UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0518

September Term, 2014

ROBERT CLARK, et ux.

v.

KATHLEEN DULANEY

Eyler, Deborah S.,
Meredith,
Rodowsky, Lawrence, F.
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: December 21, 2015

The incident that gave rise to this case was a collision between a motorcycle and a minivan. The operator of the motorcycle, Robert Clark, appellant, sued the operator of the minivan, Kathleen Dulaney, appellee, alleging that Dulaney's negligence was the cause of the accident. After the Circuit Court for Baltimore County entered judgment for costs against the driver of the motorcycle in accordance with the jury's finding that there was no negligence on the part of the driver of the minivan, Clark noted this appeal wherein he asserts that the trial court erred in denying his motion for judgment. The motion had urged the court to enter judgment in favor of appellant as to liability based upon appellant's argument that, as a matter of law, appellee's negligence was the sole proximate cause of appellant's injuries. The motion also asserted that the issue of contributory negligence should not be submitted to the jury. The court denied the motion, and the jury returned a verdict on issues, finding that the accident was not caused by the negligence of appellee. This appeal followed.[1]

QUESTIONS PRESENTED

Appellant presents two questions for our consideration:

1. Did the trial court err in denying [appellant's] motion for judgment that the [appellee] was negligent as a matter of law?

2. Did the trial court err in denying [appellant's] motion for judgment that the [appellant] was not contributorily negligent as a matter of law?

We answer "no" to the first question, which obviates the need to answer the second question, and we affirm the judgment of the Circuit Court for Baltimore County.

[1] Although Robert Clark's wife, Elizabeth Clark, was also a plaintiff, and is therefore also an appellant, because there are no issues raised on appeal with respect to her claim for consortium, we shall follow the parties' approach of referring to Mr. Clark in this opinion as the only appellant.

STANDARD OF REVIEW

Motions for judgment are governed by Maryland Rule 2-519, which provides, in pertinent part:

> (a) A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. . . .
>
> (b) When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. **When a motion for judgment is made under any other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.**

(Emphasis added.)

In *Nationwide Mut. Fire Ins. Co. v. Tufts*, 118 Md. App. 180, 189 (1997), we discussed the standard for appellate review of the denial of a motion for judgment:

> In reviewing a trial court's denial of a motion for judgment in a jury trial, we must conduct the same analysis as the trial court, viewing all evidence in the light most favorable to the non-moving party. *Martin v. ADM Partnership*, 106 Md. App. 652, 657, 666 A.2d 876 (1995), *cert. granted, ADM Partnership v. Martin*, 341 Md. 719, 672 A.2d 659 (1996). **We may affirm the lower court's denial of the motion if there is any evidence, no matter how slight, legally sufficient to generate a jury question**. *Washington Metro. Area Transit Auth. v. Reading*, 109 Md. App. 89, 94, 674 A.2d 44 (1996).

(Emphasis added.)

Accordingly, the dispositive question is whether a jury, considering the evidence and inferences in a light most favorable to appellee, was obligated, as a matter of law, to find that appellee's negligence was a proximate cause of the collision. Because the evidence did not

compel that conclusion, the trial judge did not err in denying appellant's motion for judgment.

FACTS AND PROCEDURAL HISTORY

This case arose from a motor vehicle accident that took place on Rolling Road in Catonsville on the afternoon of May 5, 2010. Appellant was injured when his motorcycle struck appellee's minivan. The evidence at trial established that, at the location of the collision, Rolling Road is a two-lane road, with one single lane for northbound travel and one single lane for southbound travel. The roadway is divided by a double yellow line down the center. The outer borders of each travel lane are marked with a solid white line. The parties stipulated that the southbound lane in which appellant was traveling is 11.01 feet wide (from the yellow center line to the white line marking the edge of the lane).

Appellant testified that he has been licensed to drive motorcycles since 1972. On the day of the accident, the weather was "sunny and nice," and he was driving his motorcycle southbound on Rolling Road when, from about one-half mile away, he saw a Ford Expedition SUV at a standstill in the lane in front of him, with its left-turn signal on, waiting to make a left turn onto the eastbound lane of Newburg Avenue.

