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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

YOSEF MUHAMMAD,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 11 L 155
)	
PACIFIC TRAILER REPAIR SERVICES, L.L.C.,)	
)	The Honorable
Defendant-Appellee,)	Daniel Lynch,
)	Judge Presiding.
and)	
)	
CSX Intermodal Terminals, Inc.)	
)	
Defendant.)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held:* circuit court's verdict in favor of defendant in plaintiff's negligence action affirmed where its finding that plaintiff was more than 50% at fault for his accident was not against the manifest weight of the evidence.

¶ 2 Plaintiff Yosef Muhammad, a former truck driver, suffered an injury to his right hand when he was adjusting a shipping container on his truck bed with the assistance of Mark

Nazorek, a crane operator employed by defendant Pacific Trailer Repair Services, L.L.C. (Pacific Trailer). Muhammad subsequently filed a negligence action against Pacific Trailer, seeking to recover damages for his injuries. Following a bench trial, the circuit court concluded that Muhammad was 65 to 70% at fault for the accident and entered judgment in favor of Pacific Trailer. Muhammad appeals the circuit court's judgment, arguing that its allocation of fault was against the manifest weight of the evidence. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4

"Pin Adjustments" and the Injury

¶ 5

In the trucking industry, a rectangular metal freight container is transported on a steel frame that is affixed to the cab of a truck, known as a chassis. The metal freight containers are equipped with holes located in each of the bottom four corners. The two front holes correspond to the two pins located in the front corners of the chassis. In order to secure a freight container for safe transport, the front pins must penetrate the shipping container's holes and lock the container into place. The back corners of the container, in turn, are secured by two twist locks. Because freight containers are quite heavy, weighing over 40,000 pounds, lift machines or cranes are used to maneuver a container and situate it squarely on the truck chassis. If the container is not centered or otherwise situated correctly, the holes in the container will not line up properly with the pins and the container will not be able to be locked into place and secured for transport. When this occurs, a "pin adjustment" is required to adjust the placement of the container. A crane will again be used to lift and resituate the container on the chassis until the requisite alignment is achieved. On October 24, 2010, Muhammad sustained an injury to his right hand

during the course of a pin adjustment. Part of his right hand was crushed between a shipping container and a bolster, which is a transverse piece of steel running along the front of the chassis.

¶ 6

Pleadings

¶ 7

Following his accident, Muhammad filed a complaint and several amendments thereto, advancing claims of negligence against Pacific Trailer.¹ In his third amended complaint, Muhammad alleged in pertinent that Mark Nazorek, the crane operator working at the Bedford Park rail yard, was an employee and agent of Pacific Trailer, and was acting within the scope of his employment at the time of Muhammad's injury. Muhammad further alleged Pacific Trailer's employee "had a duty to use reasonable care in moving the freight container" and that Nazorek violated his duty of care when he:

- "a. Moved or shifted the container in a manner which caused the container to crush Plaintiff's fingers;
- b. Failed to keep a lookout and exercise care in moving or lowering the container when the operator knew or should have known that Plaintiff's fingers were in the vicinity of the container;
- c. Failed to warn the Plaintiff prior to moving or lowering the container when such a warning was necessary to avoid crushing the Plaintiff's fingers;
- d. Carelessly and negligently failed to adequately supervise the crane operations;
- e. Failed to provide adequate safeguards to prevent Plaintiff from injury while lawfully upon the aforementioned premises; and
- f. W[as] otherwise careless and negligent in the operation and use of the crane."

¹ Muhammad also filed a negligence action against CSX Intermodal Terminals, Inc. (CSX), the owner of the rail yard where the accident occurred. CSX settled prior to trial and is not a party to this appeal.

¶ 8 Muhammad further alleged that the injury to his right hand was a direct result of one or more of the aforementioned negligent acts and omissions and sought damages in excess of \$50,000.

