UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1297

September Term, 2015

GENIA LEWIN

v.

YAFA BALAKHANI, et al.

Krauser, C.J.,
Wright,
Berger,

JJ.

Opinion by Wright, J.

Filed: August 17, 2016

This case arises from the alleged negligent conduct of appellee, Yafa Balakhani, in the operation of her motor vehicle and the resulting accident. Appellant, Genia Lewin, filed a Motion for Summary Judgment in the Circuit Court for Baltimore City, which was later withdrawn as a result of a partial "high-low" agreement ("the Agreement")[1] made between the parties at a pre-trial conference on May 28, 2015.

At trial on June 18, 2015, the circuit court denied Lewin's motion for judgment as a matter of law on the issue of negligence and lack of contributory negligence. The jury was instructed to determine liability and found Balakhani not negligent. Following the jury's verdict, Lewin filed a Motion for Judgment Notwithstanding the Verdict ("JNOV") and for a new trial on June 29, 2015, which was denied by the circuit court on August 3, 2015.

We are presented with the following questions for our review:

> 1. Whether the trial court erred by denying Lewin's motions for judgment and JNOV on the issues of primary negligence of the defendant and lack of contributory negligence of the plaintiff.
>
> 2. What effect, if any, does the Agreement stating that payment is contingent upon the issue of liability being decided by a jury have on the determination of the above motions?

For the reasons set forth below, we answer both questions in the negative and affirm the circuit court's judgment.

---

[1] A high-low agreement is a contract "in which a defendant agrees to pay the plaintiff a minimum recovery in return for the plaintiff's agreement to accept a maximum amount regardless of the outcome of trial." Prescot, JJ *et al*, *Trial and Settlement: A Study of High-Low Agreements*, n.2 Harvard Law School Journal of Law and Economics (September 2010) (citing BLACK'S LAW DICTIONARY 746 (8th ed. 2004)). The factfinder, in many cases, does not know of the agreement. *Id.*

FACTS

On May 31, 2012, Lewin was driving eastbound on Seven Mile Lane in Baltimore City, Maryland, at about 5:00 p.m. It was a clear, sunny day and there were no obstructions blocking the view of drivers from either direction. Seven Mile Lane is a flat, straight road with a 30 miles per hour speed limit and a shoulder that allows for parallel parking on the eastbound side.

At the same time that Lewin's vehicle proceeded down Seven Mile Lane, Balakhani's vehicle was stopped, in the westbound lane, with the intention of making a left-hand turn into the driveway of a home perpendicular to her current location. Balakhani testified that she initiated the left hand turn, then stopped, partly over the yellow line, as she recognized the oncoming traffic. Meanwhile, Lewin's vehicle continued eastbound, swerving to the right to avoid a collision with Balakhani's vehicle. Lewin straightened out and continued on the right shoulder, failing to return her vehicle back to the westbound lane, before colliding with a vehicle that was parallel parked on the shoulder of Seven Mile Lane.

Following the accident, Balakhani completed her left-hand turn without incident. After acknowledging the accident that occurred between Lewin and another vehicle, Balakhani proceeded to turn around and exit the driveway, departing from the scene of the collision without disclosing her information to the other motor vehicle operator.

Lewin filed a negligence claim against Balakhani, asserting that violation of the left-hand turn statute was the proximate cause of the accident. At trial, William K.

Griner, who was driving a vehicle in the eastbound lane behind Lewin, testified that he observed the accident and confirmed that Lewin's vehicle swerved to the right and continued until she hit a parked vehicle further west on Seven Mile Lane. Griner also verified that Balakhani left the area without interacting with Lewin or anyone else.

After the jury considered all evidence presented as to negligence and proximate causation, the jury's verdict was in favor of Balakhani. Lewin promptly filed a Motion for JNOV or for New Trial, both of which were denied.

Additional facts will be included as they become relevant to our discussion, below.

DISCUSSION

As we stated in *James v. Gen. Motors Corp.*, 74 Md. App. 479, 484-85 (1988):

> [W]hen ruling on a motion for a judgment the trial judge must consider the evidence, including the inferences reasonably and logically drawn therefrom, in the light most favorable to the party against whom the motion is made. If there is any evidence, no matter how slight, legally sufficient to generate a jury question, the motion must be denied . . . . An appellate court reviewing the propriety of the grant or denial of a motion for judgment by a trial judge must conduct the same analysis.