In the opposing northbound lane, appellee's Toyota Sienna minivan was also at a standstill at the same intersection with its left-turn signal on, waiting to make a left turn onto the westbound lane of Newburg Avenue. Rolling Road is a through highway at that intersection; there was no traffic signal or stop sign facing traffic on Rolling Road. Appellee's minivan and the Ford Expedition had each come to a standstill to wait for an

opportunity to turn left. If there had been no traffic behind either vehicle, the Ford Expedition and the Toyota minivan would have been able to simultaneously turn left passing by each other in the intersection. But on this occasion, there was traffic behind each lead vehicle in each lane, and some of those trailing vehicles were swerving around the lead vehicles that were waiting to turn left.

Appellant elected to pass the Ford Expedition on its right in order for him to proceed through the intersection. When he did so, he struck the rear quarter panel of the passenger side of appellee's minivan, which had then nearly completed a left-hand turn onto Newburg Avenue.

Appellant's testimony describing the situation was as follows:

> [BY APPELLANT]: And so as I approached the intersection, the cars in front of me were going through the intersection to the right around the SUV and proceeding on through the intersection and cars were coming in the opposite direction around that vehicle then going back north, and traffic was flowing through the intersection basically at a little less than the speed limit.

In other words, although there was only a single traffic lane in each direction on Rolling Road at that intersection, at the time the Ford Expedition and appellee's minivan were both waiting to make left turns, vehicles were passing each of the waiting vehicles on their right side; for most of the passing vehicles, this maneuver required them to encroach upon the paved shoulder of the roadway in order to pass the waiting vehicles on Rolling Road.

Appellant's testimony continued:

> [BY APPELLANT'S COUNSEL]: And as you approach that intersection, sir, do you have a traffic signal facing you?
>
> A No traffic signal, no stop signs.

Q No stop sign. As you approached that intersection, approximately how many cars did you see pass the SUV on the right?

A There was at least six cars in front of me and every one of them went around him.

Q And how far were you from the last one of those six vehicles?

A About 150 foot.

Q You were operating a motorcycle.

A Yes.

Q Okay. You were the owner of the motorcycle?

A Yes.

Q And what type of motorcycle is this?

A A 1993 Dyna Wide Glide.

Q Okay, and . . .

A That's a Harley Davidson, excuse me.

Q Had you been through this intersection before the day when the accident took place?

A Yes.

Q Have you ever seen anybody do anything else other than turn left, which is what apparently this SUV wanted to do, or go straight at that intersection?

A Well I've seen people make left turns, right turns, straight through.

Q Okay.

A Standard intersection.

Q And as you approached this intersection, would you tell us what then happened?

A Well as I came to the intersection, **I slowed down because the SUV was blocking the clear view of the oncoming traffic, so there was a possibility that somebody could be trying to make a left turn, I didn't know that for sure, so prudence says slow down.** I entered the intersection and just as I entered the intersection the van jumped out in front of me to make a left turn and not being able to stop, I applied the brakes and moved left to try to avoid her, and I had a collision with the back right quarter panel of her van.

Q And how close was it for you, let's see, how can I ask this question. How, how close were you to missing the rear end of the van?

A Half a second.

Q And approximate, your approximate speed, if you can recall, when you entered the intersection, approximate?

A Probably under 20 by then.

(Emphasis added.)

Appellant provided further details during his cross-examination:

[BY APPELLEE'S COUNSEL]: Now as an experienced motorcycle rider with a license for almost 40 years, would you consider yourself familiar with the rules of the road?

[BY APPELLANT]: Yes.

Q And that means you know what you're allowed to do and what you're not allowed to do while riding a motorcycle, right?

A Yes.

Q Now you're aware that there are some particular rules of the road, laws that apply specifically to motorcycles, right? Are you or are you not familiar with that?

