

Circuit Court for Prince George's County
Case No. CAL17-15322

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3420

September Term, 2018

JAMES ROBISON

v.

BOBBY SIMMS-OFFUTT

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: February 14, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Bobby Simms-Offutt, appellee, filed, in the Circuit Court for Prince George’s County, a lawsuit against Prince George’s County Police Officer James Robison and Prince George’s County, appellants, claiming negligence. Following a jury trial, the jury found in favor of Mr. Simms-Offutt and awarded him damages. In this appeal, appellants present a single question for our review:

Did Mr. Simms-Offutt present sufficient evidence at trial to establish a *prima facie* claim of negligence?

For reasons to follow, we hold that the evidence was sufficient, and we affirm the judgment of the circuit court.

BACKGROUND

Mr. Simms-Offutt filed his negligence suit against appellants after he, a pedestrian, was struck by a vehicle driven by Officer Robison. At trial, as part of Mr. Simms-Offutt’s case-in-chief, Officer Robison testified that, at approximately 8:00 p.m. on May 23, 2016, he was on duty and driving his patrol vehicle in the left-hand lane of Pennsylvania Avenue, a two-lane highway, heading westbound in response to a “routine call.”¹ Officer Robison explained that it was not “an emergency call” and that he had not activated his emergency lights. Officer Robison testified that the posted speed limit was 45 miles per hour and that he was traveling between 45 and 55 miles per hour. Officer Robison also testified that “it was raining” and that “the roads were wet.”

¹ Officer Robison testified that, prior to the accident, he was heading “northbound” on Pennsylvania Avenue. That section of highway actually runs east-west.

Officer Robison testified that, as he approached the intersection of Pennsylvania Avenue and Alton Street/Shadyside Avenue, he observed a “silver vehicle” idling in the left turn lane of the intersection. At the time, the light to make a left-hand turn and head southbound on Shadyside Avenue was red, whereas the light to continue westbound along Pennsylvania Avenue was green. Officer Robison testified that the silver vehicle was the only vehicle in the left-turn lane and that it was “all the way up front.”

Officer Robison testified that, as he got closer to the intersection, he observed the silver vehicle “make a right-hand turn” from the left-turn lane into the left-hand travel lane of Pennsylvania Avenue. Officer Robison testified that, at the time, he “was expecting them to just get back out in the fast lane of traffic to continue going [west].” Upon making this observation, Officer Robison “began” to apply the brakes and move his vehicle to the right-hand travel lane. At the time, Officer Robison’s vehicle was “like 300 feet” away from the intersection.

Officer Robison testified that, as he was switching from the left-hand lane to the right-hand lane, the silver vehicle crossed over the right-hand lane of Pennsylvania Avenue and turned right, heading northbound on Alton Street. At the same time, Officer Robison “applied the brakes” and “began to skid.” Still having “a little bit of control” over his vehicle, Officer Robison maneuvered the skidding vehicle such that he managed to “miss all the vehicles that were in traffic” around the intersection. Ultimately, Officer Robison’s vehicle went over a median, travelled through the intersection, and struck two telephone

poles that were situated off the road in a grassy area at the northwest corner of Pennsylvania Avenue and Alton Street.

Shortly thereafter, Officer Robison was informed that a pedestrian had been struck during the accident. Officer Robison testified that, by that time, the silver vehicle had left the scene.

Sophia Bond testified that she witnessed the accident involving Officer Robison's vehicle. Ms. Bond explained that, just prior to the accident, she had driven her vehicle "down Alton Street" and had stopped at the traffic light at the intersection of Alton Street and Pennsylvania Avenue. Ms. Bond explained that, as she was waiting for the light to turn green so that she could make a left-hand turn heading eastbound on Pennsylvania Avenue, she observed a "gray car," traveling at "a high rate of speed," come around the "right-hand corner" of Pennsylvania Avenue and Alton Street and continue along Alton Street. Approximately "three seconds later," Ms. Bond observed Officer Robison's police cruiser come "around the corner," go "out of control," and pass behind her vehicle. Ms. Bond then observed Officer Robison's vehicle strike a telephone pole and come to rest, upside down, in a nearby ravine. Ms. Bond testified that Officer Robison's vehicle was moving "at a high rate of speed." Ms. Bond also testified that, when she first observed the "gray car," it was "in the right-hand lane on Pennsylvania Avenue."

