Circuit Court for Frederick County
Case No. C-10-CV-19-00083

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 166

September Term, 2022

SIERRA L. ISON

v.

JOSEPH L. JASKIEWICZ, ET AL.

Leahy,
Reed,
Tang,

JJ.

Opinion by Reed, J.

Filed: February 27, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On October 30, 2016, Joseph L. Jaskiewicz ("Appellee") struck Sierra L. Ison ("Appellant") with his car while Appellant was crossing the street. Law enforcement gave Appellee a field sobriety test and breathalyzer at the scene of the incident. Appellee was arrested, charged, and pled guilty to driving while intoxicated (DWI).

Appellant filed a civil lawsuit against Appellee in the Circuit Court for Frederick County on October 30, 2019. On December 29, 2021, after discovery was completed, Appellee filed a Motion for Summary Judgment asserting that Appellant was contributorily negligent. Appellant filed an opposition to the Motion for Summary Judgment on January 13, 2022, and Appellee filed a response four days later. After an oral hearing on March 11, 2022, the circuit court entered an Order granting the Appellee's Motion for Summary Judgment stating Appellant was contributorily negligent.

Appellant timely filed an appeal on March 24, 2022. In bringing her appeal, Appellant presents one question for appellate review, rephrased for clarity:[1]

I. Did the circuit court err in granting Appellee's Motion for Summary Judgment?

For the following reasons, we answer in the affirmative, reverse, and remand this case.

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[1] Appellant presented the following question for this Court's review in her Brief:

I. Did the Circuit Court err in granting summary judgment to Appellee Joseph L. Jaskiewicz?

FACTUAL & PROCEDURAL BACKGROUND

On October 30 2016, Appellee and Heather Miler Appellee consumed alcoholic beverages.[2] Appellee was driving his Honda Civic westbound on West Patrick Street by the West Ridge Shopping Center in Frederick County. Just after passing the intersection of Hillcrest Drive, Appellee "wound up hitting something. [Appellee] wasn't sure what it was because [Appellee] didn't see anything. [Appellee] pulled over, and then [Appellee] saw that it was a person."

Appellee struck Appellant while she was walking home from work and attempting to cross West Patrick Street. The impact of the crash cracked the Appellee's windshield. Appellant has no recollection of the accident. Ms. Miler was driving behind the Appellee when Appellee struck Appellant with his vehicle. Law enforcement came to the scene, conducted a field sobriety test and a breathalyzer test,[3] and Appellee was arrested on the scene. Appellee was charged with driving while intoxicated (DWI) and later pled guilty.

Three years later, Appellant filed a suit alleging Appellee's negligence in the collision in the Circuit Court for Frederick County, Maryland on October 30, 2019.[4] The parties engaged in discovery, including interrogatories, document production, designation of expert witnesses, and depositions of the parties, two non-party witnesses, and an expert

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[2] Appellee testified that he was drinking unmixed rum, chilled on ice.

[3] Appellee stated in his deposition that a breathalyzer test taken at the police station indicated that he had 0.6 blood alcohol concentration.

[4] Under Maryland Courts & Judicial Proceedings § 5-101, the statute of limitations bars civil claims when more than three years have elapsed from the cause of action. Thus, the suit was timely filed.

witness in reconstructing the scene, Glen Reuschling. During his deposition, Appellee testified that the speed limit on West Patrick Street was forty-five miles per hour, and he was driving below the speed limit at approximately forty miles per hour, which was confirmed by Ms. Miler and Mr. Reuschling. Appellee and Ms. Miler, in their deposition, stated that Appellee went through the intersection while the traffic signal was green. Finally, another witness (Michael Metz, who did not witness the accident) testified: 1) that there was a marked crosswalk on the east side of the intersection, but no crosswalk west of the intersection where Appellant was crossing; and 2) Appellant was wearing all black at nighttime.

Appellant stated that it was her habit to walk home in the crosswalk after work and her shoe was in the unmarked legal cross walk. Appellant's right shoe was found thirteen feet, three inches from the left shoulder of West Patrick Street. Appellant's left shoe was found fifty-nine feet, eight inches away from her right shoe. Appellant's hat, coat, and backpack were found close by Appellant's left shoe. Appellant's cellphone was found located about half-way between the Appellant's left and right shoe – about 30 feet away from both.