A I'm not really sure where you're, I know, understand the, the laws of the road, yes.

Q Okay. Well getting back to the day of the accident, you've already talked about it's bright out, it's May 5th, or it's sunny out, is it still reasonably bright out at the time of the incident?

A It was sunny, yes.

Q Okay. About what time was this, 4'ish?

A Four-thirty.

Q Four-thirty, okay, p.m., just to be clear, right?

A Yes.

Q [*showing the witness Exhibit 4, an overhead photograph of the scene of the accident*] . . . There is an SUV stopped here with its left turn signal on indicating to you that it wants to turn left on eastbound Newburg, correct?

A Correct.

Q You're coming southbound on Rolling Road, you're observing automobiles, more than one, about up to six going around that vehicle, correct?

A Correct.

Q No motorcycles though, all automobiles of some sort, correct?

A Correct.

Q All right. Now as you're approaching, you have the option of stopping behind that SUV, right, waiting for it to turn, right?

A Yes.

Q And you're in control of your vehicle so you could have chosen to decelerate, brake and bring your vehicle, your motorcycle to a stop, correct?

A Yes.

Q Your decision was to go around that SUV, correct?

A Yes.

Q In your deposition and to some extent today, you testified that the SUV was stopped very close to the yellow line, correct?

A She was actually had their driver's side wheels on the yellow line. She was by us to that side, yes.

Q So is it fair to say that to the, there was space between the passenger side of the SUV and the white line, the solid white line? Was, do you . . .

A Yes.

Q . . . understand what . . .

A There was, there was room there.

* * *

A I would guess about six foot, yes. Estimate about six foot.[2]

Q Okay, and you went around obvious, **you went past the stopped, the [Ford Expedition], the SUV but you remained in that travel lane, correct?**

A That is right.

Q You never went over the white line.

A I was along the white line but never went over it, no.

Q Well when you say along the white line are you . . .

[2] The parties stipulated that the full width of that lane was 11.01 feet, and the evidence established that the width of the Ford Expedition was 78.7 inches (*i.e.*, 6.56 feet). Consequently, the open space in the lane could have been no more than 4.45 feet.

A The tire was running beside, on the inside of the white line.

Q So you weren't touching the white line.

A No.

Q Was any part of your vehicle over the white line?

A I wasn't looking at the back tire but no, it wasn't.

Q Okay. **So to your knowledge, you're in, you remained in the sole southbound travel lane when you went around the stopped SUV, correct?**

A **That's correct.**

Q Okay. In order to get around the SUV, that was really the only way to go, right? Around its passenger side?

A Yes.

* * *

[BY APPELLEE'S COUNSEL]: **As you're approaching the intersection**, I believe you testified that **you could not see beyond this, the [Ford Expedition]. Is that correct?**

[BY APPELLANT]: **Yes, it was significantly blocking the view of oncoming traffic**.

Q And obviously, **you didn't see [appellee's] vehicle until a half second before impact. Is that right?**

A **Yes.**

(Emphasis added.)

Appellant was also cross-examined regarding his deposition testimony, as follows:

[BY APPELLEE'S COUNSEL]: I'm actually going to start at Line 23 and if counsel wants to fill in, he may. Your answer in part was: ". . . I guess what

about the time I would anticipate seeing somebody there is when she jumped out in front of me."

Did I read that accurately?

[BY APPELLANT]: Yes.

Q The next question was:

"Question: Why would you have, why would you have anticipated seeing somebody there?"

Your answer was, could you read that, sir?

A "I was concerned that somebody could be there, that's why I had slowed down."

Q The next question was:

"Okay, **you were concerned that somebody could be there because you couldn't see through the SUV that was on your side of the road. You couldn't see what was on the other side, obviously, is that why you had a concern?"**

And your answer was?

A **"The SUV blocked my view, yes."**

Q The next question was:

"Given that concern that somebody might be on the other side making a left hand turn, you would say you were traveling more slowly?"

And your answer was?

A "Yes, I was slowing down."

