

No. 1-15-1059

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PHILADELPHIA INDEMNITY INSURANCE)	Appeal from the
COMPANY, as subrogee of CALVARY ACADEMY,)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 14 M6 001293
)	
JOHN RAMSEY,)	Honorable
)	Carl B. Boyd,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *Held:* Where plaintiff insurance company presented evidence of the value of a van that was damaged in a car accident with the defendant, the trial court erred in directing a verdict for the defendant on the issue of damages.

¶ 2 Defendant John Ramsey was involved in a car accident with a van that belonged to the Spirit of God Fellowship church and that was insured by plaintiff Philadelphia Indemnity Insurance Company (hereinafter referred to as plaintiff). Plaintiff settled the church's insurance

claim and filed this subrogation action against Ramsey to recover the property damages paid to the church. Ramsey admitted negligence, and a jury trial was held on the issue of damages. After both parties presented evidence, the trial court granted Ramsey's motion for a directed verdict. On appeal, plaintiff contends that it presented evidence of the value of the van both before and after the accident and that the trial court should not have directed a verdict for Ramsey.

¶ 3 Plaintiff alleged in its complaint that it issued an insurance policy to the Spirit of God Fellowship for a 2004 Ford E350 van and that the van was damaged in the accident "to the extent it was a total loss." Jose Lopez, a pastor of the Spirit of God Fellowship, testified that on November 2, 2013, he was driving the van with his wife riding in the passenger seat. Lopez stopped for a red light at an intersection in South Holland when Ramsey's vehicle struck the rear of the van. Lopez got out and saw the right side of the van was "completely smashed" from the rear, and oil and glass were on the ground. Lopez stated the van was not driveable. The van was towed from the scene.

¶ 4 Lopez testified the van was purchased for about \$22,000 about six years earlier and had been driven approximately 40,000 miles. Lopez said the van was kept in "tip-top shape" because it was for the use of the church, specifying that the van was "regularly checked" by a mechanic at Rudy's Auto on Halsted and had received routine oil changes and brake repairs. Lopez testified that, on the church's behalf, he received a check from plaintiff for damage to the van in the amount of \$10,555.75. A copy of the check was not admitted into evidence.

¶ 5 Jay Skutle, an automotive damage estimator with 14 years of experience, was hired by plaintiff to estimate the damage, and he inspected the van 10 days after the accident. Skutle testified the van had "severe collision damage to the right rear, the passenger rear as a primary point of impact and then secondary damage along the right side passenger side." When asked

what "severe" meant, Skutle replied that term "[u]sually indicates that we've got a non-repairable vehicle or a total loss situation" and he stated that the cost of repairs "would have exceed[ed] the value of the vehicle."

¶ 6 Skutle's written repair estimate was entered into evidence. That estimate stated that the cost for parts and labor to repair all visible damage to the van would be \$11,944.59. In addition, Skutle prepared an estimate of the van's market value before the accident. He testified the NADA (National Automobile Dealers Association) used car valuation of the van before the accident was \$11,338.

¶ 7 Following that testimony, Ramsey moved for a directed verdict, asserting that plaintiff had not offered sufficient proof of the van's value before or after the accident. Ramsey asserted that plaintiff did not establish the condition of the van prior to the accident and further argued that the NADA valuation document was not entered into evidence.

¶ 8 In response, plaintiff pointed to Lopez's testimony of the van's pre-accident condition and Skutle's testimony of the NADA valuation and explanation of his repair estimate. Plaintiff asserted the NADA valuation document did not need to be entered into evidence because Skutle testified as to its contents and laid a foundation for that information. Ramsey replied that the jury lacked sufficient evidence to "make a determination as to the lesser of the two, reasonableness cost of repairs against the value of the vehicle before and after the accident[.]"

¶ 9 The court granted Ramsey's motion for a directed verdict. The court stated that no testimony was presented as to the condition of the van before the accident, "*i.e.*, the van was in good condition with no accidents, with no bumps, no scratches, no dents." The court noted that the only document entered into evidence was Skutle's estimate of repair costs.

¶ 10 On appeal, plaintiff contends that because it presented evidence of the van's value before and after the collision, the trial court erred in directing a verdict for defendant. Plaintiff asserts the testimony created a question of fact as to damages to be determined by the jury.

¶ 11 A trial court may grant a directed verdict only where all the evidence, when viewed in the light most favorable to the non-moving party, so overwhelmingly favors the moving party that no contrary verdict based on that evidence could ever stand. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225 (2010), citing *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). Our review of the trial court's ruling on a motion for a directed verdict is *de novo*. *Id.*; *City of Mattoon v. Mentzer*, 282 Ill. App. 3d 628, 634 (1996). A reviewing court need not defer to the trial court's ruling because the court did not weigh the evidence or judge the credibility of the witnesses in directing a verdict. *Hemmingner v. LeMay*, 2014 IL App (3d) 120392, ¶ 18.