¶ 9 Pacific Trailer filed an answer to plaintiff's complaint in which it acknowledged that Nazorek had been acting within the scope of his employment at the time of the accident, but denied that he had acted in a negligent manner during the pin adjustment procedure. In addition, Pacific Trailer advanced a contributory negligence affirmative defense. In pertinent part, Pacific Trailer argued that Muhammad had a duty "to exercise due care and caution for his safety and the safety of others" during the pin adjustment and alleged that he breached that duty by acting in a negligent manner. Specifically, Pacific Trailer alleged that Muhammad:

- "a. Approached the chassis as the crane operator was attempting to lower the intermodal container onto the chassis;
- b. Attempted to adjust the pin on the chassis as the crane operator was attempting to lower the intermodal container onto the chassis;
- c. Placed his hand in an area where it could be pinched as the container was being lowered onto the chassis;
- d. Failed to warn the crane operator that he was going to approach the chassis as the crane operator was attempting to lower the intermodal container onto the chassis;
- e. Failed to warn the crane operator that he was going to attempt to adjust the pin on the chassis as the crane operator was attempting to lower the intermodal container onto the chassis;
- f. Failed to warn the crane operator that he was going to place his hand in an area where it could be pinched as the container was being lowered onto the chassis;

g. Was otherwise negligent and careless."

¶ 10 Pacific Trailer further argued that Muhammad's aforementioned negligent acts and omissions were either the sole proximate cause or a major contributing cause of his injuries.

¶ 11 The parties then engaged in some preliminary discovery before proceeding to trial.

¶ 12 Trial

¶ 13 At trial, Muhammad testified that he began his employ in the trucking industry in 1996. After completing his training, he worked for various trucking companies over the years. In October 2010, he was employed by C&K Trucking and was tasked with "hauling freight" containers "from rail yard to rail yard" using his own truck. He testified that he was paid per load and that he averaged four to five loads per day. On October 24, 2010, Muhammad started working around 8 a.m. He transported a load from a rail yard located in Willow Springs, Illinois, to another rail yard located in Bedford Park, Illinois. After he arrived in Bedford Park and completed his first transport, Muhammad called dispatch and received an assignment to pick up a container from the Bedford Park location. Once he picked up the load, Muhammad commenced his normal "pretrip inspection" of his truck. During that inspection, he observed that the freight container had not been properly loaded onto the chassis. Instead of sitting flush on the chassis, the container was actually "sitting on the pins" on the front of the chassis. Therefore, the container could not be locked into place and Muhammad could not begin the transport; rather, he needed a "pin adjustment."

¶ 14 Muhammad explained that pin adjustments are relatively common in the industry and indicated that he had had pin adjustments performed at that location "many times" before. On this occasion, Muhammad sought out a pin adjustment from Mark Nazorek, Pacific Trailer's crane operator at the Bedford Park rail yard location. He relayed his need for a pin adjustment to

Nazorek verbally and used hand signals to indicate that the container was sitting on the pins. Muhammad explained that hand signals are often used at the rail yard because it can be noisy and crane operators are not always able to hear the requests made by the truck drivers. After Nazorek acknowledged Muhammad's request, he positioned his crane on the side of the chassis so they could perform the pin adjustment.

¶ 15 When Nazorek lifted the container, Muhammad "retracted" the front two pins on which the container had been erroneously placed. He then walked over to the crane and told Nazorek to "drop" the container. Once the container was lowered, Muhammad returned to the chassis to "put the pin[s] back in on each side" and lock the container into place. He explained that the pins have small levers or handles and can usually be maneuvered easily by manipulating the handles. He first tried to engage the pin located on the front passenger side of the chassis, but was unable to do so manually. He then retrieved a hammer and was able to hammer the pin into place. Muhammad then went over to the pin located on the drivers' side of his truck, but had a more difficult time placing that pin into its proper place because the edge of the container was too close to the bolster and the pin's lever. He then asked Nazorek to move the container approximately one inch so that he would have enough room to manipulate the lever. Nazorek complied with his request and Muhammad then attempted to manipulate the pin manually. Both of his hands were in the small gap between the raised container and the steel truck chassis. After he had been working on the pin for about 30 seconds, Nazorek unexpectedly moved the container and Muhammad's right hand was "smashed" between the container and front bolster. The movement happened very suddenly.