Q And then the next question is:

"And **then when you got to the point where you could actually see beyond that SUV, what you were afraid of actually occurred.**"

Did I read that accurately?

A **What I was concerned about, yes, actually occurred**.

Q **So what you're saying is you were concerned of the possible risk that a vehicle could turn in front of you, right? Before you got to the intersection or before you passed the SUV?**

A **I recognized there is a possibility that there could be a vehicle, could be a vehicle making a left turn that would cross my path. That possibility was there.**

Q And yet you . . .

A Anytime you go into an intersection that people make left turns.

Q And **you couldn't see beyond the SUV, as we've established, and yet you proceeded knowing that risk, right?**

A **I proceeded,** I had a clear path through the intersection, I had the right of way, I proceeded through the right of way. Yes, there was a possibility that somebody could be making a left turn and that would be blocked by the SUV.

(Emphasis added.)

Appellee explained during her testimony that she believed it was safe for her to proceed with her left-hand turn because it appeared that the motorcycle she had observed heading southbound was going to stop behind the Expedition rather than swerve around it and proceed through the intersection. Her testimony on this point on direct examination was as follows:

> [BY APPELLEE'S COUNSEL]: Okay. In any event the, tell us what, after you stop and you see this vehicle, what happens?
>
> [BY APPELLEE]: I could see the motorcycle behind the SUV or the white vehicle stopped.

Q Okay.

A So I waited. He was traveling behind the white vehicle, directly behind it in the center of the lane.

Q Okay.

A So **I waited and he came closer to the [Ford Expedition] so I assumed that as he was close enough to the [Ford Expedition] he didn't give me any indication he'd be coming around so I assumed that it was safe at that point to make a left hand turn.**

Q How long was this glimpse of the motorcyclist?

A Long enough for me to see that he was close enough to the [Ford Expedition] before I made a turn, because I was completely stopped waiting to see what he was going to do.

Q Did you believe the, **did you have any indication or believe that the motorcycle was going to do anything but stop?**

A **I did not.**

Q So did you begin your turn?

A I did.

Q And how far into your turn were you before something unusual happened?

A **My front portion of my van was onto Newburg Avenue before the motorcycle struck my back panel.**

(Emphasis added.)

After appellee acknowledged on cross examination that there had been other times that appellee had seen cars on Rolling Road swerve around and pass a vehicle that was stopped to make a left turn, appellee testified on redirect that she could not recall seeing any other vehicles perform that maneuver on the day of the accident. Appellee testified that,

when she saw appellant on his motorcycle behind the Ford Expedition, she had no reason to believe he was not going to stay there, and she proceeded to make her turn, whereupon appellant ran into her van.

Appellant sustained injuries as a result of colliding with appellee's minivan, and sued appellee, contending in the complaint that appellee "failed to yield the right of way to [appellant] . . . and, due to that negligent act or omission, a collision ensued, resulting in property damage, bodily injury, and other damage[.]" Trial was held in the Circuit Court for Baltimore County on April 29 and 30, 2014.

After appellee rested her case, appellant made a motion for judgment "on the issue of the negligence of [appellee]," asking the court to rule that appellee was negligent as a matter of law. Appellant also urged the court to rule as a matter of law that there was no contributory negligence on his part. Appellee opposed appellant's motion and made her own motion for judgment, asking the court to rule that appellant — whose maneuver of passing the Expedition in a single lane was in violation of a statute — was himself negligent, and that his negligence was a proximate cause of the accident. The oral motions were argued as follows:

