony that she never saw Plaintiff’s vehicle in motion and argues that such testimony negates Defendant’s allegation of Plaintiff’s contributory negligence. Plaintiff also references *Daisy v. Yost*, in which we observed:

While [the] [p]laintiff certainly had a duty to drive no faster than was safe under the circumstances, to keep his vehicle under control, to maintain a reasonably careful lookout,

and to take reasonably prudent steps to avoid a collision, he [was] entitled to assume even to the last moment, that [the] [d]efendant would comply with the law . . . before entering [the plaintiff's lane of travel].

Daisy v. Yost, 250 N.C. App. 530, 533 (2016). This observation does not bear on whether Defendant's evidence was sufficient to constitute more than a scintilla. Plaintiff further cites *Myrick v. Peeden*, in which we held that the trial court erred by denying the plaintiff's motion for directed verdict on the contentions of improper lookout and improper control because the defendant presented "no evidence that [the] plaintiff could have stopped in time to possibly avoid collision with [the] defendant." *Myrick v. Peeden*, 113 N.C. App. 638, 642-43, *disc. rev. denied*, 336 N.C. 781 (1994). However, Plaintiff fails to argue how the facts in this case are analogous to those in *Myrick*.

In response, Defendant argues that "[Plaintiff's] arguments fail to acknowledge the competing and compelling evidence offered at trial by [Defendant] of her contradictory recollection of the events leading up to the [a]ccident." As Plaintiff herself notes, "[t]here was no eye witness testimony separate from the accounts provided by Plaintiff and Defendant." Defendant argues that in this

'she said-she said' case with no eyewitnesses, where both parties claim to have entered the intersection with a green light[,] . . . to side with [Plaintiff] and reverse, [we] must stand in the place of the fact finder and determine that [Plaintiff's] version of the [a]ccident is not only more credible than [Defendant's] version[,] but also the only version in which no reasonable mind could differ.

Plaintiff's contention that Defendant's own testimony of the events leading up to the accident is insufficient to constitute more than a scintilla of evidence is a self-defeating argument, as the only evidence to support Plaintiff's version of the events is, in fact, also her own testimony. To reverse the trial court's denial of Plaintiff's motions for directed verdict and JNOV, we would need to stand in the place of the factfinder and conclude that Plaintiff's evidence, of the same type and magnitude as Defendant's evidence, was more than a scintilla, but that Defendant's was not. This is not the standard for our review. We review the denial of these motions *only* to determine whether, *as a matter of law*, the trial court erred by concluding that Defendant presented more than a scintilla of evidence supporting her recollection of the events. We hold that it did not.

In ruling on a motion for directed verdict, the trial court must resolve all issues and controversies in favor of the non-movant, Defendant. *Ellis*, 156 N.C. App. at 194-95. Defendant testified during trial that when she

was either the second or third car back [in the left turn lane] . . . there was a light colored vehicle in front of [her]. [She] could see the other cars stopped along the lanes for the oncoming traffic. And then when [she] had the green arrow the cars in front of [her] started to move and so [she] proceeded to follow those cars through the intersection.

Defendant further testified that when she “got to the farther side of the intersection, [she] felt a sudden impact on [her] passenger side[]” and that she “was definitely looking at the cars in front of [her] because at that point [she] had already made a

turn. And so [she] was looking in front of [her].” This testimony constitutes evidence which directly contradicts Plaintiff’s own testimony, and consequently, the controversies within this testimony should be resolved in Defendant’s favor for the purposes of ruling on Plaintiff’s motion for directed verdict. Furthermore, Plaintiff testified that she was unable to see what color stoplight Defendant had when she turned, and no evidence other than Defendant’s own testimony was introduced as to the color of Defendant’s stoplight. Defendant argues, and we agree, that Defendant’s “uncontradicted statement that she had a green turn arrow is sufficient to create an issue of fact as to which woman had the green light, since it is inconceivable that both women could have a green light given that there is no evidence that the traffic signal was malfunctioning at the time of the accident.”

The trial court did not err when it denied Plaintiff’s motions for directed verdict and JNOV based on its conclusion that, in the light most favorable to and with all controversies resolved in favor of Defendant, Defendant presented more than a scintilla of evidence supporting her account of the events, and therefore, the trial court must submit the case to the jury as factfinder. *Hawley v. Cash*, 155 N.C. App. 580, 582 (2002) (“Contradictions or discrepancies in the evidence even when arising from [a] plaintiff’s evidence must be resolved by the jury rather than the trial judge.”).

B. Jury Instructions

Next, we review Plaintiff’s challenge to the appropriateness of the trial court’s jury instructions to determine whether the trial court abused its discretion, and, if

so, whether that abuse of discretion “was likely to have misled the jury.” *Goins v. Time Warner Cable Se., LLC*, 258 N.C. App. 234, 237, *disc. rev. denied*, 371 N.C. 569 (2018). “We consider whether the [challenged] instruction is correct as a statement of law and, if so, whether the requested instruction is supported by the evidence.” *Id.*

Defendant requested, and the trial court gave, instructions on six separate contentions of Plaintiff’s contributory negligence: (1) failing to keep a proper lookout, (2) failing to keep her vehicle under proper control, (3) failing to decrease speed as was necessary to avoid a collision, (4) failing to stop for a red light, (5) driving at an excessive rate of speed under the circumstances, and (6) failing to yield the right of way at an intersection. Plaintiff contends that the trial court’s instructions relating to the contentions of improper control, excessive speed, and failure to stop for a red light demonstrate an abuse of discretion because these contentions “were based upon mere conjecture and remote possibilities” rather than “substantial evidence[,]” which “allow[ed] the jury to speculate.”

