Circuit Court for Baltimore City
Case No. 24-C-15-001986

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 01288

September Term, 2016

JONATHAN BAILEY, et ux.

v.

CHARLES BERMAN, et al.

Meredith,
Berger,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: October 5, 2017

This appeal arises out of a motor vehicle accident in which the Appellant, Jonathan Bailey, suffered personal injuries. Bailey challenges the circuit court's denial of his motion for judgment notwithstanding the verdict on the grounds that the court improperly submitted the issue of his contributory negligence to the jury. We affirm.

BACKGROUND

On June 21, 2013, Bailey and Charles Berman were involved in a motor vehicle collision while traveling in opposite directions on Greenspring Avenue near its intersection with Westspring Way in Baltimore County. Greenspring Avenue runs north-south with one lane in each direction. Berman was heading north and attempting to turn left from Greenspring Avenue onto Westspring Way when he struck Bailey's southbound vehicle. The impact, which occurred between the front, passenger side of Berman's vehicle and the front, driver's side of Bailey's vehicle, caused Bailey's vehicle to flip. Bailey suffered significant injuries, including two broken femurs. Bailey and his wife brought suit against Berman in the Circuit Court for Baltimore City alleging negligence and loss of consortium.

During the three-day jury trial, the primary issue concerned whether Bailey's speed contributed to the accident. Greenspring Avenue has a speed limit of 40 miles per hour. Bailey testified that he believed he had been driving 45 miles per hour, but admitted that he typically drove with the rate of traffic and did not "pay attention" to his speedometer.

Berman, on the other hand, contended that Bailey's actual speed was much higher and that his inattention to his speedometer contributed to the accident. He supported this argument first with his own testimony, and then by calling an accident reconstruction

engineer, whom the court accepted as an expert witness. The expert presented the jury with a series of calculations and a computer-simulated model of the accident, both of which showed that Bailey was likely traveling at a rate of at least 60 miles per hour. Both Bailey and Berman testified that when they first noticed the other's vehicle, it appeared to be at least 100 yards away. Based on speed and distance calculations, the expert opined that if Bailey had been traveling at the speed limit, Berman would have safely cleared the intersection before Bailey reached the point of the collision, and the accident would not have occurred. From these facts, the expert concluded that Bailey's "excessive speed contributed to the crash."

At the close of evidence, Bailey moved for judgment, arguing that Berman's failure to yield the right of way to Bailey constituted negligence as a matter of law, and that even if Bailey had been speeding, it did not relieve Berman of the duty to yield to an oncoming vehicle. Berman opposed the motion and requested the court to instruct the jury on contributory negligence, arguing that "the uncontradicted evidence is that Bailey's speed … was a contributing factor to the accident" and that Bailey should therefore be barred from recovery. The court concluded that Berman had presented sufficient evidence for the jury to consider contributory negligence, and instructed the jury accordingly.

The jury returned a verdict finding Berman negligent but also finding that Bailey was contributorily negligent, and was therefore barred from recovery. The next day, Bailey filed a Motion for Judgment Notwithstanding the Verdict arguing that the circuit court

should not have instructed the jury on contributory negligence. The circuit court denied Bailey's motion, and Bailey timely noted this appeal.

DISCUSSION

The sole issue presented for review in this case is whether the circuit court properly submitted the issue of Bailey's contributory negligence to the jury.

We review a trial court's denial of a motion for judgment notwithstanding the verdict ("JNOV") for legal correctness. *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 464 (2013). A trial court should grant a motion for JNOV when "the evidence at the close of the case, taken in the light most favorable to the nonmoving party, does not legally support the nonmoving party's claim or defense." *Gallagher v. H.V. Pierhomes, LLC*, 182 Md. App. 94, 101 (2008) (citing *Jacobs v. Flynn*, 131 Md. App. 342 (2002)). We will affirm a circuit court's denial of a motion for JNOV if there was "any legally relevant and competent evidence, however slight, from which the jury could rationally find as it did." *Jacobs v. Flynn*, 131 Md. App. 342, 353 (2002). Here, if Berman presented adequate evidence for a jury to find that Bailey's own negligence contributed to the accident, then the circuit court properly submitted that question to the jury, and the jury's verdict finding Bailey contributorily negligent will not be disturbed.

In Maryland, a plaintiff is completely barred from recovery if he or she is found to have been contributorily negligent. *Myers v. Bright*, 327 Md. 395 (1992). Contributory negligence is defined as a breach of the duty to observe ordinary care for one's own safety,

which proximately causes an accident. *Thomas v. Panco Mgmt. of Maryland, LLC*, 423 Md. 387, 417 (2011) (citations omitted). To establish a *prima facie* case of contributory negligence, a defendant bears the burden of showing that the plaintiff's negligence was a proximate cause of the accident. *Rosenthal v. Mueller*, 124 Md. App. 170, 175 (1998). Thus, Bailey's own negligence as to his excessive speed would not bar his right to recover under these circumstances unless it was a "direct and proximate cause of the accident." *Id.* (quoting *Friedman v. Hendler Creamery Co.*, 158 Md. 131 (1930)).