> [BY APPELLANT'S COUNSEL]: Your Honor, first we would move for judgment on the issue of the negligence of [appellee]. As the Court knows from the evidence, she made a left hand turn, she said she saw a motorcycle coming, she did not see it stop. She knew there were two possibilities, one was it was stopped and one is that it would pass the other vehicle on the right hand side, something which she's seen many vehicles do in that 20 year period of time that she's lived there. And making a left hand turn across traffic through when the other person could go straight and has the right of way, in my judgment, is negligence as a matter of law. It's violating the left turn statute which says you have to yield the right of way to any vehicle which is

close enough so as to be a danger. Was the motorcycle close enough so as to be a danger? Sort of by definition it was. We had this motor vehicle accident. It was a very short amount of time from the time that [appellee] made the left hand turn. There is no evidence of speed on that part of [appellant]. His testimony he's going about 25 miles per hour. [Appellee] stopped, she looked, she did not see whether the motorcycle was coming and then made an assumption. Now that was the word she used in her testimony, she made an assumption. The law requires you to look and to verify that the path is clear before you made a left hand turn, not to make an assumption. . . . She made an assumption that the road was clear but the law requires substantially more than that. The law requires that you stop and yield the right of way. So for those reasons, we would ask that the Court determine that [appellee] was negligent as a matter of law.

[BY THE COURT]: All right. Mr. [appellee's counsel]?

[BY APPELLEE'S COUNSEL]: Well, Your Honor, a vehicle approaching in the travel lane that was occupied by the [Ford Expedition], which if you remove the [Ford Expedition] from the equation, had the [Ford Expedition] been going straight through that lane or [appellant] been going straight through that lane, an open lane, and [appellee] had turned in front of it, I'd be right there with [appellant's counsel] in saying yep, the law, [§] 21-402 it is from the traffic code, certainly puts the burden and likely the negligence on the driver who made the turn. Of course as we have discussed and we all know, if there is a violation of statute, that's only evidence of negligence and that is an appropriate jury question. What we have here, and this goes back to something else we've talked about, is a question of whether [appellant] . . . was even conducting himself and controlling his vehicle in a lawful manner when he did what he did. As he's approaching the intersection, it is a one lane road, there is a stopped vehicle in that one lane. People speed all the time, it doesn't mean that it's legal. People sometimes go around other vehicles, make illegal U-turns, make U-turns where they shouldn't make them. It doesn't mean it's legal. What [appellant] did, it's clear as day and it's also a violation of statute, is he passed a vehicle, he overtook and passed a vehicle that was stopped in the sole travel lane. So if you're going to grant his Motion for Judgment, I think you need, you need to grant mine under the same logic because to me it's a flagrant violation of statute. I don't even think [appellee] violated the statute because the lane that was facing her, the one lane was occupied and [appellant] doesn't have a right to go around that vehicle under any circumstances, he can't go around it in the lane, he certainly can't go onto that shoulder, if you want to call it that, over that white line, and continue straight. Just because vehicles do it . . .

[BY THE COURT]: Of course he didn't do that so.

[BY APPELLEE'S COUNSEL]: No, he did not so . . .

[BY THE COURT]: So I don't have to worry about that.

[BY APPELLEE'S COUNSEL]: No, but he, he was within the lane, he said it clear as day.

[BY THE COURT]: Okay, all right.

[BY APPELLEE'S COUNSEL]: And so go ahead and grant his but then grant mine.

[BY THE COURT]: Grant yours?

* * *

[BY APPELLANT'S COUNSEL]: . . . Since we're talking about [appellant], if we want to sort of wrap this into one global motion, I was going to make a separate motion that whatever it is that [appellant] did or failed to do, as a matter of law, was not contributory negligence because it was not the proximate cause of the accident. The case law . . .

[BY THE COURT]: Well, I'm going to interrupt you.

[BY APPELLANT'S COUNSEL]: Okay.