(Internal citations omitted). Thus, if there are any disputed issues of fact, this rule precludes the trial court from resolving them, unless there is no jury. *See Garrison v. Shoppers Food Warehouse*, 82 Md. App. 351, 354 (1990).

Courts use the same standard to review the denial of a motion for judgment and JNOV, evaluating "whether on the evidence presented a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence." *University of Maryland Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012) (citation omitted).

In making such a determination, appellate courts view any evidence that may be deemed legally sufficient in the light most favorable to the nonmoving party. *Gales v. Sunoco, Inc.*, 440 Md. 358, 363 (2014).

I. The trial court did not err in denying Lewin's motions for judgment and for JNOV.

"It is well-established law that the mere violation of a statute will not support an action for damages, unless there is legally sufficient evidence to show that the violation was a proximate cause of the injury complained of." *Fowler v. Smith*, 240 Md. 240, 248 (1965) (citing *Austin v. Buettner*, 211 Md. 61, 70 (1956)). In an action for damages caused by a motor vehicle accident, the burden of proof is on the plaintiff to present evidence that the defendant's alleged negligence was the direct cause of the accident in question. *Brehm v. Lorenz*, 206 Md. 500, 506 (1955). "On the issue of the fact of causation . . . the plaintiff . . . must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a substantial factor in bringing about the result." *Tri-State Truck & Equipment Co., Inc. v. Stauffer*, 24 Md. App. 221, 228 (1975) (quoting Prosser, *Law of Torts*, Ch. 7, s 41 (4th Ed. HB, 1971)).

We have found a lack of legally sufficient evidence in negligence cases when the assumed truth of all credible evidence and all inferences does not "rise above speculation, hypothesis, and conjecture, and does not lead to the jury's conclusion with reasonable certainty." *Bartholomee v. Casey*, 103 Md. App. 34, 51 (1994).

In this case, Lewin presented evidence alleging that Balakhani violated Md. Code (1977, 2012 Repl. Vol.), Transportation Law Article ("Trans.") § 21-402 and § 21-604(b) and, therefore, was the direct cause of the accident. Trans. § 21-402, Vehicles Making Left And U Turns, provides that a driver must "yield the right-of-way to any other vehicle that is approaching from the opposite direction . . . ," and Trans. § 21-604(b), Turns Made With Reasonable Safety, requires drivers to only make movement to turn with "reasonable safety."

Balakhani, in response, presented evidence that Balakhani's alleged negligent conduct did not cause the subsequent collision that occurred between Lewin and a parked vehicle.

At trial, the circuit court ruled:

> There's certainly an issue of fact for the jury to determine whether, upon its consideration of the Plaintiff's testimony, upon the consideration of Mr. Griner, who was following approximately . . . 5 to 10 car lengths behind the Plaintiff, and whether the circumstances were ripe for the Defendant to decide to attempt to cross the yellow line as she would obviously need to do to make a left-hand turn.

The circuit court properly denied Lewin's motion for judgment on the issue of negligence as Griner's testimony was legally sufficient to generate a jury question as to whether it was possible that the distance between Balakhani and Lewin was sufficient to enable Balakhani to initiate the left-hand turn. Griner also testified that Lewin continued to drive straight after she avoided Balakhani's vehicle, and that he had no recollection of

perceiving any attempt by Lewin to stop before the collision.[2] This testimony was legally sufficient to generate a jury question as to whether Balakhani's driving maneuver was the

[2] The pertinent testimony is as follows:

COUNSEL FOR BALAKHANI:

Q. Okay. And so my understanding of your testimony, you can tell me if I'm wrong, you saw the plaintiff's car swerve to the right?

A. That's correct.

Q. About how far to the right did she swerve?

A. Well, as I remember, swerved all the way to the right where the parking lot is and straightened out.

Q. So okay, she swerved to the right to the parking lane and then she straightened her car out.

A. Yes.

Q. Was she skidding at that time?

A. I don't –

Q. Did you observe her skidding?

A. I don't remember ever hearing the skid or seeing any skid marks on the road, but I wasn't looking for that.

Q. Okay, but you don't remember hearing any skids or seeing any skid marks, do you?

A. That's correct.

Q. Okay. And when she went over to this parking lane then she had time to straighten out?

A. Yes. (continued…)

COUNSEL FOR LEWIN: Objection, Your Honor, as to characterizing what my client did. And he can testify what he observed, he can't talk her straightening out.

THE COURT: As posed, sustained. If you would rephrase it, please.