After discovery was completed, Appellee filed a Motion for Summary Judgment on December 29, 2021, where Appellee "denie[d] that he was in any way negligent and further maintains the occurrence was caused solely by the negligence of [Appellant]." Appellee asserted that the Appellant was contributorily negligent because:

1. [Appellant] has no memory of the occurrence;
2. [Appellee] was driving under the speed limit;
3. [Appellee] entered and went through the intersection on a green traffic

signal;

4. [Appellant] was not crossing the street in a crosswalk even though there was one available.
5. The accident took place past the intersection of West Patrick Street and Hillcrest Drive.

Appellee also cited the witness's testimony that Appellant was wearing all dark clothing. Appellee then concludes that, "[t]he undisputed facts demonstrate that as a matter of law [Appellee] was not negligent and that the occurrence was caused solely by the negligence of [Appellant]."

Appellant filed an Opposition to the Motion for Summary Judgment on January 13, 2022 arguing that the Appellee's credibility and recollection, because he was driving drunk, is "suspect, and a jury could easily find them not credible." Moreover, Appellant stated that a reasonable jury could conclude that Appellee was not using reasonable care when driving while intoxicated.

Appellee filed a Response to the Opposition on January 17, 2022. In his response, Appellee rebukes Appellant's argument that Appellant could have somehow been found negligent because he was driving while intoxicated. Appellee reasserted that Appellant was contributorily negligent.

After an oral hearing on March 11, 2022, the circuit court entered an Order granting Appellee's Motion for Summary Judgment on March 16, 2022. The circuit court stated that there was no evidence to the contrary that the Appellee was driving under the speed limit and went through a green traffic signal. The circuit court also stated that there was no evidence that the Appellee was driving erratically. The circuit court granted summary judgment in Appellee's favor, holding the Appellant was contributorily negligent. The

circuit court cited that Appellant "left a place of safety, tried to cross against the light, wearing all dark, or black clothing as one of the witnesses . . . has said." The circuit court then concluded:

> based on the arguments, and those facts which have been presented mainly by depositions, although there was the affidavit, I am going to find as a matter of law, that the plaintiff is and was contributorily negligent. That is based on the totality of the circumstances and these specific facts has been presented to me, which are not disputed in this regard. And I respectfully submit that ordinary and reasonable minds would not differ in this case and thus I grant summary judgment on behalf of the defendant and find contributory negligence as a matter of law.

Appellant timely filed a Notice of Appeal on March 24, 2022.

DISCUSSION

A. Parties' Contentions

Appellant contends that the circuit court erred in granting the Appellee's Motion for Summary Judgment because the circuit court, "impermissibly weighed evidence in granting summary judgment, which is the province of the jury, and disregarded evidence in [Appellant's] favor." Appellee, in response, argues that the issue before the Court is not whether the Appellant was negligent, but whether the Appellant was contributorily negligent. Appellee's theory of contributory negligence is based upon his argument that Appellant was wearing dark clothes while crossing the street in a place that is not specifically designated as a crosswalk. Appellee also cites other facts, such that the Appellee was driving under the posted speed limit, Appellee went through the intersection on a green traffic signal, and the location of the accident. Appellee concludes that the "undisputable" facts show that Appellee was not negligent, and that the occurrence was

caused solely by the Appellant's negligence.

B. Analysis

I. Disputes of Material Fact

Summary judgment is proper where the circuit court determines that there are no genuine disputes as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501. Thus, appellate review of an order granting summary judgment is a two-step process.

The first step is to decide whether there were genuine disputes of material fact before the circuit court. *Koste v. Town of Oxford*, 431 Md. 14, 24-25 (2013); *Dashiell v. Meeks*, 396 Md. 149, 163 (2006). We apply the *de novo* standard of review. *Koste*, 431 Md. at 25; *Dashiell*, 396 Md. at 163. Any factual dispute of evidence is to be resolved in the version of the evidence that is most favorable of the non-moving party. *Cador v. Yes Organic Market Hyattsville Inc.*, 253 Md. App. 628, 653 (2022). If a fair-minded jury could return a verdict for the opposing party, then the circuit court should not grant summary judgment. *Id.* at 739. Even if the facts are undisputed, should they be susceptible to inferences that support opposition to the motion, the grant of summary judgment is improper. *Williams v. Mayor & City Council of Baltimore,* 359 Md. 101, 114–15 (2000).