Mr. Simms-Offutt testified that he was walking home from work when the accident occurred. Mr. Simms-Offutt explained that, just prior to the accident, he had exited a bus on Shadyside Avenue, walked across Pennsylvania Avenue toward Alton Street using the

designated crosswalk, and ended up in a grassy area near a telephone pole at the corner of Pennsylvania Avenue and Alton Street. Upon reaching that area, Mr. Simms-Offutt heard a “skidding noise,” looked up, and was struck by Officer Robison’s vehicle. Mr. Simms-Offutt testified that “about three seconds” had passed between the time he observed Officer Robison losing control of his vehicle and when he was struck. Mr. Simms-Offutt testified that he was knocked unconscious by the impact and sustained multiple injuries.

On cross-examination, Mr. Simms-Offutt testified that, when he entered the grassy area where he was struck, he did not look toward Pennsylvania Avenue and did not see any “gray car.” Mr. Simms-Offutt stated that the “only car [he saw] was Officer Robison’s car lose control.”

Dr. Matthew Menet, the physician who treated Mr. Simms-Offutt following the accident, testified as to the extent of Mr. Simms-Offutt’s injuries, which included a concussion and various contusions, sprains, and strains. Dr. Menet also testified that all of Mr. Simms-Offutt’s injuries were “causally related to the injury he incurred on May 23rd, 2016.”

At the conclusion of Mr. Simms-Offutt’s case-in-chief, and again at the close of all evidence, defense counsel made a motion for judgment, arguing that Mr. Simms-Offutt did not present any evidence that appellants were negligent or that any negligence was a cause of the accident. Specifically, defense counsel maintained that the “gray car,” not Officer Robison, caused the accident and that Mr. Simms-Offutt did not present any evidence to refute that claim. The trial court denied both motions.

The trial court then instructed the jury on the relevant law concerning negligence:

The driver of a motor vehicle must use reasonable care. Reasonable care is that degree of caution and attention that a person of ordinary skill and judgment would use under similar circumstances. What constitutes reasonable care depends upon the circumstances of a particular case.

A driver of a motor vehicle has a duty to keep a proper look-out, the driver must reasonably observe traffic and other conditions that confront him or her. The driver may not operate a vehicle at a speed that is greater than reasonable and prudent under the conditions then existing.

A driver of a motor vehicle faced with a sudden or real emergency not created by the driver's own conduct must exercise reasonable care for his or her own safety and for the safety of others. The reasonableness of the driver's actions must be measured by the acts of other drivers of ordinary skill and judgment, faced on [sic] a similar, sudden, and real emergency.

The driver is not required to use the same coolness or accuracy of judgment required of a person not facing a sudden or real emergency.

Negligence is doing something that a person using reasonable care would not do or not doing something that a person using reasonable care would do. Reasonable care means that caution, attention or skill a reasonable person would use under similar circumstances.

For a plaintiff to recover damages, the plaintiff's injuries must result from and be a reasonable foreseeable consequence of the defendant's negligence. There may be more than one cause of an injury, and that is several negligent acts may work together to cause the injury. Each persons whose negligent act is a substantial factor in causing an injury is responsible.

There can be additional causes for injuries that occur after the defendant's conduct. If a later event or act could have been reasonably foreseen, the defendant is not excused for the responsibility for an injury caused by the defendant's negligence. But if an event or act is so extraordinary that it was not reasonably foreseeable, the defendant's conduct is not a legal cause of the injury.

* * *

A person may not drive a vehicle on a highway at a speed that, with regard to the actual and potential danger existing, is more than which is reasonable and prudent under the circumstances. At all times, the driver of the vehicle on a highway shall control the speed of the vehicle as necessary to avoid colliding with any person or any vehicle or other conveyance that in compliance with legal requirements and a duty of all persons to use due care is on or entering the highway.

Consistent with the requirement of this section, the driver of a vehicle shall drive at an appropriate reduced speed when any special danger exists as to pedestrians or other traffic or because of weather or highway conditions.

The person is guilty of negligence if the person drives a motor vehicle in a careless or imprudent manner that endangers any property or life or a person of any individual.

The mere happening of an accident, even [with] resulting harm, considered outside of the surrounding facts and circumstances, does not involve any proof of negligence.

The jury returned a verdict in favor of Mr. Simms-Offutt and awarded him damages. Appellants thereafter filed a motion for judgment notwithstanding the verdict. Appellants also filed, in the alternative, a motion for new trial. Both motions were denied. This timely appeal followed.