[BY THE COURT]: I don't know the answer to that and that's why I think it's a jury question. He, he, he, you know, there is evidence of negligence by passing the vehicle in the same lane because of the statute. Was, was that the proximate cause? It may not have been but it may have been, because it all happened so quick. The other thing is did, and I don't know that the evidence really has developed this but it's not my decision to make because it's a jury trial, did his passing that vehicle in the same lane, since it was an SUV, block [appellee's] view from seeing where [appellant] was, therefore, she didn't know where he was because she didn't have a view of him. I can't answer that question. I'm not answering that question. That's up to the jury to answer. So I think there's a couple of things. One is did just passing in the lane, as you said, was that the proximate? It may not have been, okay? But also did it, passing in the same lane, because there was an SUV right next to him, he was

> so close to it, did it block his view from the [appellee]. I can't answer that either.
>
> [BY APPELLANT'S COUNSEL]: Right, I understand the Court's ruling.
>
> [BY THE COURT]: Yeah, so.
>
> [BY APPELLANT'S COUNSEL]: And I don't want to belabor the point but.
>
> * * *
>
> [BY APPELLANT'S COUNSEL]: His actions are not the proximate cause of the accident, as a matter of law.
>
> [BY THE COURT]: Well I don't agree with that because, again, I go back to did his actions block her view from, from where he was and then resulting in her thinking it was clear or not. I think, you know, that's not a matter of law, that's a matter of fact, whether the view was blocked and, and then she was unable to make a reasonable decision and make a foreseeable decision. I just think that's the case. I'm going to deny all Motions. . . .

The jury returned a verdict in favor of appellee, answering "No" to the following question: "Do you find that the Defendant, Kathleen Dulaney, was negligent and that her negligence was the proximate cause of the accident of May 5, 2010?" The court entered judgment for appellee. No post trial motions were filed.

DISCUSSION

Appellant's contention that the trial court erred in denying his motion for judgment on the issue of appellee's negligence presumes that appellant was the favored driver. He relies upon cases that have held that a driver who makes a left turn into the lane of an oncoming favored driver is negligent as a matter of law. He cites Maryland Code (1977, 2009 Repl. Vol.), Transportation Article ("Trans."), § 21-402(a), along with a number of cases imposing liability for negligence upon left-turning drivers. *E.g.*, *Myers v. Bright*, 327

Md. 395, 403 (1992) (there was no issue for jury where motorist making left turn into commercial establishment cut through a line of cars that had stopped, and was immediately struck by a vehicle proceeding on the through roadway); *Peters v. Ramsay*, 273 Md. 21, 29 (1974) (plaintiff driver who was traveling on paved lane adjacent to the two main travel lanes of Ritchie Highway was not in violation of traffic laws and was not contributorily negligent when his vehicle collided with vehicle of defendant who was turning left at a median crossover and had been waived through two standing lines of cars); *Bennett v. Bass*, 248 Md. 260, 266 (1967) (directed verdict for defendant driver who was in the through lane was affirmed where there was no reason for her to have anticipated that left-turning driver would not yield right of way).

Each of the left-turn cases cited by appellant is materially different from the instant case, however, because in each of the cited cases, an unfavored driver turned left across the path of a favored driver whose vehicle was the lead vehicle in the oncoming lane of traffic. But appellant was not driving the lead vehicle in the single southbound lane of Rolling Road, and was not the favored driver having a right of way to proceed southbound through that intersection.

Trans. § 21-101(t) defines right-of-way: "'Right-of-way' means the right of one vehicle or pedestrian to proceed in a lawful manner on a highway in preference to another vehicle or pedestrian." Because appellant could not lawfully pass the Ford Expedition SUV in the same lane, he did not have the right-of-way to proceed through the intersection as the favored driver. In other words, appellee was entitled to assume that appellant would keep a

proper lookout and would not pass the SUV on the right sliver of a single traffic lane. In the present case, the evidence established that appellant was not proceeding in a lawful manner when he opted to pass the Ford Expedition on the right portion of a single lane, which caused him to fail to see that appellee had initiated her turn and put him in a position of being unable to avoid striking appellee's minivan. Appellant admitted in his testimony that he "slowed down because the SUV was blocking the clear view of the oncoming traffic, so there was a possibility that somebody could be trying to make a left turn[;] I didn't know that for sure, so prudence says slow down."

