

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0323

September Term, 2015

JOSE ANTONIO YANES

v.

HASSANE MAMADO, ET AL.

Woodward,
Arthur,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: July 12, 2016

*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.

Following a motor vehicle accident, Jose Antonio Yanes, appellant, filed suit in the Circuit Court for Montgomery County against Hassane Mamado and his employer, Veolia Transportation Services, Inc. (collectively, “the appellees”), seeking damages for injuries sustained and medical expenses incurred as a result of the accident. During a bench trial, the parties stipulated that Mamado was negligent, and thus the only issue was whether Yanes was contributorily negligent in the accident. The only evidence produced at trial consisted of a dashcam video from Mamado’s van. After viewing the video and hearing argument from counsel, the circuit court determined that Yanes was contributorily negligent and entered a judgment in favor of appellees.

Yanes noted this timely appeal and presents two questions for our review, which we have rephrased:¹

1. Does the Boulevard Rule apply to Maryland Code (1977, 2012 Repl. Vol.), § 21-402(a) of the Transportation Article (“Trans.”)?
2. Was the circuit court clearly erroneous in finding that Yanes was contributorily negligent?

¹ Yanes’s questions, verbatim from his brief, are as follows:

1. Is Section 21-402 of the Transportation Article (“Vehicles Making Left and U-Turns [from the opposition direction]”) a component of the Boulevard Rule or is the Boulevard Rule only applicable to vehicles that enter the main boulevard from outside of it?
2. Did the trial judge err when she found that there was legally sufficient evidence to find contributory negligence on the part of the plaintiff on the sole basis that he failed to slow down in response to a solid yellow light when the defendant had the duty to yield the right of way to the plaintiff under Transportation Art. § 21-402?

For the reasons stated below, we answer both questions in the negative and affirm the judgment of the circuit court.

BACKGROUND

On the evening of September 24, 2013, Mamado, driving a Super Shuttle van, was in the southbound left turn lane on 16th Street, at the intersection of 16th Street and East West Highway in Silver Spring, Maryland. At that intersection, each direction of 16th Street consists of three through lanes of traffic, with an additional lane dedicated to drivers turning left. The intersection is governed by traffic signals, and each left turn lane has its own separate signal. In the left turn lane of southbound 16th Street, there were four cars in front of Mamado, each of which turned left onto East West Highway on a green or yellow circular signal. Mamado, however, entered the intersection on a red light and turned left onto East West Highway.

At the same time, Yanes was travelling northbound on 16th Street in the middle lane of through traffic, approaching the same intersection. When Yanes continued through the intersection without stopping, Mamado's van struck Yanes's vehicle on the driver's side.

On February 4, 2014, Yanes filed suit against appellees. At a bench trial on March 3, 2015, the parties stipulated that Mamado was negligent in entering the intersection on a red light. As framed by Yanes's counsel, the case came "down to contributory negligence. If you find [it], the case is over. If you don't find [it], then we'll put on evidence for damages." The

only evidence presented at trial was an approximately fifteen-second dashcam video from Mamado's van.² The parties supplemented this video with still screenshots.

After hearing closing arguments from counsel, the trial court determined that Yanes was contributorily negligent:

[Yanes's counsel], your argument is very interesting but **I do think there is contributory negligence in this case.** The video shows that the light had changed from green to red, there would have been a yellow in between the green and the red change. Proceeding with caution, does suggest that there has to be some caution taken. **It didn't look to me like [Yanes's] car had slowed down, that would have been a way to proceed with caution.** I don't know that it has to be explicit, but it is implicit. **And proximate cause, the failure to stop at the red and to slow down at the yellow, contributed to the accident.**

Now, I do agree that [Mamado], obviously, was negligent in the way the vehicle was handled from the defense point of view. But because of [Yanes]'s contributory negligence, it's going to be a defense verdict.

(Emphasis added). Yanes noted a timely appeal. Additional facts will be included as necessary to our discussion of the issues raised in the instant appeal.