¶ 12 The trial court should direct a verdict for the defense only where the plaintiff has failed to establish a *prima facie* case, meaning that the plaintiff has failed to present some evidence on every essential element of the cause of action. *Perkey v. Portes-Jarol*, 2013 IL App (2d) 120470, ¶ 63. Thus, the entry of a directed verdict for the defendant is proper if a plaintiff fails to produce any evidence to prove damages, which are a necessary element of a negligence case. *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 130314, ¶ 28; *Iacovelli v. First Security Trust and Savings Bank*, 202 Ill. App. 3d 982, 985 (1990). In contrast, a directed verdict is improper where "there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome." *Maple v. Gustafson*, 151 Ill. 2d 445, 454 (1992). Put another way, a directed verdict is not appropriate if reasonable

minds may differ as to the inferences or conclusion to be drawn from the facts presented. *Perfetti v. Marion County*, 2013 IL App (5th) 110489, ¶ 15.

¶ 13 As a general rule, the question of damages is to be determined by the jury. *Arthur v. Catour*, 216 Ill. 2d 72, 81 (2005); *Flynn v. Vancil*, 41 Ill. 2d 236, 240 (1968). Accordingly, a directed verdict on damages "should be subject to exacting scrutiny on review." *Baker v. Hutson*, 333 Ill. App. 3d 486, 495-96 (2002).

¶ 14 A plaintiff has the burden of proving damages to a reasonable degree of certainty, and the standard for assessing damages to repairable property is the reasonable cost of repairs. *Beasley v. Pelmore*, 259 Ill. App. 3d 513, 523 (1994). Where property has not been repaired or cannot be repaired because it would not be economical to do so, the measure of damages is the difference in the value of the property immediately before and immediately after the occurrence that caused the damage. *Aetna Insurance Co. v. 3 Oaks Wrecking and Lumber Co.*, 65 Ill. App. 3d 618, 627-28 (1978).

¶ 15 Skutle testified that, based on the NADA valuation, the market value of the van before the accident was \$11,338. Skutle testified the repairs to the van would cost \$11,944.59, and he referred to the van's condition following the accident as a "total loss" and "impractical for repair." Therefore, plaintiff presented evidence that the cost of those repairs exceeded the value of the van prior to the accident, as represented by the \$11,338 NADA value.

¶ 16 Ramsey contends that the NADA valuation was not sufficient evidence of the van's value before the collision. He argues the van could have been damaged from a prior accident and that plaintiff was required to establish that all damage considered by Skutle in forming his repair estimate resulted from the collision in question.

¶ 17 In support of his position, Ramsey cites *Fassola v. Montgomery Ward Insurance Co.*, 104 Ill. App. 3d 825 (1982). However, *Fassola* is distinguishable from the facts here and in fact supports plaintiff's position.

¶ 18 *Fassola* involved the valuation of a 1973 Dodge Dart that was not listed in a generally used source book such as an NADA guide. *Id.* at 827. Instead, an insurance adjuster performed a market survey and obtained quotes for the retail value of a comparable vehicle from at least two car dealers. *Id.* The adjuster then subtracted from that value the costs to repair "old damage," *i.e.*, damage that existed before the accident. *Id.* at 828. The trial court found that valuation method was flawed because costs to repair previous damage should not have been deducted from the car's value as determined by the market survey. *Id.* at 829.

¶ 19 On appeal, this court affirmed the trial court's ruling that the valuation method used by the adjuster reflected an improper double reduction in the value of the vehicle. *Id.* Noting the testimony that the Dodge Dart was in average to good condition prior to the accident and was regularly maintained with necessary repairs, this court stated that when an insurer asks a dealer to value a used car in such a market survey, the insurer should provide specific information as to the "pre-accident condition of the auto (both its pros and cons) so that the dealer may note how, if at all, such existing condition affects his estimate." *Id.* at 831. Thus, this court found, the condition of the car is reflected in the market value determination or in the NADA guide amount, if listed, and that value "represents a base, or starting, value for an average automobile" of that make and model. *Id.* This court held that it was "completely improper" for the insurer to then deduct from that base value the amount that would be required to repair pre-existing damage to the vehicle. *Id.* at 830.

¶ 20 *Fassola* holds that specific pre-accident information about a car's condition is considered in calculating the market value or a NADA valuation of a car. Contrary to Ramsey's argument on appeal, *Fassola* does not state that an insurer that has presented evidence of the NADA value of a vehicle prior to an accident, along with testimony that the vehicle was in good repair, is further required to provide testimony that the vehicle bore no previous damage. The "pre-accident condition" referred to in *Fassola* is part of the determination of market value or NADA value. *Id.* at 831.

¶ 21 At trial, Skutle testified as to the NADA value of the van before the accident. Lopez, who was driving the van at the time of the accident, testified that the van had about 40,000 miles on it and had received routine maintenance. Skutle testified that after the accident, the van had "severe collision damage" on the rear passenger side, which is where Lopez testified the impact occurred.

¶ 22 Because plaintiff presented evidence of its damages to be determined by the jury, and a directed verdict for Ramsey should not have been entered. Accordingly, the trial court's order directing a verdict for Ramsey is reversed, and this case is remanded for a new trial on the issue of damages.

¶ 23 Reversed and remanded.