STANDARD OF REVIEW

“The standard of review of a question of the sufficiency of the evidence is *de novo*.” *University of Maryland Medical System Corp. v. Gholston*, 203 Md. App. 321, 329 (2012). “Evidence is legally sufficient if there is ‘some evidence, including all inferences that may permissibly be drawn therefrom, that, if believed and if given maximum weight, could logically establish all the elements necessary to prove’ plaintiff’s case.” *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 202 Md. App. 307, 333 (2011) (citing *Starke v. Starke*, 134 Md.

App. 663, 678-79 (2000)). “When determining the sufficiency of the evidence, it is imperative that we view the evidence in the light most favorable to the prevailing party below[.]” *University of Maryland Medical System Corp. v. Malory*, 143 Md. App. 327, 335-36 (2001). “In a jury trial, the quantum of legally sufficient evidence needed to create a jury question is slight.” *Gholston*, 203 Md. App. at 329.

DISCUSSION

Appellants contend that Mr. Simms-Offutt failed to present sufficient evidence at trial to sustain the jury’s verdict. Appellants maintain that no evidence was presented from which the jury could have concluded that Officer Robison either caused the accident or acted in a negligent manner as he approached the intersection on Pennsylvania Avenue. Appellants maintain, rather, that the uncontroverted evidence established that “a second vehicle, a gray automobile, wrongfully and suddenly entered [Officer Robison’s] lane of traffic,” which “caused [Officer Robison’s] police cruiser to lose control, jump the median, and strike [Mr. Simms-Offutt].” Appellants maintain, therefore, that “no reasonable jury could have reached a verdict in [Mr. Simms-Offutt’s] favor, finding Officer Robison negligent.”

“In a tort action based on allegation of negligence, the plaintiff must establish at trial (1) the duty of the defendant based on the applicable standard of care, (2) breach of that duty, (3) causation that relates that breach to the plaintiff’s injury, and (4) damages.” *Armacost v. Davis*, 462 Md. 504, 526 (2019). “In a negligence action, plaintiff, of course, has the burden of proving defendant’s negligence.” *Vito v. Sargis & Jones, Ltd.*, 108 Md.

App. 408, 417 (1996). “The burden of proof requires plaintiff to produce evidence that will permit the trier of fact to conclude that it is ‘more likely than not’ that defendant’s negligence caused plaintiff’s injuries.” *Id.* A party “cannot sustain this burden by offering a mere scintilla of evidence amounting to no more than a surmise, possibility or conjecture[.]” *Dalmo Sales of Wheaton, Inc. v. Steinberg*, 43 Md. App. 659, 686 (1979) (citations and quotations omitted). But “[n]egligence, like any other fact, can be established by the proof of circumstances from which its existence may be inferred.” *Tucker v. University Specialty Hosp.*, 166 Md. App. 50, 61-62 (2005) (citations and quotations omitted).

Duty

There can be little question that Officer Robison, as the driver of a motor vehicle on a public road, had a general duty to operate that vehicle in a safe manner such as not to injure Mr. Simms-Offutt, a pedestrian, who, according to the evidence, was lawfully standing in a grassy area at the corner of an intersection. *See Flohr v. Coleman*, 245 Md. 254, 263 (1967) (“[T]he driver of an automobile is obliged to anticipate that pedestrians may be using the public roads, and it is especially incumbent upon him to exercise reasonable care to avoid injury to pedestrians.”); *see also* Md. Code, Transp. § 21-504 (a) (“[T]he driver of a vehicle shall exercise due care to avoid colliding with any pedestrian.”). In addition, as the trial court instructed the jury, Officer Robison had a duty to use reasonable care and to keep a proper look-out while operating his motor vehicle; to operate his vehicle at a speed that was reasonable under the circumstances to avoid a collision; and

to drive his vehicle at an appropriate reduced speed when confronted with adverse weather conditions or special dangers involving pedestrians or other traffic. *See generally* Md. Code, Transp. §§ 21-801(a) and (h) (requiring drivers to drive at a reasonable speed under the circumstances and at a reduced speed “when any special danger exists as to pedestrians or other traffic or because of weather or highway conditions.”).

