Circuit Court for Cecil County
Case No. 07-C-15-000143

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 641

September Term, 2017

CHRISTOPHER C. TROUTMAN

v.

RYAN MICHAEL MAITLAND

Woodward, C.J.,
Fader,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, J.

Filed: May 14, 2018

* 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.

Christopher C. Troutman brought a negligence suit against Ryan Michael Maitland in the Circuit Court for Cecil County over an accident in which Mr. Troutman's motorcycle ran into the rear wheel-well of a woodchipper being hauled behind a truck being driven by Mr. Maitland. After a bench trial, the circuit court entered a defense verdict. Mr. Troutman challenges that verdict on several grounds, none of which are meritorious. We affirm.

BACKGROUND

The underlying factual dispute is not complicated. The accident occurred at the intersection of Delancey Road and Wheelhouse Drive in Elkton. Mr. Troutman, driving a motorcycle, had turned right (into the northbound lane) of Delancey Road from the driveway of his place of business, several hundred feet south of the intersection. Mr. Maitland, driving a slowly-accelerating 10,000 pound truck that was hauling a 7,000 pound woodchipper containing approximately a ton or more of woodchips, was in the process of turning left (into the southbound lane) from Wheelhouse Drive onto Delancey Road. At the time of the accident, the truck itself had already crossed fully into the southbound lane. Mr. Troutman's motorcycle collided with the rear wheel-well of the woodchipper, which was still in the northbound lane. Before proceeding into the intersection, the truck had come to a full stop and had waited to allow two girls to cross in front of it.

According to Mr. Troutman, *he* was obeying all rules of the road and driving cautiously until, when he was only 30-50 feet from the intersection, the truck suddenly proceeded into the intersection and effectively blocked both lanes, making the collision unavoidable. According to Mr. Maitland, *he* was obeying all rules of the road and driving cautiously when, as his turn was mostly complete, Mr. Troutman's vehicle came "flying"

toward him and hit the rear of the woodchipper. Mr. Maitland testified that he looked both directions and saw a clear path before proceeding into the intersection.

Mr. Troutman's account was not supported by any other witnesses. Mr. Maitland's account was supported by two. First, his passenger, Curtis Buckland, testified that he and Mr. Maitland both looked both ways before entering the intersection, and that neither saw the motorcycle. Mr. Buckland first saw the motorcycle "flying" towards them when it was approximately 70-80 feet away. Second, one of the girls who crossed in front of the truck while it was stopped at the intersection testified that, after she had crossed, she saw the motorcycle leave the driveway and start heading north. As soon as the motorcycle pulled out, she then turned to see the truck. By that time, the truck was already in the southbound lane, but the woodchipper was not. She then turned back to see the motorcycle still on its way toward the intersection, and then observed the collision.

In explaining its ruling, the circuit court found that Mr. Troutman's "testimony and the timing in his testimony doesn't make sense," because if he had really seen the truck pulling out when the other witnesses testified it did, "he certainly had time to slow down"; conversely, if his testimony had been accurate about when the truck started to pull out, "he would have hit the truck" itself and not the woodchipper. Thus, the Court concluded, Mr. Troutman "was most likely speeding." Because Mr. Troutman's "testimony does not make sense regarding where he first saw the truck in connection with where he hit the truck," the court found for Mr. Maitland. This appeal followed.

DISCUSSION

Mr. Troutman claims that the circuit court erred: (1) in not applying the Boulevard Rule; (2) in finding that Mr. Maitland was not negligent; and (3) in finding that Mr. Troutman was contributorily negligent. We disagree as to each contention.

We review the decision of a bench trial "on both the law and evidence," deferring to the trial court's findings of fact "unless clearly erroneous" and "giv[ing] due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). "The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *Breeding v. Koste*, 443 Md. 15, 27 (2015) (quoting *Clickner v. Magothy River Ass'n Inc.*, 424 Md. 253, 266 (2012)). The circuit court's conclusions of law, however, are reviewed de novo. *Id.*; *Banks v. Pusey*, 393 Md. 688, 697 (2006).

The circuit court clearly believed the account of the accident provided by Mr. Maitland, and supported by the non-party witnesses, and not the account provided by Mr. Troutman. For Mr. Troutman's testimony to be believed, the court would have had to conclude that Mr. Maitland's 10,000 pound truck, which was hauling nearly that same weight, went from a dead stop to crossing all the way into the opposite lane of traffic in the time it took Mr. Troutman's motorcycle to travel 30-50 feet. Even if Mr. Troutman were traveling at only 30 miles per hour at that point, it would have taken only approximately a second to travel that distance. The circuit court's finding that Mr. Troutman's testimony

did not make sense was not clearly erroneous. Accepting Mr. Maitland's account and not Mr. Troutman's, as the circuit court did, Mr. Maitland was not negligent.

We also reject Mr. Troutman's contention that the circuit court erred in finding him contributorily negligent. First, we do not think the circuit court made such a finding; it certainly did not say that it did. Mr. Troutman infers that the circuit court made such a finding based on the court's statement that Mr. Troutman was probably speeding. That statement, however, appears to be more of an explanation of how the accident occurred, given the court's conclusion that Mr. Maitland was not negligent, than an affirmative finding of contributory negligence. Second, because the court found that Mr. Maitland was not negligent, contributory negligence is irrelevant.

Finally, Mr. Troutman's contention that the circuit court erred in not applying the Boulevard Rule fails because he waived the argument by failing to make it below.[1] *See* Md. Rule 8-131(a). Mr. Troutman's counsel never once mentioned the Boulevard Rule during trial. Instead, he argued that Mr. Maitland was negligent because he breached "a duty to not pull out into traffic until it's safe to do so." The only reference to the Boulevard Rule during trial was a single statement of *Mr. Maitland's counsel* in closing argument "that this is not a boulevard case." No one, including Mr. Troutman's counsel in his rebuttal, stated any disagreement.

[1] The Boulevard Rule provides that when a vehicle attempts to turn onto or cross a through highway, it "must stop and yield the right of way to all traffic already in or which may enter the intersection during the entire time the [vehicle] encroaches upon the right of way" of that traffic. *Grady v. Brown*, 408 Md. 182, 194 (2009) (quoting *Creaser v. Owens*, 267 Md. 238, 239-40 (1972)).

Moreover, even if the argument had been preserved, the circuit court did not err. The Boulevard Rule "must be applied with a modicum of common sense." *Grady*, 408 Md. at 197. Here, where the court reasonably refused to accept the only account of the accident under which: (1) Mr. Maitland acted with anything but the utmost care in entering the intersection; and (2) Mr. Troutman was already on the roadway when Mr. Maitland began turning onto it, the Boulevard Rule was inapplicable.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.