Circuit Court for Prince George's County
Case No. CAL21-11082

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0355

September Term, 2023

ANIBAL PEREZ
v.
AROUND THE CLARK TRUCKING, LLC.
ET AL.

Beachley,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: March 28, 2024

*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).

In 2021, Appellant, Anibal Perez ("Mr. Perez") filed a complaint against Appellees, Around the Clark Trucking, LLC and Leonard Clark ("Mr. Clark"), in the Circuit Court for Prince George's County. Appellant alleged that he sustained injuries and automobile damage resulting from an incident where he rear-ended a tractor-trailer owned by Around the Clark Trucking, LLC and operated by Mr. Clark. In support of his claims, Mr. Perez identified Adam Grill as an expert witness in the field of motor carrier safety. Appellees filed a Motion to Exclude, or in the Alternative, Limit the Opinion of Plaintiff's Liability Expert, Adam Grill ("Mr. Grill"), which the court granted following a hearing. Mr. Perez then filed an Emergency Motion for Reconsideration and Request to Continue the Trial Date on March 29, 2023, which was denied. Trial began the next day, March 30, 2023. At the close of evidence on March 31, 2023, Appellees made a Motion for a Directed Verdict, which the court granted. Mr. Perez timely noted his appeal.

He presents two questions for our review[1]:

1. Did the circuit court err when it granted Appellees' Motion for Judgment?

2. Did the trial court abuse its discretion when it granted Appellees' Motion in Limine to exclude the testimony of Adam Grill, Appellant's expert witness?

[1] We have rephrased and reordered Appellant's questions for clarity. Appellant's questions verbatim are:

1. Did the trial court abuse its discretion in precluding Adam Grill, Appellant's expert witness, from testifying in this matter?

2. Could a reasonable jury have found that Mr. Perez was not contributorily negligent for his actions given the totality of facts and all evidence and inferences viewed in the light most favorable to Mr. Perez?

Because we conclude that the circuit court did not err in granting Appellees' Motion for Judgment, we do not reach the second question. We affirm the judgment of the circuit court.

BACKGROUND

Mr. Perez testified first at trial, stating that on October 15, 2018, he was traveling northbound on Route 1 in Laurel, Maryland and he was in the left lane when he stopped at a red light at the intersection of Talbott Street and Second Street. At that time, he saw a tractor-trailer ahead of him, but he could not discern whether it was moving or stationary. Mr. Perez was the first vehicle in the far-left lane at the traffic signal and there were no vehicles in front of him to obstruct his view. After the light turned green, Mr. Perez began driving towards the tractor-trailer. Once he realized the truck was not moving, he accelerated and attempted to merge into the right lane. Mr. Perez testified that he was unable to merge because of traffic and his vehicle collided into the rear of the tractor-trailer. It is undisputed that no warning devices had been placed behind the tractor-trailer to indicate that the truck was parked.

Mr. Clark was the next witness to testify at trial. He testified that on October 15, 2018, he was operating a tractor-trailer owned by Around the Clark Trucking, LLC, traveling northbound on Route 1. Mr. Clark testified that southbound and northbound travel on Route 1 is split into two separate one-way roads, Second Street heading northbound and Washington Boulevard heading southbound. After crossing Talbott Street, Mr. Clark parked his tractor-trailer in the left lane of Second Street, which spans three lanes, in front of the AutoNation Chevrolet car dealership. The speed limit in this section

of Second Street is thirty-five miles per hour. Mr. Clark testified that he parked the tractor-trailer in the left lane, turned on his flashers, and exited the tractor-trailer to see if he could safely pull into the AutoNation parking lot. Once Mr. Clark exited his vehicle, he crossed the parking lot of AutoNation, spoke to an individual at AutoNation who explained that he was at the wrong address, and he then walked back to the tractor-trailer to travel to the correct address. Mr. Clark stated that he did not know exactly how long it took for him to return to his vehicle, but that it was less than ten minutes. When Mr. Clark returned to the tractor-trailer, he discovered that Mr. Perez had collided with the rear of his tractor-trailer, resulting in serious bodily injury to Mr. Perez, and severe damage to Mr. Perez's vehicle.

Mr. Perez filed a complaint in the Circuit Court for Prince George's County on September 15, 2021, against Around the Clark Trucking, LLC and Leonard Clark, alleging three counts: 1) negligence; 2) negligent hiring and retention; and 3) negligent infliction of emotional distress. After the case proceeded to discovery, Mr. Perez dismissed the negligent hiring and retention claim.

On December 29, 2022, Mr. Perez designated Adam Grill as an expert witness, stating that he "will be called to testify that the Defendant driver was negligent in the operation of his vehicle and that such negligence was a direct and proximate cause of the collision in question based upon his education, training, experience, and materials that he has and will review." Mr. Grill did not prepare a written report related to the motor vehicle accident at issue and did not provide any materials that he relied upon other than material given to him by Appellant's counsel. On February 20, 2023, Mr. Grill was deposed by Appellees' counsel.