¶ 16 Once he was able to extricate his hand, Muhammad was taken to the emergency room at Christ Hospital for treatment. He received painkillers and stitches at the emergency room and

sought out additional treatment from Doctor Speziale, a specialist, the following day. After undergoing a skin graft, Muhammad commenced several weeks of physical therapy. During the weeks following his accident, Muhammad experienced numbness in his right hand as well as extreme sensitivity to cold temperatures. Muhammad testified that he attempted to return to work in February 2011; however, the cold sensitivity and numbness that he continued to experience in his right hand prevented him from being able to fully perform his job. As a result, he stopped working to give his hand more time to heal. He testified that the numbness improved; however, he has not regained full strength in his right hand and has not resumed his employ in the trucking industry. In addition, his right index finger still does not have normal movement or feeling.

¶ 17 On cross-examination, Muhammad acknowledged that a truck driver is supposed to move a safe distance away from the chassis when a crane operator is maneuvering a freight container. He estimated that a truck driver should be 10 to 20 feet away from the container and chassis when a crane operator is performing an adjustment. Muhammad further testified that a crane operator is not supposed to move a container until he can determine the driver's location. If the crane operator observes the driver moving he will not perform the adjustment. When asked specifically about the pin adjustment that led to his injuries, Muhammad confirmed that he was in a safe position when Nazorek initially lifted the container. After he removed the two front pins, Muhammad again maintained a safe distance when Nazorek lowered the container onto the chassis. Once the container had been lowered, Muhammad confirmed that he then returned to his truck and attempted to fit the pins into place and secure the container to the chassis. When he was unable to secure the front drivers' side pin, Muhammad had an "idea in [his] mind" to have Nazorek move the container an inch or so to allow him to better manually manipulate the pin.

He then bent down inserted his hands between the small gap created by Nazorek and attempted to maneuver the pin into place. His back was facing Nazorek. When he did so, he was not paying attention to the container because Nazorek "was not supposed to move [it] until [he] g[ave] an okay." Because Muhammad was not paying attention to the container, he acknowledged that he did not try to move his hand out of the way when the container shifted. He conceded that if he had observed the container move, he would have only needed to move his right hand a couple of inches to get out of the way. If he had done so, he would have avoided his injury. He further conceded that he was aware that when he put his right hand between the gap, his hand could be crushed if the container moved.

¶ 18 Muhammad also admitted on cross-examination that he was physically able to use his right hand to drive and shift gears when he initially returned to work in February 2011. He further admitted that he left the trucking industry because he mentally affected by his accident and was very fearful of suffering another injury.

¶ 19 Mark Nazorek confirmed that at the time of the accident, he was employed by Pacific Trailer and assigned to the Bedford Park rail yard. He was tasked with operating various machines including lift machines, which he used to maneuver and load shipping containers and to perform pin adjustments. He further confirmed that pin adjustments are routine procedures at the rail yard and estimated that he has performed pin adjustments "hundreds and hundreds of times." Nazorek explained that during an adjustment, the driver will exit his truck and make sure the front pins are in the unlocked position. He will also unlock the twist locks on the back of the chassis. The driver will then position himself by the drivers' side door. After the driver moves "off to the side," Nazorek "do[es] the lift and reset[s] the container." He first looks to his left and repositions the front ends of the container onto the chassis, sliding the container until it reaches

the bolster. The truck driver is in his field of vision when he is repositioning the front end of the container. Nazorek then looks to his right and lowers the rear of the container onto the chassis. Neither the truck driver nor the front end of the container is visible when he is placing the back end of the container onto the chassis. He confirmed that the purpose of the adjustment is to ensure that the holes located on the bottom corners of the shipping containers line up properly with the chassis so that the pins can secure the container. Once the container is properly placed, the truck driver locks can secure the container and begin the transport.