In this case, Appellee was charged with a DWI for being intoxicated while driving his vehicle and ultimately hitting the Appellant so hard that the impact of the crash cracked the Appellee's windshield and Appellant's shoes were found sixty feet away from one another. These facts leave an important issue for the jury to resolve concerning where the Appellant was when she was stuck by the vehicle. The force of the impact could have

thrown the Appellant's clothing and shoes away from their original landing place. The final resting place of the clothing and shoes does not indicate the one and only place that the Appellant could have been standing when the vehicle struck her. Respectively the items were thirteen, fifty-nine, and thirty feet away from each other. Just after passing the intersection of Hillcrest Drive, Appellant "wound up hitting something. [Appellant] wasn't sure what it was because [Appellant] didn't see anything. [Appellant] pulled over, and then [Appellant] saw that it was a person." A jury could find that the Appellee's testimony was unreliable concerning where he was when he struck the object that he could not identify and the speed that he was traveling. Appellant has no recollection of the accident. However, there is no doubt that the Appellant was struck by the vehicle and there is some evidence that could allow for the issue of contributory negligence to be decided in favor of the Appellant. It is not apparent to this court that wearing dark clothing at night is negligent or contributorily negligent.

Based on the facts above, a fair-minded jury could possibly return a verdict for the opposing party. Thus, the motion for summary judgment should have been denied. However, the circuit court, instead of resolving factual disputes most favorably for the non-moving party as is required in summary judgment cases, *see Cador*, 253 Md. App. at 655, instead inferred from the facts presented by Appellee that Appellant was contributorily negligent. As further explained below, this conclusion was erroneous.

II. Judgment as a Matter of Law

In the second step of analysis for reviewing the grant of a motion for summary judgment, appellate courts focus on whether the trial court's grant of the motion was legally correct. *Barclay v. Briscoe*, 427 Md. 270, 281 (2012). The parameter for appellate review is determining "whether a fair-minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial . . . ." *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152-53 (2008) (citations omitted). Moreover, an appellate court ordinarily may uphold the grant of summary judgment only on the grounds relied on by the trial court. *See Ashton v. Brown*, 339 Md. 70, 80 (1995) (citations omitted).

The circuit court granted the summary judgment on the basis of contributory negligence, stating that "based on the arguments, and those facts which have been presented mainly by depositions, although there was the affidavit, I am going to find as a matter of law, that the plaintiff is and was contributorily negligent." However, "the question of whether a plaintiff was contributorily negligent or assumed the risk is ordinarily one that should be answered by the finder of fact, rather than the court." *Cador,* 253 Md. App. at 651; *see also Kasten Constr. Co. v. Evans*, 260 Md. 536, 541 (1971) ("Contributory negligence, like assumption of risk, is ordinarily a question for the jury."); *Driver v. Potomac Elec. Power Co.*, 247 Md. 75, 79 (1967) ("[U]sually it is neither advisable or practicable to enter a Summary Judgment in a tort action."); *Robertson v. Shell Oil Co.*, 34 Md. App. 399, 403 (1977) ("As a general proposition, questions of primary and contributory negligence are for the jury."); *Diffendal v. Kash and Karry Serv. Corp.*, 74

Md. App. 170, 173 (1988) ("Ordinarily, contributory negligence is a question for the jury."). This Court further explained:

> juries may properly make findings of contributory negligence as a matter of fact but judges should be reluctant to make rulings with respect to contributory negligence as a matter of law. This Court has consistently been in full agreement with that adjudicative assignment.

Cador, 253 Md. App. at 651. Because more than one inference from the given set of facts may be reasonably drawn and juries generally decide, as fact finders, whether a plaintiff was contributorily negligent, this Court holds that the Circuit Court for Frederick County erroneously granted the Appellee summary judgment. Accordingly, we reverse and remand.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED AND REMANDED; COSTS TO APPELLEE.