Appellant's testimony about the accident had the effect of conceding that he violated Trans. § 21-1303 by passing the SUV on its right within the same lane. The jury was entitled to find that violation was a proximate cause of the collision. The statute provides, in pertinent part:

> (a) (1) On any roadway that is divided into two or more clearly marked lanes for vehicular traffic, the following rules, in addition to any others consistent with them apply.
>
> * * *
>
> (c) **The operator of a motorcycle may not overtake and pass in the same lane occupied by the vehicle being overtaken.**

(Emphasis added.)

Trans. § 21-304 makes provision for vehicles in general to pass to the right of a vehicle that "is making or about to make a left turn," but the statute stipulates in § 21-304(b) that "[t]he driver of a vehicle may overtake and pass another vehicle to the right only if it is safe to do so."

Appellant's violation of a statute is evidence of negligence, and the jury was entitled to find that, under the circumstances, appellant's negligence was the sole proximate cause of the accident, which would support the jury's finding that any negligence on the part of appellee was not the proximate cause of the accident. As the trial judge correctly ruled in denying the motions for judgment, questions of proximate cause are for the jury to determine. "'[U]nless the facts admit of but one inference . . . the determination of proximate cause . . . is for the jury.'" *Pittway Corp. v. Collins*, 409 Md. 218, 253 (2009) (internal citation omitted) (quoting *Caroline v. Reicher*, 269 Md. 125, 133 (1973)). We are obligated to affirm the trial court's denial of appellant's motion for judgment if "there is any evidence, no matter how slight, legally sufficient to generate a jury question." *Tufts, supra*, 118 Md. App. at 189. In this case, the evidence of appellant's violation of the statute, combined with his testimony about being unable to see past the lead vehicle in his lane and his knowledge that a left-turning vehicle could be entering the intersection ahead of him, was legally sufficient evidence of negligence to have permitted the case to go to the jury for its determination of the question of whose negligence was the proximate cause of his injuries. The trial court did not err in denying appellant's motion for judgment.

In *Freudenberger v. Copeland*, 15 Md. App. 169 (1972), this Court upheld a judgment entered upon a jury verdict in favor of a defendant driver who had made a left turn to exit a highway and had collided with the plaintiffs' vehicle that was approaching from the opposite direction. On appeal, the plaintiffs urged us to hold that they had been entitled to a directed verdict as to the defendant driver's negligence. They argued that it was clear that

defendant had violated the left-turn statute — now codified as Trans. § 21-402(a) — by failing to yield the right-of-way to them. Writing for this Court, Judge Charles Moylan observed. *id*. at 175:

> Five decisions of the Court of Appeals have discussed prominently the duty imposed upon a driver who makes a left-hand turn across the flow of oncoming traffic. Four of those decisions dealt with left-hand turns made at intersections. *Gudelsky v. Boone*, 180 Md. 265, 23 A.2d 694; *Meldrum v. Kellam Distributing Company*, 211 Md. 504, 128 A.2d 400; *Talbott v. Gegenheimer*, 245 Md. 186, 225 A.2d 462; *Bennett v. Bass*, 248 Md. 260, 235 A.2d 715. One of those decisions dealt with a left-hand turn made between intersections into a private driveway. *Shanahan v. Sullivan*, 231 Md. 580, 191 A.2d 564.

Judge Moylan further commented, *id*. at 178:

> In each [of the above cases], that left-turning motorist became an unfavored driver obliged to yield the right-of-way to the traffic approaching from the opposite direction. In each case, an oncoming favored vehicle struck the left-turning, unfavored vehicle. In each case, the court held the left-turning, unfavored driver to have been negligent in law. . . . **In none of the cases, however, was the left-turning, unfavored driver held to be negligent in law simply because his left turn across the flow of traffic was followed by a collision.** In each case, there was the prominent and decisive fact that the unfavored driver had seen or was in a position to have seen . . . the approaching favored driver. In each case, the unfavored, left-turning driver either misjudged the speed of the approaching favored driver or misjudged his own ability to complete the turn and be off the highway before the favored vehicle arrived at the spot of collision. **In each case, therefore, there was an effective failure to yield the right-of-way to an observed or observable favored vehicle.**

(Emphasis added.)