¶ 20 Nazorek testified that on October 24, 2010, he was notified that Muhammad needed a pin adjustment. After he located Muhammad in the rail yard, Muhammad informed him that he "was having trouble with the left front corner getting the pin in." Muhammad did not complain that the container was sitting up on the pins and Nazorek saw no visual indication that the container was on the pins; rather, the container was flush onto the chassis. Nonetheless, because Muhammad could not secure the container, Nazorek agreed to the adjustment. Nazorek testified that once Muhammad unlocked the other pins, he gestured for Muhammad to move out of the way. When Muhammad moved approximately 15 feet away from the drivers' side of his truck, Nazorek "proceeded to do the lift and readjust" the container. He testified that he readjusted the container by setting down the two front corners of the container first and then lowering the rear corners of the container. Immediately thereafter, Nazorek noticed Muhammad near the front left corner of the container. He "gave a gesture like his finger, hand, or something, got, kind of, hurt." Muhammad apologized and explained that he was "trying to make sure that the pin went into the box, the container, because that was the one he was having a problem with." Because Nazorek observed that Muhammad was bleeding, he contacted his supervisor who then called an ambulance.

¶ 21 Nazorek testified that Muhammad gave him no indication that he was going to approach the container as he was lowering rear end of the container onto the chassis. Moreover, he "never" had any reason to expect that Muhammad would do so because truck drivers know not to approach a container that is in the process of being adjusted. He further testified that no one should ever place their hands underneath a suspended container or between a container and a bolster and he had no reason to anticipate that Muhammad would have done so. Nazorek confirmed that he would never have attempted to adjust a container while the truck driver was standing next to the chassis.

¶ 22 On cross-examination, Nazorek confirmed that cab in which he sits while operating a lift is approximately 20 feet off the ground. He acknowledged that while he is in his cab, it is his obligation to make sure that the truck driver is in a safe place before he begins to adjust a container. On redirect-examination, Nazorek confirmed that Muhammad was within his field of vision at all times except for the 10 to 15 seconds it took for him to lower the rear corners of the container. That is because when he lowers the rear of the container, he is looking to his right side and the truck driver is standing on his left side.

¶ 23 Jose Taboada, another truck driver employed by C&K Trucking, confirmed that pin adjustments are common procedures in the trucking industry. They are generally required if a container is mistakenly mounted on top of the pins, the container is not centered correctly, or if the pins "cannot lock for some reason." Taboada explained that during a pin adjustment, the driver is expected to stand in front of his truck on the drivers' side. Once the driver is in the proper position, the crane operator will approach the container, lift it, and back it away from the chassis. At that point, the crane operator will signal to the driver to approach the chassis and make his adjustments. When the truck driver finishes the adjustment, he will then move away

from the chassis and signal the crane operator "with a thumbs up to go back and put the container back on the chassis." Taboada testified that the "thumbs up" signal lets the crane operator know that "it's safe for him to go back and the adjustment has been [made]."

¶ 24 Depending upon how a container is loaded onto a chassis, the container may sit all the way up against the front bolster or there may be a small gap between the container and the bolster. Taboada testified that he has never placed his hand between a suspended container and a bolster. He explained that the space between a container and a bolster constitutes a "pinch point" and that safety rules preclude truck drivers from placing their hands between pinch points. Taboada further testified that he has never approached a chassis during a pin adjustment without making sure the crane operator knew he was going to do so.

¶ 25 After reviewing the evidence, the circuit court concluded that Muhammad and Nazorek "were both a cause of [plaintiff's] injury to some extent." The court then continued:

"So it boils down to this. What are the percentages when you have both sides at fault, if you will, or a cause of the injury here?

I believe that it is the Plaintiff who is in the position to know precisely where his hands and fingers are and not the driver who is some 20 to 25 feet away, his vision obscured by the back of the Plaintiff and that the options available to the Plaintiff were other options that could have avoided the use of his hand or as I said, a flip or more macro movement of his truck to see if by chance this pin could be engaged to make this trailer roadworthy.