COUNSEL FOR BALAKHANI:

Q. All right. You observed her swerve to the right; you didn't see any brake lights come on or anything.

A. I don't –

COUNSEL FOR LEWIN: Objection, Your Honor, two-part question.

MR. GRINER: Sir, I don't remember the –

THE COURT: I'm sorry.

MR. PINDER: Objection, Your Honor. The question started you saw her swerve and then you didn't see any brake lights. So it's two parts to that question.

COUNSEL FOR BALAKHANI: Let me rephrase it. I'm trying to –

THE COURT: Sustained. Go ahead, please.

COUNSEL FOR LEWIN:

Q. You saw her swerve to the right and then you saw her straighten out.

COUNSEL FOR LEWIN: Again, same objection, Your Honor.

THE COURT: Okay, if you could just ask one question and then move to the next part of your question.

COUNSEL FOR BALAKHANI:

Q. You saw her swerve to the right?

(continued…)

proximate cause of Lewin's collision with the parked vehicle.[3] Therefore, we hold that the circuit court also did not err in denying Lewin's motion for JNOV.

II. The Agreement has no effect on the determination of the motions for judgment and for JNOV.

In an effort to make the Agreement relevant to this appeal, Lewin argues that the Agreement was not binding because "no record was made at the conference, and the parties did not sign any agreement at that time to memorialize the terms of any agreement." Lewin further contends that there was no meeting of the minds, and that the Agreement contingency requiring that the liability must be "decided by a jury," was a vague term, rendering the Agreement unenforceable.

Our courts have interpreted high-low agreement settlements under the same lens as independent contracts, finding them to be enforceable with clear and unambiguous language and a reasonable interpretation of such language. *Maslow v. Vanguri*, 168 Md. App. 298, 316-19 (2006). A contract is ambiguous if a "reasonably prudent person

---

A. That's correct.

Q. Okay. What's the next thing you saw her do after she swerved to the right?

A. Oh, I saw her swerve to the right and then straighten out and the vehicle was still moving.

[3] Considering our conclusions, we need not visit the issue of contributory negligence. "Contributory negligence assumes the existence of negligence of the defendant, and is such negligence on the part of the plaintiff as directly contributes to his injury and prevents recovery." *Goldman v. Johnson Motor Lines*, 192 Md. 24, 32 (1949) (citation omitted).

would consider the contract susceptible to more than one interpretation." *Fultz v. Shaffer*, 111 Md. App. 278, 298-99 (1996) (citations omitted). "[I]t is not the province of the court to rewrite the terms of a contract so as to avoid hardship to a party, or because one party has become dissatisfied with its terms." *Maslow*, 168 Md. App. at 319 (citations omitted).

At the pre-trial conference, counsel for the parties orally agreed to the damage amount awarded to Lewin, contingent upon liability to be determined by the jury. On June 1, 2015, Balakhani's counsel documented the terms of the Agreement in a letter to opposing counsel requesting notification of any disagreement. Lewin's counsel did not submit any evidence of disagreement to the circuit court to demonstrate a failure of a meeting of the minds.

The letter provided that, should the jury find in favor of Lewin on the issue of liability, Lewin would receive $50,000.00 in damages. However, if the jury found in favor of Balakhani, it was agreed that Lewin would receive $10,000.00.

During the second day of trial, in anticipation of arguing motions for judgment, counsel addressed the circuit court as to the meaning of the Agreement. The trial judge reserved on the ruling, but identified two issues: the first was that the parties' agreement or stipulation was not reduced to writing; the second was that there may have been a failure to have a complete, full meeting of the minds on all issues including collateral issues of the parties' agreement regarding the high-low.

Initially, the trial judge granted Lewin's motion for judgment on lack of contributory negligence. After hearing argument from counsel for Balakhani that the ruling was contrary to the Agreement between the parties that the issue of liability was to be determined by a jury, the trial judge reversed its ruling.[4]

Assuming any error by the circuit court, that error would be harmless. The aforementioned back and forth by the court does not have an "effect" on this appeal because the jury never reached the issue of contributory negligence. The jury rendered a verdict that Lewin was not negligent. We will not reverse a lower court's judgment for harmless error when the complaining party has failed to show prejudice as well as error. *Harris v. Harris*, 310 Md. 310, 319 (1987).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELANT.

[4] The pertinent provision was as follows:

> The aforesaid high-low agreement is contingent upon the issue being decided by a jury following trial presently scheduled for June 17, 2015.