Circuit Court for Montgomery County
Case No. 404305-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1203

September Term, 2016

BRENDA SHERLETT GRANT

v.

SUSAN NEWMAN

Graeff,
Arthur,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: September 26, 2017

*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.

This appeal stems from an automobile collision, in which Susan Newman's Volvo rear-ended Brenda Grant's Mercedes minivan while the two were merging onto a traffic circle. Grant filed suit against Newman in the Circuit Court for Montgomery County, and the jury found in Newman's favor. Grant appealed, contending that the trial court erred in denying her motions for judgment and for judgment notwithstanding the verdict on the ground of liability and in allowing the jury to decide whether Newman was negligent. Finding sufficient evidence to warrant the submission of the issue of Newman's negligence to the jury, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On August 20, 2013, both Grant and Newman were travelling southbound on Connecticut Avenue towards Chevy Chase Circle in the middle of three lanes. The parties agreed that traffic was heavy. The parties also agreed that at some point Grant's minivan came to a stop while it was in the circle. The parties primarily disputed how long Grant had been stopped before Newman rear-ended her.

Newman testified that she saw Grant begin to accelerate into the circle and that she too began to accelerate into the circle. Newman said that she was approximately three-quarters of a car length behind Grant at that time.

As the two cars moved into the circle, Newman said, she took what she variously described as a "split second," one or two seconds, or an "incredibly brief" period of time to look over her left shoulder and check on the traffic that was already moving through

the circle.[1] Newman claimed to have noticed that it was safe for both her and Grant to proceed into the circle. In that brief interval, she said, the cars collided.

Newman testified that at the time of impact her car was not moving "very fast," because, she said, "we were just starting up," apparently from a full stop or something close to it. Newman also testified that she could not see the traffic in front of Grant's minivan before the collision.

Grant had a different account. She testified that after entering the circle she stopped in the middle lane because a utility van in front of her had blocked the street in its attempt to make its way across several lanes in heavy traffic. She said that she had been "sitting there for a while" when Newman rear-ended her.

Grant described the impact as "a very, very, very hard hit." Newman, by contrast, testified that she did not observe any damage to either car, although she also admitted that her car (the smaller of the two) sustained some damage to the front bumper, the grill, the front headlights, and the cooling system.

Grant testified that after the collision she had a conversation with Newman, in which Newman admitted that she was at fault. Grant claimed that Newman also admitted to a police officer that the collision was her fault. At trial, Newman was not asked whether she had admitted liability to anyone at the scene, but when asked whether she had any conversation with Grant, she responded, "Not really, no."

[1] On cross-examination, Newman appeared to testify that she looked to her left on two occasions.

At the close of the evidence, Grant moved for judgment on the issue of Newman's negligence, arguing that Newman had been following too closely and had been moving forward without looking when the collision occurred. The court denied Grant's motion.

The jury answered "no" to a question concerning whether Newman was negligent in the operation of her vehicle and whether her negligence had caused Grant's injuries. Grant moved for judgment notwithstanding the verdict, the court denied the motion, and Grant filed this timely appeal.

QUESTIONS PRESENTED

Grant presents two questions for review, which we condense and rephrase to eliminate any argumentative qualities: Did the circuit court err in denying Grant's motions for judgment and for judgment notwithstanding the verdict in light of the grounds that Newman advanced at trial?[2]

We answer the question in the negative. Newman presented enough evidence for a reasonable jury to conclude that she was not negligent. We affirm.

[2] Grant presents her questions as follows:

1. Was the trial court's denial of Ms. Grant's Motion for Judgment at the close of the evidence error when the evidence at trial, when viewed in the light most favorable to Ms. Newman, was that Ms. Newman was negligent in the operation of her motor vehicle and caused the collision?

2. Was the trial court's denial of Ms. Grant's Motion for Judgment Notwithstanding the Verdict in error when the evidence at trial, when viewed in a light most favorable to Ms. Newman, was that Ms. Newman was negligent in the operation of her motor vehicle and caused the rear-end collision with Ms. Grant?

STANDARD OF REVIEW

At the close of the evidence in a jury trial, a party "may move for judgment on any or all of the issues" in the action, but must "state with particularity all reasons why the motion should be granted." Md. Rule 2-519(a). "Appellate courts reviewing the denial of a motion for judgment during a jury trial perform the same task as the trial court, affirming the denial of the motion 'if there is "any evidence, no matter how slight, that is legally sufficient to generate a jury question."'" *Prince George's Cnty. v. Morales*, 230 Md. App. 699, 711 (2016) (quoting *C&M Builders v. Strub*, 420 Md. 268, 291 (2011), *which quoted Tate v. Board of Educ*., 155 Md. App. 536, 544-45 (2004)). "We assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom," and we view the evidence and those inferences "in the light most favorable to the party against whom the motion is made." *Orwick v. Moldawer*, 150 Md. App. 528, 531 (2003) (citation omitted).