Breach of Duty

We likewise hold that sufficient evidence was presented to support a finding that Officer Robison breached his duty. *See Macias v. Summit Management, Inc.*, 243 Md. App. 294, 317 (2019) (“A breach occurs when a party fails to discharge the duty owed.”). That evidence, when viewed in a light most favorable to Mr. Simms-Offutt, showed that Officer Robison drove his vehicle in excess of the posted speed limit during rainy weather conditions, all while approaching an intersection busy with other vehicles and at least one pedestrian. *See Mayor and City Council of Baltimore v. Stokes*, 217 Md. App. 471, 499 (2014) (noting that it is not “unreasonable to expect drivers approaching intersections to slow down and exercise due diligence regarding approaching vehicles.”). There was evidence that Officer Robison, while speeding toward the intersection on wet roads, caused his vehicle to skid several hundred feet, careen through the intersection, strike and sever a telephone pole, strike a pedestrian, Mr. Simms-Offutt, who was legally standing on the side of the road, and finally come to a stop, upside down, in a ravine. *See Trusty v. Wooden*, 251 Md. 294, 298 (1968) (“[S]kidding may be evidence of negligence if it appears that it was caused by a failure to take reasonable precautions to avoid it, when the conditions at

the time make such a result probable in the absence of such precaution.”). From that evidence, a reasonable inference can be drawn that Officer Robison did not operate his vehicle at a speed that was reasonable under the circumstances or drive his vehicle at an appropriate reduced speed when confronted with adverse weather conditions or special dangers involving pedestrians or other traffic.

To be sure, Officer Robison testified that his skid through the intersection was a direct result of the “gray car” that crossed in front of him on Pennsylvania Avenue. Even if we accept that testimony as true, we nevertheless remain convinced that sufficient evidence was adduced that Officer Robison breached his duty. Officer Robison may have been faced with a sudden emergency presented by the gray car’s movement, but that is one of the circumstances under which the reasonableness of his actions should be weighed. The weighing is for the factfinder. *See Armstrong v. Johnson Motor Lines, Inc.*, 12 Md. App. 492, 501 (1971) (“Whether [a person] was negligent in the action he took in the face of the emergency, or whether he used reasonable care under the circumstances is ordinarily a jury question.”).

Causation

Although a person is considered negligent upon the breach of a duty, that breach is actionable only if it is a proximate cause of the injury. *Perry v. Asphalt & Concrete Services, Inc.*, 447 Md. 31, 51-52 (2016). “To establish that proximate cause existed, the plaintiff must show some reasonable connection between the defendant’s alleged negligence and the injury suffered by the plaintiff.” *Taylor v. Feissner*, 103 Md. App. 356,

366 (1995). Nevertheless, “[t]he question for the jury is simply whether the defendant was ‘a’ cause of injury.” *Martinez ex rel. Fielding v. The Johns Hopkins Hosp.*, 212 Md. App. 634, 669 (2013). That is, “[t]he fact that another individual also tortiously contributes to the plaintiff’s injury does not alter the independent, concurring tortfeasor’s responsibility for the entirety of the injury which he or she actually and proximately caused.” *Id.* (citing *Consumer Protection Division v. Morgan*, 387 Md. 125, 182 (2005)). Such causation “may be found if it is ‘more likely than not’ that the defendant’s conduct was a substantial factor in producing the plaintiff’s injuries.” *Pittway Corp. v. Collins*, 409 Md. 218, 244 (2009). Moreover, “[t]he existence or absence of proximate cause rests upon principles of common sense in light of the surrounding facts and circumstances.” *Taylor*, 103 Md. App. at 366.

Appellants rely on cases holding that mere adjectival descriptions of speed, standing alone, are insufficient. See *Fowler v. Smith*, 240 Md. 240 (1965) and *Jones v. Baltimore Transit Co.*, 211 Md. 423 (1956). Those cases are readily distinguishable. As noted, there was evidence that Officer Robison drove his vehicle in the rain and in excess of the speed limit, such that when faced with the presence of another car in the road, he was unable to prevent his car from skidding several hundred feet, careening through an intersection, and colliding with Mr. Simms-Offutt, who was lawfully standing in a grassy area on the side of the road. Officer Robison’s conduct does not have to be the sole proximate cause of the accident. It is sufficient if it is a proximate cause. Thus, even if the jury accepted Officer Robison’s testimony that the incident began with the illegal actions of the gray car,

sufficient evidence was produced to establish that Officer Robison’s negligence was a proximate cause of Mr. Simms-Offutt’s injuries.

Damages

Dr. Matthew Menet, the physician who treated Mr. Simms-Offutt following the accident, testified that Mr. Simms-Offutt’s injuries were “causally related to the injury he incurred on May 23rd, 2016,” the date of the accident. Thus, sufficient evidence was presented to establish the element of damages.

Conclusion

In sum, Mr. Simms-Offutt presented legally sufficient evidence to support the jury’s finding that appellants were negligent and that that negligence caused Mr. Simms-Offutt’s injuries. Accordingly, we affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**