The parties stipulated to bifurcate the matter and to independently litigate the case on liability. They agreed to a separate trial on damages, if necessary. On February 9, 2023, Appellees filed a Motion for Summary Judgment, which was denied. Appellees then filed a Motion to Exclude, or in the Alternative, Limit the Opinion of Plaintiff's Liability Expert, Adam Grill. Appellant filed an Opposition to the Motion, and a hearing was held on March 28, 2023, two days prior to the date trial was scheduled to commence. Appellees' motion was granted, and Mr. Grill's testimony was precluded. Appellant then filed an Emergency Motion for Reconsideration, which was denied in a written order.

The trial proceeded as scheduled, lasting two days. On March 31, 2023, Appellees made a Motion for Judgment at the close of evidence, arguing that Mr. Perez was barred from recovery because he was contributorily negligent. The trial court granted the motion, holding that Mr. Perez was contributorily negligent as a matter of law, and therefore barred from recovery. Mr. Perez timely appealed.

STANDARD OF REVIEW

When reviewing a circuit court decision granting a Motion for Judgment, we use the "same analysis that a trial court should make when considering the motion[.]" *C & B Constr., Inc v. Dashiell*, 460 Md. 272, 279 (2018) (quotation marks and citation omitted). We shall consider whether, on the evidence presented, a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence. *Six Flags Am., L.P. v. Gonzalez-Perdomo*, 248 Md. App. 569, 581 (2020) (quoting *Univ. of Maryland Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012)); Md. Rule 2-501. On review of a Motion for Judgment, the appellate court assumes the truth of all credible evidence on

the issue and any inferences therefrom in the light most favorable to the nonmoving party. *Id.* (quoting *Lowery v. Smithsburg Emergency Med. Services*, 173 Md. App. 662, 683 (2007)). On a Motion for Judgment at the close of the evidence, if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration. *Id.* When there is no evidence to support a verdict on a particular question, the question should not be submitted to the jury. *Maszcenski v. Myers*, 212 Md. 346, 354 (1957).

DISCUSSION

I. The court did not err in granting Appellees' Motion for Judgment.

Appellant argues the issue of contributory negligence and the reasonableness of his conduct were considerations for the jury, and, as such, the court erred in granting judgment in favor of Appellees. Appellees respond that Appellant is barred from recovery because Appellant was contributorily negligent as a matter of law by failing to reasonably observe his surroundings. In considering the totality of the evidence, Appellees argue, the court correctly determined a reasonable jury could not find that Appellant was not contributorily negligent.

In Maryland, under the doctrine of contributory negligence, a plaintiff in a negligence action is completely barred from "recovery against a defendant who causes an injury where such injury is [the] result of the plaintiff's own failure to exercise due care." *Kiriakos v. Phillips*, 448 Md. 440, 474 (2016) (citation omitted); *see also Batten v. Michel*, 15 Md. App. 646, 652 (1972) ("Contributory negligence, if present, defeats recovery because it is the proximate cause of the accident[.]"). A plaintiff is contributorily negligent

if he or she "fail[s] to observe ordinary care for [his or her] own safety" or does "something that a person of ordinary prudence would not do[.]" *Menish v. Polinger Co.*, 277 Md. 553, 559 (1976) (internal quotation marks omitted). In granting a motion for judgment, the trial court must find "in the evidence some prominent and decisive act, or failure to act, which permits but one interpretation and in regard to which there is no room for reasonable minds to differ." *Ayala v. Lee*, 215 Md. App. 457, 468 (2013) (quoting *Weishaar v. Canestrale,* 241 Md. 676, 681 (1966)).

A motorist has a duty to both "observe carefully the road in front of them" and "be reasonably aware of what is occurring along the sides of a street or highway." *Morris v. Williams,* 258 Md. 625, 628 (1970). The duty to keep a lookout "follows the motorist wherever he directs his vehicle." *Ayala*, 215 Md. App. at 469. It is a clear common law duty that dates back to the early twentieth century with the rise of the popularity of automobiles. *See, e.g., Mahan v. State, to Use of Carr,* 172 Md. 373, 383 (1937) (a driver "has no right to assume that the road is clear, but that, under virtually all circumstances and at all times, he must be reasonably vigilant and must anticipate and expect the presence of others"). "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." *Dashiell v. Moore*, 177 Md. 657, 666–67 (1940).

Viewed in the light most favorable to Mr. Perez, the following facts were adduced at trial: (1) Appellees' tractor-trailer was parked in the far left lane ahead of Mr. Perez before the collision; (2) initially Mr. Perez was aware of the position of Appellees' tractor-

trailer in the lane but not its stationary status; (3) Appellees' tractor-trailer did not have its warning flashers on[2]; (4) the far left lane in which both vehicles were traveling is a lane of travel; (5) Mr. Clark did not place warning triangles after parking the tractor-trailer; (6) Mr. Perez became aware that the tractor-trailer was stopped; and (7) Mr. Perez made "a sudden, and panicked decision to attempt to avoid the stationary vehicle b[y] applying the gas and merging to the right lane."