"In a jury trial, a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion." Md. Rule 2-532. The "[d]enial of a motion for [judgment notwithstanding the verdict] is reviewed under the same standard as [the] denial of a motion for judgment." *Prince George's Cnty. v. Morales*, 230 Md. App. at 712. "'[O]nly where reasonable minds cannot differ in the conclusions to be drawn from the evidence, after it has been viewed in the light most favorable to the [nonmoving party], does the issue in question become one of law for the court and not of fact for the

jury.'" *Elste v. ISG Sparrows Point, LLC*, 188 Md. App. 634, 648 (2009) (second alteration in original) (quoting *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 177-78 (2003)).

DISCUSSION

"[E]very automobile driver must exercise toward other travelers on the highways that degree of care which a person of ordinary prudence would exercise under similar circumstances." *Brehm v. Lorenz*, 206 Md. 500, 505 (1955). "[T]he degree of care incumbent upon the rear driver to avoid collision with the front vehicle is not susceptible of precise formulation; it must depend upon the facts and circumstances of each particular situation." *Herbert v. Klisenbauer*, 12 Md. App. 135, 139 (1971); *see also Brehm v. Lorenz*, 206 Md. at 505 ("[j]ust how near the driver of an automobile may follow another automobile and still exercise ordinary care depends upon the facts and circumstances of the case"); *Sieland v. Gallo*, 194 Md. 282, 287 (1950) ("how closely one automobile should follow another depends upon the circumstances of each case, namely, the speed of such vehicles, the amount of traffic, and the condition of the highway").

"The question whether the following vehicle involved in a rear-end collision neglected to use due care is ordinarily for the jury to decide." *Herbert v. Klisenbauer*, 12 Md. App. at 139. "Maryland 'has adopted a very restrictive rule about taking cases from the jury in negligence actions.'" *Hill v. Wilson*, 134 Md. App. 472, 492 (2000) (quoting *Campbell v. Montgomery Cnty. Bd. of Educ.*, 73 Md. App. 54, 62 (1987)). "'Only in

exceptional cases, where it is clear . . . that reasonable minds would not differ with regard to the facts, will the question of negligence pass from the realm of fact to that of law.'" *Herbert v. Klisenbauer*, 12 Md. App. at 139-40 (alteration in original) (quoting *Altenburg v. Sears*, 249 Md. 298, 304 (1968)).

Grant challenges the court's decision to submit the issue of Newman's negligence to the jury. As a result, the only question we must answer is whether there was sufficient evidence for a reasonable jury to conclude that Newman did not fail to exercise due care. We assume that the jury resolved all conflicts in the testimony in Newman's favor. Consequently, we assume that the jury credited Newman's testimony and rejected Grant's. *See, e.g.*, *McGarr v. Baltimore Area Council, Boy Scouts of Am., Inc.*, 74 Md. App. 127, 134-35 (1988).

Newman testified that she maintained a distance of three-quarters of a car length from Grant's car and that, when Grant accelerated into the traffic circle, she moved forward into the circle as well. Newman further testified that Grant's car continued into the circle, so she looked over her shoulder to check whether it was safe for her too to proceed into the circle. When she looked back from her momentary safety-check, she said, she collided with Grant's car, which had stopped. Because Newman said that she had been unable to see the traffic ahead of Grant's car, she was unable to see the utility van that blocked the traffic in the circle and forced Grant to come to a stop.

Grant denied that she came to a sudden stop. But even if she did suddenly stop, as Newman contended, Grant argued that Newman was negligent in accelerating and looking over her shoulder while following Grant's vehicle too closely.

Here, the burden was on Grant to show that Newman was negligent (*Cooper v. Singleton*, 217 Md. App. 626, 643-44 (2014)), "since the happening of the accident does not of itself constitute negligence[.]" *Brehm v. Lorenz*, 206 Md. at 506. In this specific type of case, where a rear-end collision occurs after the lead vehicle comes to a stop, "there is no presumption that the rear driver was negligent unless [she] had the chance to stop after the necessity of stopping was apparent." *Herbert v. Klinsenbauer*, 12 Md. App. at 139 (citations and quotation marks omitted).

In Grant's view, Newman's own testimony established that she breached the standard of care in Md. Code (1977, 2012 Rep. Vol.), § 21-310(a) of the Transportation Article, which states that "[t]he driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the other vehicle and of the traffic on and the condition of the highway." We disagree.

