Circuit Court for Prince George's County
Case No. CAL20-12438

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1151

September Term, 2023

JOHN K. MURRAY

v.

DEBORAH A. HYATT

Nazarian,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: September 5, 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 this appeal from a judgment in favor of a defendant in a motor vehicle negligence case, we are asked to decide whether the trial court erred in allowing the jury to consider whether the plaintiff was contributorily negligent. Because the claim of error was not preserved for our consideration, we shall affirm the judgment.

BACKGROUND

John K. Murray, appellant, filed suit against Deborah A. Hyatt, appellee, in the Circuit Court for Prince George's County. He alleged that, as he was backing his vehicle out of a parking space, a vehicle operated by Ms. Hyatt "suddenly and without warning backed into [his] lane of travel[,] causing a collision." Mr. Murray claimed that he sustained serious personal injuries as a result. Ms. Hyatt raised the defense of contributory negligence.

A jury trial was held on July 18, 2023. The parties were the only witnesses to testify. Mr. Murray stated that he had just left a bank and was returning to his parked car when he noticed Ms. Hyatt's vehicle as she was parking it in a spot directly across the aisle from his. He testified:

> So I was coming out of the bank, and I [saw] her trying to park. And I just waited on the sidewalk looking at her. You know, it was funny to me, 'cause she was in and out, backing in and out, backing in and out, backing in and out, backing in and out. And I'm like, to myself, when is this lady going to park?

He added, "I was like, . . . this is another person who can't drive." He described what happened next as follows:

> So I waited, and when I went and got in the car, I looked both ways for the traffic that was coming through. And she had stopped, right?

* * *

> As I was backing out, a car passed this way, and then a car was coming this way passed. . . . I [saw] the coast was clear, and I proceed[ed] to back out. And as I was backing out, turning that way, [Ms. Hyatt] just came out of nowhere, boom. . . . I thought [she] was parked[.]

Ms. Hyatt testified that when she first pulled into her parking spot, she was too close to the vehicle next to her. She backed out and maneuvered into the same spot, but was then too close to the vehicle on the other side. After allowing a vehicle that was moving through the parking lot to pass behind her, she began to back out a second time, at which point the collision occurred. She stated that she did not see Mr. Murray's vehicle before the accident took place.

The defense rested its case after Ms. Hyatt testified, and Mr. Murray offered no rebuttal evidence. Mr. Murray did not move for judgment in his favor on the issue of contributory negligence before the case was submitted to the jury.

Prior to instructing the jury, the court reviewed the parties' requested instructions with counsel. Counsel for Mr. Murray stated that he had no objection to the court instructing the jury on the affirmative defense of contributory negligence. After the court instructed the jury, the court called counsel to the bench and asked if there were any exceptions to the instructions as given. Counsel for Mr. Murray replied: "No, Your Honor." Mr. Murray's attorney also approved the verdict sheet that included a jury determination as to contributory negligence.

The jury found that Ms. Hyatt was negligent, and that Mr. Murray was contributorily negligent. In accordance with the jury's verdict, the court entered judgment in favor of

Ms. Hyatt. This appeal followed.

DISCUSSION

Mr. Murray's sole contention on appeal is that there was insufficient evidence to submit the question of contributory negligence to the jury. Ms. Hyatt asserts that the issue was not preserved for appellate review. We agree with Ms. Hyatt.

An appellate court will not ordinarily review an issue other than jurisdiction "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). Because Mr. Murray's claim of evidentiary insufficiency was not raised in or decided by the trial court, there is nothing for us to review.

Gittin v. Haught-Bingham, 123 Md. App. 44 (1998), is controlling. The appellant in that case filed a negligence action for injuries sustained in a motor vehicle accident. *Id.* at 46. He noted an appeal from a judgment in favor of the defendant, arguing that the evidence was insufficient to sustain the jury's finding that he was contributorily negligent. *Id.* at 47. In holding that the claim of error was not preserved, this Court stated:

> In order to preserve for appellate review the evidentiary sufficiency issues he now raises, appellant was required specifically to make a motion for judgment pursuant to Md. Rule 2-519 at the close of all evidence. . . . Had appellant done as the rule requires, the trial court could have ruled on some or all of the legal issues in the case, thus removing them from the jury's consideration. He made no such motion.
>
> In order to preserve his contentions concerning the law that should have governed the jury's deliberations, appellant was required to note exceptions to the trial court's jury instructions. Md. Rule 2-520(e) . . . . Instead appellant approved of the instructions as delivered.

* * *

> Having neither moved for judgment nor objected to the jury instructions, appellant is precluded from arguing that the jury's verdict was in error.

Id. at 48-49. The same rationale applies to this case. *See also Waters v. Whiting*, 113 Md. App. 464, 474-75 (holding that the appellant "cannot challenge the jury verdicts on appeal given that she did not move for judgment under Rule 2-519 at the close of all the evidence and prior to the submission of the case to the jury").

In addition, Maryland Rule 2-520(e) provides: "No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection." Our precedent is clear that a party's failure to "fully comply with the requirements" of Rule 2-520(e) means that "there is nothing for us to consider on appeal." *Steamfitters Loc. Union No. 602 v. Erie Ins. Exch.*, 241 Md. App. 94, 131-32 (2019) (quoting *Black v. Leatherwood Motor Coach Corp*., 92 Md. App. 27, 34 (1992)). Mr. Murray agreed to the proposed jury instruction on contributory negligence; he cannot now claim that the issue was erroneously submitted to the jury.

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