Judge Moylan summarized the legal impact of Trans. § 21-402(a) as follows: "It is generally recognized that the duty imposed upon the driver making the left-hand turn is one of exercising reasonable care. He is not charged with the absolute liability of making the

left-hand turn at his peril." *Id*. at 175. *Cf. Myers, supra*, 327 Md. at 401 ("Drivers, including those intending to turn left, are ordinarily entitled to assume that other drivers are obeying the law."); *Carlin v. Worthington,* 172 Md. 505, 508 (1937) ("The weight of authority seems to be that the right of a driver on a favored highway is not absolute but is to be enjoyed with due regard to the circumstances then and there existing, particularly as to speed and distances of the respective cars from the intersection when in sight of each other.").

We held in *Freudenberger, supra*, 15 Md. App. at 178-79, that there was sufficient evidence to submit the question of the left-turning driver's liability for negligence to the jury:

> [T]here was evidence in the instant case which would have permitted findings that the [defendant left-turning driver] came to a virtual stop before beginning the left-hand turn, that he activated his left turn signal, that he looked for oncoming traffic and observed none within his range of visibility before beginning the left-hand turn, that his range of visibility for oncoming traffic extended to two hundred feet, and that he was already into the turn and into the northbound lanes before he observed the [plaintiffs' vehicle] cresting the hill. We think **the question of whether the [defendant] was or was not negligent for attempting the left-hand turn when and where he did was, under all of the circumstances, a proper one for the jury to resolve. The trial judge was, therefore, not in error in refusing to direct a verdict for the appellants on the issue of liability**.

(Emphasis added.)

Similarly, in this case, there was evidence that appellee came to a complete stop on Rolling Road, put on her turn signal, and, even though she was face-to-face with an approaching vehicle that was also signaling an intention to make a left turn, she carefully waited for an opportunity to proceed with her left turn. She observed appellant pull up close to the Ford SUV that appellee was facing, which indicated to appellee that the operator of the motorcycle was not intending to attempt an unlawful maneuver of passing the SUV on

the right. Only then, when appellee had no indication that the motorcycle was going to do anything but stop behind the SUV, did she begin her left turn onto Newburg Avenue. In the meantime, appellant temporarily lost sight of appellee's vehicle because his view was blocked by the SUV. Nevertheless, despite appellant's inability to see whether appellee had proceeded with her left turn, appellant maneuvered his motorcycle past the SUV and forged ahead into the intersection where appellee had nearly completed her turn onto Newburg Avenue. Under these circumstances, we conclude — as we did in *Freudenberger* — that "the question of whether the appellee was or was not negligent for attempting the left-hand turn when and where [she] did was, under all of the circumstances, a proper one for the jury to resolve. The trial judge was, therefore, not in error in refusing to direct a verdict for the appellants on the issue of liability." 15 Md. App. at 178-79.

Appellant also contends that the trial court erred in not granting his motion for judgment on the issue of his own asserted lack of contributory negligence. We need not separately analyze that question. The record plainly reveals that it was argued based on appellant's contention that, whatever he did, whether he was contributorily negligent or not, was not the proximate cause of the accident. That was a question for the jury. *Wlodkowski v. Yerkaitis*, 190 Md. 128, 134 (1948) ("We specifically hold that where, in an action for damages resulting from an automobile collision at a street intersection, the evidence is conflicting, or more than one inference may be reasonably drawn therefrom, the question of contributory negligence is one of fact for the jury."); *see also Schwier v. Gray*, 277 Md. 631, 636 (1976) (contributory negligence is properly submitted to jury where "reasonable minds

may well differ as to whether" plaintiff's negligent conduct was a concurrent cause of the accident); *Haraszti v. Klarman*, 277 Md. 234, 255 (1976) ("there was sufficient probative evidence for the jury to resolve whether or not the plaintiff's entry into the intersection had been made while exercising due care, or whether or not his failure to do so was a proximate cause of the collision.").

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.