It is well settled that when legally sufficient evidence of a party's negligence exists, proximate causation is typically a question to be determined by a jury. *Fowler v. Smith*, 240 Md. 240, 246 (1965) ("Maryland has gone almost as far as any jurisdiction that we know of in holding that [even] meager evidence of negligence is sufficient to carry the case to the jury."); *Mallard v. Earl*, 106 Md. App. 449, 461 (1995) (holding that if the plaintiff could have avoided the accident by exercising due care, the issue of whether the plaintiff's negligence was a proximate cause of the accident should be submitted to the jury); *Dennard v. Green*, 335 Md. 305, 319 (1994) ("[T]he jury should determine whose negligence was the proximate cause of the accident when evidence sufficient to present that issue has been adduced."). Evidence that is legally sufficient to warrant a contributory negligence instruction for the jury must amount to "more than surmise, possibility, or conjecture that such other party has been guilty of negligence." *Fowler*, 240 Md. at 247. The circuit court, therefore, properly submitted the question of Bailey's contributory negligence to the jury

so long as Berman presented evidence amounting to more than just conjecture that Bailey's speed proximately contributed to their collision.

Bailey contends that no legally sufficient evidence existed in this case to generate a jury question on his contributory negligence. He argues that, even if there was credible evidence of his excessive speed, as a matter of law, speed alone cannot constitute negligence unless it is a proximate cause of the accident. In support of his argument, Bailey offers examples from several cases in which a party's excessive speed did not warrant a contributory negligence instruction. *See Poteet v. Sauter*, 136 Md. App. 383 (2001); *Myers v. Bright*, 327 Md. 395 (1992); *Johnson v. Dortch*, 27 Md. App. 605 (1975). None of the cases cited by Bailey, however, have facts analogous to this case, nor do they stand for the blanket provision that speed alone is insufficient to generate a question of contributory negligence. For example, in *Myers v. Bright*, the Court of Appeals held that the plaintiff's speeding did not amount to contributory negligence because even if she had been driving at the speed limit, it still would have been impossible for her to avoid the accident. 327 Md. at 395. A driver's excessive speed, however, *can* be a proximate cause of an accident where the speed prevents him or her from taking action to avoid the collision. *Myers*, 327 Md. at 408 (concluding if "there was evidence that [Myers] could have swerved or stopped in time had she been driving at or under the speed limit, this case might have gone to the jury."); *Kopitzki v. Boyd*, 277 Md. 491, 496 (1976) (holding evidence of favored driver's excessive speed was properly submitted to the jury to consider whether favored driver

"could have avoided the accident if he had been operating lawfully and with due care"); *Dean v. Redmiles*, 280 Md. 137, 161 (1977) ("[I]f the evidence before the court is sufficient to support a conclusion that the speed of the favored driver was a proximate cause of the accident, then this becomes a jury question."); *Dennard v. Green*, 335 Md. 305, 323 (1994) (holding that when exceeding the speed limit prevents a driver from avoiding an accident, a jury should determine whether that speed was a proximate cause of the accident).

Here, based on the evidence adduced at trial by Berman's expert witness and through testimony of the parties, there was sufficient evidence for the jury to consider Bailey's negligence and whether it was a proximate cause of the accident. Berman's expert witness testified that, at the time Berman began his left turn, if Bailey had been driving the speed limit, Berman would have safely cleared the intersection, but "because [Bailey] was going 60 miles an hour he got to the accident location quicker and impacted … Berman during the middle of his turn." The expert also concluded that when Berman started to turn, Bailey's vehicle was approximately 300 feet away which, under normal speed conditions, would have allowed Berman to complete his turn prior to any impact. Additionally, Berman explained that when he initiated his turn, Bailey's vehicle was "better than a football field" away, and that Berman "had made a left-hand turn with cars at that distance thousands of times over the years." Altogether, Berman's evidence amounted to more than "surmise, possibility, or conjecture" that Bailey's speed proximately caused the accident. *Fowler*,

240 Md. at 247. Berman's evidence was therefore legally sufficient to send the question of Bailey's contributory negligence to the jury.

In conclusion, Berman presented legally sufficient evidence from which a jury could conclude that that Bailey's own negligence proximately caused the accident. Therefore, the circuit court properly submitted the issue of contributory negligence to the jury and we affirm the circuit court's denial of Bailey's motion for judgment JNOV.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.