STANDARD OF REVIEW

Our review of this case is governed by Maryland Rule 8-131(c), which provides, in part: "When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]" The Court of Appeals has noted: "The appellate court

² We note that the video continues for approximately five more seconds after the impact, but this portion of the video shows Yanes moving around in his car and does not show the vehicles in motion.

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.” *Clickner v. Magothy River Ass’n, Inc.*, 424 Md. 253, 266 (2012) (quoting *Ryan v. Thurston*, 276 Md. 390, 392 (1975)). Furthermore, “[w]e do not evaluate conflicting evidence but assume the truth of all evidence, and inferences fairly deducible from it, tending to support the findings of the trial court, and, on that basis, simply inquire whether there is any evidence legally sufficient to support those findings.” *Mid S. Bldg. Supply of Md., Inc. v. Guardian Door & Window, Inc.*, 156 Md. App. 445, 455 (2004). “[W]here the order involves an interpretation and application of Maryland statutory and case law,” however, we ““must determine whether the lower court’s conclusions are legally correct under a *de novo* standard of review.”” *Saxon Mortg. Servs., Inc. v. Harrison*, 186 Md. App. 228, 263 (2009) (quoting *L.W. Wolfe Enters., Inc. v. Md. Nat’l Golf, L.P.*, 165 Md. App. 339, 344 (2005)).

Regarding the standard of review, Yanes contends that, because the circuit court made no credibility determinations of witnesses, the court merely applied the law to the facts of the case, and thus this Court should conduct a *de novo* review. We agree in part and disagree in part. We agree that whether the boulevard rule applies, or should be extended to apply, to the instant case is an issue of law, which we review *de novo*. On the other hand, the circuit court made factual findings in arriving at its ultimate factual determination that Yanes was contributorily negligent. Accordingly, we will review those findings under the clearly erroneous standard. *See* Md. Rule 8-131(c).

DISCUSSION

Boulevard Rule

This Court has recognized that the boulevard rule “has evolved from judicial construction of statutory requirements relevant to yielding the right-of-way in various situations.” *Bright v. Myers*, 88 Md. App. 296, 300-01 (1991), *rev’d on other grounds*, 327 Md. 395 (1992). The rule requires the following:

“[A] driver upon approaching a ‘through highway’ from an unfavored road must stop and yield the right of way to all traffic already in or which may enter the intersection during the entire time the unfavored driver encroaches upon the right of way; [and] this duty continues as long as he is in the intersection and until he becomes a part of the flow of favored travelers or successfully traverses the boulevard.”

Grady v. Brown, 408 Md. 182, 194 (2009) (alterations in original) (quoting *Creaser v. Owens*, 267 Md. 238, 239-40 (1972)). “The purpose of the rule is to ‘accelerate the flow of traffic over through highways by permitting travelers thereon to proceed within lawful speed limits without interruption.’” *Id.* (quoting *Belle Isle Cab Co. v. Pruitt*, 187 Md. 174, 179 (1946)).

The Court of Appeals has noted that the boulevard rule, as it is presently recognized, is codified in Trans. §§ 21-403, -404, -705(c). *Grady*, 408 Md. at 194. These statutes concern: vehicles approaching intersections with stop or yield signs; vehicles entering a paved highway from a private road, driveway, or unpaved roadway; and vehicles emerging from alleys, driveways, or buildings. *See* Trans. §§ 21-403, -404, -705(c).

The instant case involves the application of Trans. § 21-402(a), which provides: “If the driver of a vehicle intends to turn to the left in an intersection . . . the driver shall yield the right-of-way to any other vehicle that is approaching from the opposite direction and is in the intersection or so near it as to be an immediate danger.”

Yanes concedes that the boulevard rule does not presently apply to Trans. § 21-402(a). Nevertheless, he contends that we should extend the application of the boulevard rule to this case and Trans. § 21-402(a). Yanes argues that such an application would serve the goals of the rule, and that turning left at an intersection governed by traffic lights presents many of the same dangers encompassed by the rule. Appellees caution that an extension of the boulevard rule to Trans. § 21-402(a) would obviate the need for traffic signals, and that we should decline Yanes’s invitation to expand the boulevard rule.