Although we have no quantification of the precise speed at which the parties were traveling, both said that they were moving slowly, in heavy traffic, while attempting to merge into a traffic circle. Newman testified that she was following Grant at a distance of roughly three-quarters of a car-length, which we take to be about 10 feet.[3] Grant cites

[3] Newman testified that she was driving a Volvo S40. The length of a 2011 S40 is 176.2 inches, or 14.683 feet (14 feet and a little more than eight inches). *See* https://www.edmunds.com/volvo/s40/2011/#edm-entry-pros-cons (last viewed Sept. 20,

no authority for the proposition that it is, as a matter of law, unsafe to follow at a distance of three-quarters of a car-length, in heavy, slow-moving traffic, on what appears to have been a dry, summer afternoon. On the basis of this testimony, therefore, a reasonable jury would *not* have been required to find that Newman was following more closely than was reasonable and prudent under the circumstances.

Grant stresses Newman's admission that she accelerated even though she was not looking forward. In so doing, Grant discounts the need for Newman to shift her focus from the traffic ahead of her in order to merge safely onto the circle, as well as the need for Newman to keep pace with traffic behind and around her as she merged onto the circle. Had Newman failed to look to her left and, as a consequence, collided with a vehicle that was already moving through the circle, she would have faced a formidable allegation of negligence.

Grant seeks to rely on *Colmes v. Jos. M. Zamoiski Co.*, 16 Md. App. 76, 82 (1972), for the proposition that, as a matter of law, it was negligent for Newman to fail to see a stopped vehicle and to avoid a collision with it. In *Colmes* this Court wrote:

> "'It may be stated as a general rule that the driver of an automobile is charged with notice of such conditions in and along the road as [she] should have seen. In other words, [she] is conclusively presumed to have seen such surrounding circumstances as [she] would have seen had [she] properly exercised [her] faculty of vision. The duty to look implies the duty to see what is in plain sight unless some *reasonable explanation* is shown. Where there is nothing to obstruct the vision of a driver, it is negligence not to see what is clearly visible.'"

2017). Three-quarters of the length of a 2011 S40, therefore, would be 11.01225 feet (14.683 x .75), or just over 11 feet.

Id. at 81-82 (quoting *Dashiell v. Moore*, 177 Md. 657, 666 (1940), *which quoted Huddy on Automobiles* § 371) (emphasis added).

Here, Newman provided a "reasonable explanation" for why she did not see Grant's stopped vehicle in time to prevent a collision. *See id* at 82. Newman explained that she looked over her left shoulder for a brief instant, which the jury was entitled to deem reasonably prudent given that she was merging onto a traffic circle. Newman also explained that Grant accelerated into the circle, but came to a stop while Newman was conducting the momentary safety-check. From Newman's vantage point, she could not see the traffic ahead of Grant's car (and hence could not see that Grant might be required to come to a stop). It was for the jury to decide whether Newman failed to exercise due care because she momentarily diverted her attention to her left to ensure that it was safe to enter the circle and, in that interval, failed to notice Grant had stopped in time to bring her own car to a stop.

In summary, we have testimony that Grant was in the traffic circle, but at a complete stop both immediately before and at the time of impact. We also have testimony, admittedly in dispute, that Grant's car accelerated, moved into the traffic circle, and suddenly stopped immediately before the collision. On the basis of that conflicting testimony, a reasonable jury could conclude that Newman acted prudently when she drove forward and briefly checked over her left shoulder for oncoming traffic on the assumption that Grant would continue to accelerate into the traffic circle and would not have to suddenly stop. On the basis of that testimony, a reasonable jury could

also conclude that because of Grant's sudden stop, Newman did not have "the chance to stop after the necessity of stopping was apparent." *See Brehm v. Lorenz*, 206 Md. at 509.[4]

In contending that a jury could reasonably conclude only that Newman's negligence caused the collision, Grant observes that the court did not instruct the jury about contributory negligence. But Newman's failure to assert contributory negligence does not remove Grant's actions from the jury's consideration. The jury evaluates the actions of both parties under the totality of the circumstances in its consideration of whether Newman acted reasonably. The jury was not required to find Grant contributorily negligent for it to find that Newman was not negligent in the first place. The jury could well have concluded that Grant too had exercised due care in bringing her car to a stop when she saw that the utility van was blocking traffic ahead in the circle. In fact, it is entirely conceivable that this collision occurred even though both drivers exercised ordinary care.

In addition to contending that Newman was negligent as a matter of law in failing to avoid the rear-end collision, Grant challenges the court's failure to award judgment in

[4] In support of her contention that Newman was negligent as a matter of law, Grant relies on two federal trial-court cases: *St. Louis v. Dail*, 178 F. Supp. 2d 520 (D. Md. 2001), and *Nugent v. Curry*, 908 F. Supp. 309 (D. Md. 1995). Both are inapposite and, hence, unpersuasive. In *St. Louis v. Dail*, 178 F. Supp. 2d at 523, it was undisputed that the plaintiff "had been stopped," with her left turn-signal on, "for at least thirty seconds to a minute before she was struck." In *Nugent v. Curry*, 908 F. Supp. at 311-12, the court applied the law of the District of Columbia, and not Maryland law, because the accident occurred in Washington, D.C.

her favor on the basis that Newman allegedly admitted liability at the scene of the accident. We see no error.