He admits that if he would have seen the trailer moving or the box moving, he could have moved his hand. Perhaps he decided at the last attempt to take a little more risk than was appropriate or reasonable and obviously that the evidence does suggest that.

I believe it is fair to assess percentages where the Plaintiff is 65 to 70 percent at fault leaving the driver 30 to 35 percent at fault and because we're greater than 50 percent, it means that I have to rule in favor of the Defendant in this case for the reasons I have cited on the record here. So for those reasons, the Court finds in favor of the Defendant."

¶ 26 Muhammad subsequently filed a posttrial motion, challenging the circuit court's apportionment of fault. After conducting a hearing on the motion, the circuit court denied Muhammad's motion. In doing so, the court reasoned that Muhammad's fault was "significantly or substantially above 50 percent based on the facts" presented. This appeal followed.

¶ 27 ANALYSIS

¶ 28 On appeal, Muhammad challenges the circuit court's judgment. Although he acknowledges that "it [wa]s reasonable [for the circuit court] to conclude that [he] was guilty of some degree of contributory negligence," he argues that it was unreasonable for the circuit court to find that his contributory negligence "was greater than 50%" given Nazorek's conduct at the time of the accident.

¶ 29 Pacific Trailer responds that the circuit court's judgment and allocation of fault is not against the manifest weight of the evidence. Defendant emphasizes that Muhammad was an experienced truck driver who knew not to put his hand in pinch point or approach a container while it is being maneuvered by a crane operator during a pin adjustment and that Nazorek, its employee, had no reason to anticipate that Muhammad would act in such a dangerous manner. As such, Pacific Trailer argues that the circuit court's conclusion that Muhammad's negligence accounted for more than 50% of the proximate cause of his injury is supported by the evidence.

¶ 30 During a bench trial, it is the obligation of the circuit court to weigh the evidence, make credibility determinations, and resolve disputed issues of fact. *Bazydlo v. Volant*, 164 Ill. 2d 207,

214-25 (1995); *Klaskin v. Klepak*, 126 Ill. 2d 376, 389 (1989); *Battaglia v. 736 N. Clark Corp.*, 2015 IL App (1st) 142437, ¶ 23. The circuit court's judgment in a bench trial will not be disturbed unless it is against the manifest weight of the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 251 (2002); *Longo Realty v. Menard, Inc.*, 2016 IL App (1st) 151231, ¶ 19. A judgment is only against the manifest weight of the evidence where it is unreasonable, arbitrary, and not based on the evidence or where the opposite conclusion is clearly evident from the record. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 38; *Eychaner*, 202 Ill. 2d at 252. Therefore, as long as there is some evidence that supports the circuit court's judgment it will be upheld on appeal. *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 25; *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35.

¶ 31 To prevail on a negligence claim, a plaintiff must establish that the defendant owed him a duty of care, that the defendant breached that duty, and that the breach of that duty caused the plaintiff's injury. *Bruns v. City of Centralia*, 2014 IL 116998, 2014 IL 116998, ¶ 12; *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (2001); *Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39, 42 (2009). In Illinois, a plaintiff in a negligence action is barred from recovering damages if his contributory negligence accounts for more than 50% of the proximate cause of his injury. *Gillespie Community Unit School District No. 7, Macoupin County v. Union Pacific R.R. Co.*, 2015 IL App (4th) 140877, ¶ 197; *Merca v. Rhodes*, 2011 IL App (1st) 102234, ¶ 45. This principle is codified in section 2-1116 of the Illinois Code of Civil Procedure, which provides as follows:

"In all actions on account of death, bodily injury or physical damage to property in which recovery is predicated upon fault, the contributory fault chargeable to the plaintiff shall be compared with the fault of all tortfeasors whose fault was a proximate cause of

the death, injury, loss or damage for which recovery is sought. *The plaintiff shall be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought.* The plaintiff shall not be barred from recovering damages if the trier of fact finds that the contributory fault on the plaintiff is not more than 50% of the proximate cause of the injury or damage for which recovery is sought, but any economic or non-economic damages allowed shall be diminished in proportion to the amount of fault attributable to the plaintiff." (Emphasis added.) 735 ILCS 5/2-1116 (c) (West 2010).