First, because 16th Street, at its intersection with East West Highway, is not a “through highway” as defined by Trans. § 21-101(x), the boulevard rule does not apply. This Court has recognized: “In order for the Boulevard Rule to apply, the road must be a ‘through highway,’ which” is defined by Trans. § 21-101(x). *Mayor & City Council of Balt. v. Stokes*, 217 Md. App. 471, 494 (2014). A “through highway” is a highway on which vehicles are given the right-of-way and “[a]t the entrances to which vehicular traffic from intersecting highways is required by law to yield the right-of-way to vehicles on that highway or part of a highway, in obedience to either a stop sign or yield sign placed as provided in the *Maryland Vehicle Law*.” Trans. § 21-101(x) (emphasis added). In this case, the intersection of 16th Street and East West Highway is governed by traffic signals, not signs. *See Houlihan*

v. McCall, 197 Md. 130, 136 (1951) (“In the absence of evidence that a stop sign had ever been erected [at the intersection], we think the court correctly ruled that the boulevard stop law did not apply.”).

Second, the boulevard rule governs the entrance onto boulevards, not the exit therefrom. In *Safeway Trails, Inc. v. Smith*, the Court of Appeals remarked: “By its express terms, the boulevard law controls entrance onto the favored highway; exit from it is not mentioned.” 222 Md. 206, 212 (1960); *see also Palmer v. Scheid*, 223 Md. 613, 616-17 (1960) (holding that the boulevard rule did not apply where vehicle was exiting boulevard). Indeed, this Court has noted: “Maryland courts repeatedly have held that ‘boulevard law is not applicable to a vehicle making its exit from the boulevard.’” *Bright*, 88 Md. App. at 303 (quoting *Dean v. Redmiles*, 280 Md. 137, 149 (1977)). Here, Mamado was exiting the boulevard.

Whether to extend the boulevard rule to the instant case, however, is an issue for the Court of Appeals, not this Court. *See Evergreen Assocs., LLC v. Crawford*, 214 Md. App. 179, 191 (2013) (“[T]he declaration of the common law of Maryland, especially a heretofore unrecognized tort duty, is the primary function of the highest court in Maryland, the Court of Appeals.”). Moreover, in reviewing boulevard rule jurisprudence, this Court has recognized that “[c]onstraint, not expansion, of the boulevard rule is the clear lesson of the authorities reviewed above.” *Hansen v. Kaplan*, 47 Md. App. 32, 37 (1980). Accordingly, we decline Yanes’s invitation to extend the boulevard rule to Trans. § 21-402(a).

Contributory Negligence

After reviewing the dashcam video and hearing argument from counsel, the trial court found that Yanes was contributorily negligent in the accident. Specifically, the court determined that Yanes did not slow down when he was approaching the intersection against a yellow signal, which “would have been a way to proceed with caution.” Furthermore, the court found Yanes’s contributory negligence was a proximate cause of the accident, because “the failure to stop at the red and to slow down at the yellow, contributed to the accident.”

Yanes contends that the trial court erred in finding that he was contributorily negligent. He argues that there is no duty to slow down for a yellow light, and, because the only evidence at trial was the dashcam video, there was no evidence of Yanes’s speed, location, perspective at the time the light turned yellow, or that Yanes entered the intersection on a red light.³ Mamado responds that there was sufficient evidence—in the form of the dashcam video—from which the court could conclude that Yanes was contributorily negligent.

“Contributory negligence is that degree of reasonable and ordinary care that a plaintiff fails to undertake in the face of an appreciable risk which cooperates with the defendant’s negligence in bringing about the plaintiff’s harm.” *McQuay v. Schertle*, 126

³ Yanes also contends that, even if he entered the intersection on a red light, Mamado still had a duty pursuant to Trans. § 21-402(a) to yield the right-of-way. Drivers, however, are not expected to anticipate other drivers’ negligence. *See Myers v. Bright*, 327 Md. 395, 401 (1992) (“Drivers, including those intending to turn left, are ordinarily entitled to assume that other drivers are obeying the law.”); *Williamson Truck Lines, Inc. v. Benjamin*, 244 Md. 1, 14-15 (1966).