Appellant cites *Campbell v. Balt Gas & Elec. Co.* to support his contention that the question of contributory negligence should have been left for the jury. 95 Md. App. 86, 93–94 (1993). In *Campbell*, the appellant, an aluminum siding installer, was injured when the ladder he was raising made contact with an overhead electric line. *Id.* at 91. He filed a claim asserting negligence by the electric company. *Id.* Following a jury verdict in favor of the installer, the trial judge granted Baltimore Gas & Electric, Co.'s Motion for Judgment Notwithstanding the Verdict, holding that the installer was barred from recovery because he had been contributorily negligent as a matter of law. *Id.* at 92. Mr. Campbell appealed, arguing that the trial court erred in finding contributory negligence as a matter of law, and thus the grant of the Motion for Judgment NOV should have been reversed. *Id.* This Court affirmed the trial court and held that Mr. Campbell *was* contributorily negligent as a matter of law because he was "generally aware of the existence and potential danger of

[2] Appellees contend that Mr. Clark turned on the tractor-trailer's flashers before exiting the vehicle. In reviewing the circuit court's grant of judgment in favor of Appellees, we construe the facts in a light most favorable to Mr. Perez.

nearby overhead power lines, that he appreciated the dangers such lines presented, and that he failed to look up to make certain that there were no power lines overhead." *Id.* at 96.

While the *Campbell* case involved a jury verdict, this Court, nevertheless, affirmed the trial court's determination, as a matter of law, that Mr. Campbell was contributorily negligent. *Id.* at 98. In the present case, like *Campbell*, there was testimony from the injured party that he was aware of the existence of a potential danger and that he failed to take appropriate action to avoid the danger. At trial, Mr. Perez testified:

> COUNSEL FOR MR. PEREZ: Okay. And can you explain to the jury what you remember about the actions you took once you started to accelerate up until the incident occurred?
>
> MR. PEREZ: Well I started accelerating and suddenly I saw that there was a car that was stopped. When I realized that this vehicle was not moving but rather at a standstill my first thought was to get around it on the right lane.
>
> COUNSEL FOR MR. PEREZ: Were you able to?
>
> MR. PEREZ: No. I mean I had been accelerated and then another car yielded to me but it was too late, I still ended up crashing into this vehicle.

On cross examination, Mr. Perez responded:

> APPELLEE TRIAL COUNSEL: The decision you made to make a sudden lane change to the right, albeit too late, that was a rapid last-second decision, correct?
>
> MR. PEREZ: Yes.

Mr. Perez's version of events was corroborated by the testimony of Kevin Newell, a Deputy with the U.S. Marshal's Service, who was driving behind Mr. Perez at the time of the accident. Mr. Newell testified:

> APPELLEE TRIAL COUNSEL: How far behind [Mr. Perez] were you when the collision occurred?

MR. NEWELL: I was pretty far into that intersection, but I had given some space. He was still trying to get over. And then when I noticed he was still traveling in the left lane, I slowed down significantly to avoid any other kind of like accident.

APPELLEE TRIAL COUNSEL: Okay. Why is it that you made a decision to slow down significantly? What caused you to make that decision?

MR. NEWELL: That his rate of speed in the lane and no real outward signs that he was going to move over to the right to merge.

APPELLEE TRIAL COUNSEL: What were you anticipating was going to happen?

MR. NEWELL: That they [sic] there would possible be an accident between his vehicle and the stopped vehicle.

*
*
*

APPELLEE TRIAL COUNSEL: Did you notice him break [sic] at any point in time prior to the collision?

MR. NEWELL: No, I never saw him break [sic].

As noted previously, on review of a motion for judgment, this Court assumes the truth of all credible evidence on the issue and any inferences therefrom in the light most favorable to the nonmoving party. *Id.* (quoting *Lowery v. Smithsburg Emergency Med. Services*, 173 Md. App. 662, 683 (2007)). If there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration. *Id.*

Based on the record before us, we conclude that the testimony of Mr. Perez and Mr. Newell permits "but one interpretation and in regard to which there is no room for reasonable minds to differ." *Weishaar v. Canestrale,* 241 Md. 676, 681 (1966). Once he

saw the tractor-trailer was stopped, he chose to accelerate rather than apply his brakes, and, in doing so, he failed to undertake reasonable and ordinary care in the face of an appreciable risk, the stationary tractor-trailer. *County Commissioners v. Bell Atlantic*, 346 Md. 160, 180 (1997). As a result, Mr. Perez's "failure to exercise ordinary care [was] a proximate cause of his injuries," and, thus, bars his recovery. *Seaborne-Worsley v. Mintiens*, 458 Md. 555, 563 (2018).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.