Plaintiff contends that the trial court’s statement during the jury charge conference that it must consider “every contention that’s possible from the evidence” reveals that the trial court improperly “allowed the jury to speculate on matters that were not supported by substantial evidence.” However, our standard of review is not whether the requested instructions are supported by *substantial* evidence, but, rather, “whether [they are] supported by *the* evidence.” *Goins*, 258 N.C. App. at 237 (emphasis added).

In response, Defendant argues that, from the facts, “multiple inferences regarding [Plaintiff’s] actions could [] be drawn therefrom by a reasonable person such that each contention was not only applicable for the jury’s consideration but necessary.” *See Everhart v. Le Brun*, 52 N.C. App. 139, 142 (1981) (holding that when the evidence presents permissible inferences in resolving conflicting contentions by the parties, it is the jury’s role, not the court’s role, to make such inferences) (citing *Broadway v. King-Hunter, Inc.*, 236 N.C. 673 (1953)).

We have previously addressed sufficiency of the evidence as it pertains to the issue of contributory negligence:

In determining the sufficiency of the evidence to justify submission of contributory negligence, we consider [the] defendant’s evidence in the light most favorable to her, with all reasonable inferences therefrom, and disregard [the] plaintiff’s evidence except to the extent favorable to [the] defendant. *Jones v. Holt*, 268 N.C. 381 (1966). Evidence which merely raises a conjecture as to [the] plaintiff’s negligence will not support an instruction. *Id.* However, since negligence usually involves issues of due care and reasonableness of actions under the circumstances, it is especially appropriate for determination by the jury. *See Haddock v. Smithson*, 30 N.C. App. 228, *disc. rev. denied*, 290 N.C. 776 (1976). In “borderline cases,” fairness and judicial economy suggest that courts should decide in favor of submitting issues to the jury. *Cunningham v. Brown*, 62 N.C. App. 239, *disc. rev. denied*, 308 N.C. 675 (1983). These policies ought to apply especially where the subject matter is particularly familiar to lay jurors, as in this case.

Radford v. Norris, 74 N.C. App. 87, 88-89, *disc. rev. denied*, 314 N.C. 117 (1985) (cleaned up). Thus, our inquiry is whether the evidence, viewed in the light most

favorable to Defendant, supported submission of each of the six contentions of contributory negligence to the jury. Defendant contends that “each of the contentions of contributory negligence are derived from direct and circumstantial evidence as well as reasonable inferences based on the facts of the Accident as proffered by [Plaintiff] and [Defendant].”

At trial, Defendant testified, in pertinent part, as follows:

When I got closer to [the traffic light] finally, I was either the second or third car back. I just remember there was a light colored vehicle in front of me. I could see the other cars stopped along the lanes for the oncoming traffic. And then when we had the green arrow [to turn left] the cars in front of me started to move and so I proceeded to follow those cars through the intersection.

When I got to the farther side of the intersection, I felt a sudden impact on my passenger side. At that point, of course, the car just stopped.

....

[A]t the time before the accident I didn't know but I recall seeing a Honda Civic in [the] right-most turn lane.

....

[W]hen I was sitting at the traffic light I saw a Honda vehicle in the right-hand lane. When I came out of my car after the accident, I saw a Honda vehicle that had collided with my car. And because the path of that vehicle matched up with the car that was sitting there, I made the connection that that was [Plaintiff] . . . that that was her vehicle.

On cross-examination, the following exchange occurred between Plaintiff's trial counsel and Defendant:

[Plaintiff's counsel:] You weren't going very fast yourself, is that right?

[Defendant:] Right.

[Plaintiff's counsel:] And the last time you saw [Plaintiff's] car, her car was stopped, correct?

[Defendant:] Yes.

[Plaintiff's counsel:] So can you explain the force of this impact from a stopped vehicle as you're starting a turn at an intersection?

[Defendant:] Yeah, I can't speak to what was or was not done. I can guess that maybe somebody started to make a right turn when they thought they could turn right on red and couldn't, I don't know.

The trial court properly concluded that, in the light most favorable to Defendant, sufficient evidence—including Defendant's own testimony—existed to justify the submission of each of Defendant's six contentions of contributory negligence to the jury because the jury could reasonably infer any of these contentions from the facts presented by both parties at trial.

CONCLUSION

The trial court did not err by denying Plaintiff's motions for directed verdict and JNOV. Furthermore, the trial court did not abuse its discretion by submitting Defendant's six contentions of contributory negligence to the jury, where the evidence presented at trial and reasonable inferences therefrom could support a finding of contributory negligence based on any of the six contentions.

AFFIRMED.

STROUPE V. WOOD

Opinion of the Court

Judges STROUD and FLOOD concur.

Report per Rule 30(e).