At trial, Grant testified that Newman admitted that the accident was her fault. Newman testified, however, that she did "not really" have a conversation with Grant after the accident. This testimony creates a dispute of fact that the jury was entitled to resolve. The jury was entitled to credit Newman's testimony and not to credit Grant's. After giving "maximum credibility and maximum weight" (*Terumo Med. Corp. v. Greenway*, 171 Md. App. 617, 626 (2006)) to Newman's testimony that she did "not really" have a conversation with Grant after the accident, the jury was not required to find that Newman had admitted fault, as Grant contended.

Grant also testified that Newman admitted fault when she spoke to the police officer at the scene of the accident. In Grant's view, it is noteworthy that Newman did not contradict this testimony. However, a trial court cannot "'say as a matter of law that one upon whom the burden rests has discharged that burden merely because testimony offered by [her] was not contradicted.'" *Starke v. Starke*, 134 Md. App. 663, 685 (2000) (quoting *Smith v. Miller*, 71 Md. App. 273, 279 (1987)). "'[W]here a motion for judgment and subsequent motion for judgment [notwithstanding the verdict] are filed by a party who bears the burden of proof on the issue, the court may only grant either motion when the facts are *uncontroverted* (as opposed to merely *uncontradicted*)[.]'" *Id.* at 684 (emphasis in original) (quoting *Smith v. Miller*, 71 Md. App. at 279). In our view, it is not truly uncontroverted that Newman admitted to the officer that the collision was her

fault: Newman did not testify that she admitted liability to anyone at the scene of the accident, and she contested liability at the trial. The jury did not credit Grant's testimony on this issue, nor was it required to do so.

As an additional reason for affirming the judgment, Newman points out that on the verdict sheet the jury answered "no" to the question, "Do you find that the defendant was negligent in the operation of her motor vehicle on August 20, 2013, *and* that the defendant's negligence was a cause of plaintiff's injuries?" (Emphasis added.) From the jury's answer to this compound question, Newman infers that the jury must have found no causation. On the basis of that inference, Newman argues that even if the court erred in submitting the issue of negligence to the jury, the verdict as to causation must stand – and that we must affirm the judgment in her favor on that ground. In this regard, Newman notes that Grant did not move for judgment on the issue of causation and, hence, could not move for judgment notwithstanding the verdict on that ground. Md. Rule 2-532 ("a party may move for judgment notwithstanding the verdict . . . only on the grounds advanced in support of the earlier motion").

Newman's argument is unpersuasive because she fails to recognize that the jury was called upon to answer a compound question concerning whether Newman was negligent *and* whether her negligence caused Grant's alleged injuries. To answer that question in the affirmative and to find in Grant's favor, the jury had to find *both* (a) that Newman was negligent *and* (b) that Newman's negligence caused Grant's alleged injuries. By contrast, to answer the question in the negative (as it did) and to find in

Newman's favor, the jury could have found *either* (a) that Newman was not negligent *or* (b) that she was negligent, but that her negligence did not cause Grant's alleged injuries. Because the jury was not asked to specify the basis for its negative response to the ambiguous, compound question, we cannot conclude, as Newman would like us to do, that the jury necessarily found no causation: the jury may well have simply found that Newman was not negligent and that it was unnecessary to proceed any further.[5]

Nonetheless, although we disagree with Newman's view concerning the significance of the verdict sheet, we agree that the circuit court did not err in submitting the issue of her negligence to the jury. Consequently, we agree that the circuit court did not err in denying Grant's motions for judgment and for judgment notwithstanding the verdict. Until we enter the era of self-driving or autonomous vehicles, with a 360-degree range of "vision" (and therefore no need to divert their attention from the traffic ahead in order to merge safely with traffic on the left), collisions like the one in this case may occur without the fault of either of the human beings who are driving the cars involved.

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

[5] The ambiguity in the question has some implications for Grant as well: it is hard to see how the court could have erred in submitting the issue of Newman's negligence to the jury if the jury actually agreed that Newman was negligent, but found in Newman's favor on the ground that the negligence did not cause Grant's alleged injuries. But because we cannot definitively say that the jury found in Newman's favor on the ground that she was not negligent (and not on the ground that she was negligent, but that her negligence did not cause Grant's alleged injuries), we do not premise our decision on that ground.