As a general rule, a plaintiff is deemed contributorily negligent when he acts without the degree of care that a reasonably prudent person would have used for his or her own safety under like circumstances and that action is a proximate cause of his injury. *Merca*, 2011 IL App (1st) 102234, ¶ 45. Where there is evidence that the plaintiff was contributorily negligent, it is the role of the trier of fact to determine the relative allocation of fault between the parties. *Id.*

¶ 32 Here, Muhammad does not dispute that circuit court's finding that he was contributorily negligent; rather, he simply contests the circuit court's apportionment of negligence. At trial, the court heard two very different accounts of the circumstances surrounding Muhammad's injury. Muhammad testified that after several unsuccessful attempts engage the pin on the left front corner of the chassis, he asked Nazorek to lift the container slightly so he would have some room to manipulate the lever on that pin. Nazorek did so, and Muhammad put his right hand in the gap between the container and the bolster and attempted to manipulate the pin. According to Muhammad, Nazorek then unexpectedly moved the container and caused his injury. Nazorek, however, testified that Muhammad's injury did not happen the way that Muhammad described.

He denied that multiple attempts were made to resituate the container and further denied that Muhammad ever requested him to slightly raise the front left corner of the container. Rather, he testified that the container was properly placed on the first attempt. Based on Nazorek's testimony, when he lifted the container, Muhammad was off to his left side near the cab of the truck. He lowered the front end of the container first and Muhammad was within his field of vision at that time. After placing the front of the container onto the chassis, Nazorek then lowered the two rear corners of the container. Because he was looking to his right, Muhammad was not in his field of vision during the 10 to 15 seconds it took him to lower the rear of the container. According to Nazorek, Muhammad was injured when he unexpectedly approached the left front corner of the chassis as Nazorek was setting the rear of the container onto the chassis and placed his right hand in the small space between the bolster and the container. Muhammad's right hand was crushed as the rear of the container settled into place on the chassis.

¶ 33 Although the circuit court found that Muhammad and Nazorek were both subject to "some impeachment," the court ultimately concluded that Muhammad was primarily responsible for his accident. In doing so, the court found it significant that Muhammad admitted to being "in close proximity" to the chassis at a time when "he shouldn't have been" in that location. Moreover, Muhammad also testified that at the time of the injury, he was "bent over at the waist" with his back to Nazorek. Therefore, the court reasoned that even if Nazorek had been able to see Muhammad's location next to the chassis, he would have not been able to see where Muhammad's hands were situated. In addition, based upon safety standards applicable to pin adjustment procedures, the court found that there was no reason that Nazorek knew or should have known that Muhammad had placed his right hand in between the container and the front bolster. Finally, the court found it significant that Muhammad admitted he had not been paying

attention to the container and that if he had been mindful of the container, he would have been able to move his hand and avoid the injury. Based upon all of these factors, the circuit court concluded that Muhammad was 65 to 70% at fault for his accident.

¶ 34 Given the record, the circuit court's conclusion cannot be deemed unreasonable, arbitrary, or not based on the evidence. Rather, we find that the evidence presented at trial was sufficient to support the circuit court's conclusion that Muhammad failed to exercise reasonable care during the course of the pin adjustment. Muhammad was an experienced truck driver who violated safety standards when he positioned his right hand in a pinch point during a pin adjustment. Muhammad compounded this dangerous situation by failing to keep an eye on the shipping container. By his own admission, his accident could have been avoided had he done so. Based on these facts, the circuit court's conclusion that Muhammad was more than 50% at fault for his injury is not against the manifest weight of the evidence.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court is affirmed.

¶ 37 Affirmed.