Md. App. 556, 568 (1999) (quoting *Bd. of Cnty. Comm'rs of Garrett Cnty., Md. v. Bell Atl.-Md., Inc.*, 346 Md. 160, 180 (1997)). The defendant bears the burden of establishing the plaintiff's contributory negligence, and this is ordinarily a question of fact for the fact-finder. *Id.* at 568-69. Accordingly, if Mamado introduced “more than a ‘mere scintilla of evidence, . . . more than surmise, possibility, or conjecture that [Yanes] has been guilty of negligence,’” then we will affirm. *Id.* at 569 (quoting *Rosenthal v. Mueller*, 124 Md. App. 170, 174 (1998)).

Trans. § 21-202(g)(1) provides: “Vehicular traffic facing a steady yellow signal is warned that the related green movement is ending or that a red signal, *which will prohibit vehicular traffic from entering the intersection*, will be shown immediately after the yellow signal.” (Emphasis added). A driver facing a yellow signal “is forewarned that the signal controlling his travel is about to turn red and that vehicles on the intersecting thoroughfare are about to obtain a green signal authorizing them to lawfully proceed.” *Haraszti v. Klarman*, 277 Md. 234, 253 (1976). The Court of Appeals has noted that a driver may enter an intersection on a yellow signal, but he or she must “exercise due care. Indeed, by international recognition, a yellow signal universally connotes the use of caution.” *Id.* at 250.

Yanes is correct in his assertion that the dashcam video does not provide a view of the traffic signal facing him as he approached the intersection. At oral argument before this Court, however, Yanes conceded that the lights displayed by the signals facing him and Mamado were the same during the time leading up to the accident. The dashcam video shows, and Mamado concedes, that Mamado entered the intersection on a red light. The

video also shows the headlights of Yanes’s vehicle approaching the intersection when the yellow light was facing Mamado. The circuit court, thus, rationally found that the signal facing Yanes must have been yellow as he approached the intersection.

We conclude that the trial court was not clearly erroneous in finding that Yanes failed to exercise caution upon approaching the yellow light. Indeed, in his brief, Yanes noted that his vehicle “enter[ed] the intersection traveling at a constant speed,” indicating that he did not slow down in the face of the yellow light. As Yanes approached the intersection, he could clearly see several vehicles turning left onto East West Highway directly across his line of travel. The trial court thus could conclude that a driver exercising due care would have slowed down upon approaching the intersection, because such driver would have observed the turning vehicles and appreciated that he or she might not be able to safely cross the intersection without reducing the vehicle’s speed.

In addition, there was sufficient evidence from which the trial court could conclude that Yanes entered the intersection on a red light. Trans. § 21-202(h)(1) provides:

Vehicular traffic facing a steady circular red signal alone:

- (i) Shall stop at the near side of the intersection:
 - 1. At a clearly marked stop line;
 - 2. If there is no clearly marked stop line, before entering any crosswalk; or
 - 3. If there is no crosswalk, before entering the intersection; and
- (ii) [with certain exceptions inapplicable in this case]

shall remain stopped until a signal to proceed is shown.

At the time that Mamado entered the intersection on the red light, Yanes's vehicle was at the entrance of the intersection. As Mamado turned left across Yanes's lane of travel, the light for traffic on East West Highway turned green, and Yanes entered the intersection. Approximately one second later, the accident occurred.

The circuit court found that Yanes entered the intersection on a red light, because not only was the light red for Mamado when Yanes entered the intersection, but the light for East West Highway was green. Such finding is not clearly erroneous. Therefore, the combination of Yanes's failing to slow down for the yellow light and then running the red light supports a finding of contributory negligence. Accordingly, the court was not clearly erroneous in finding that Yanes was contributorily negligent.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; APPELLANT TO PAY COSTS.**