2014 IL App (5th) 120160-U

NO. 5-12-0160

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ANGELLA HEARD,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 06-L-17
	)	
ROBERT FUDGE and RENALDO JACKSON,	)	Honorable
	)	Lloyd A. Cueto,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Welch and Justice Spomer concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred by not entering judgment notwithstanding the verdict against defendant Fudge on the issue of liability.

¶ 2 Plaintiff, Angella Heard, filed suit against defendants, Robert Fudge and Renaldo Jackson, the drivers in the two-car accident in which she was a passenger. After a jury trial in St. Clair County, the circuit court denied Heard's motion for a judgment notwithstanding the verdict or in the alternative for a new trial and entered judgment on the verdict. On appeal, Heard raises the issues of whether the trial court erred by not entering a judgment notwithstanding the verdict and abused its discretion by not ordering a new trial.

¶ 3 FACTS

¶ 4 This litigation derives from a two-vehicle traffic accident. One vehicle was a Chevrolet Impala driven by Renaldo Jackson. Jackson entered onto the northbound lanes of Interstate 255 from Camp Jackson Road. After the ramp tapers to an end, northbound I-255 has three through lanes. Jackson merged onto the right-most through lane. Jackson testified that when he entered onto I-255 the roadway was clear with a tractor-trailer in the center-most through lane, approximately "a football field" ahead of him. Jackson remained in the right-most lane, accelerated, and proceeded to pass the truck.

¶ 5 Jackson testified that he attempted to pass the truck on the right because "that was the lane I was in so I just wanted to get past." He testified that he was in the act of passing for approximately 10 to 15 seconds. Jackson asserted that he was concerned about being in a blind spot for the truck so he sped up. Jackson also testified that he was urged by a front seat passenger, his brother Rashad Jackson, to hurry while they were overtaking the truck and that he was almost past the cab of the truck at the time of collision. Heard, Jackson's aunt, was a back seat passenger.

¶ 6 The other vehicle involved in the accident was the truck–an 18-wheel semitrailer truck loaded with 50,000 pounds of lime. The truck was driven by Robert Fudge. Fudge testified that he had entered the middle lane while in a construction zone about five miles before the site of the accident and that he had been planning to exit onto I-70 about four miles ahead. Fudge described his actions:

> "A. I turned my signal on. I slowed down. I speeded up a little bit. I looked in my mirrors. I slowed down. I let off of it. It slowed back down. No

vehicles ever showed themselves in my mirrors at all and that usually counts for–you know, I'm doing 55. There ought to be no vehicles sitting beside me at that time.

Q. [Attorney for defendant:] All right. So you're saying you looked at this mirror?

A. Yes, sir.

Q. And you didn't see anything?

A. I did not see nothing. I had cars coming out of the construction zone. Since I was in the middle they were passing me on the right all the way up through there. I knew they was coming and coming and, you know, sometimes I'd see them and say well, okay. And the next thing you know another one goes by, okay, and they was all passing on the right. "

Fudge continued:

"Q. [Attorney for defendant:] All right. And so you turned and tell us what happened, what you experienced as you turned. When you turned your tractor, the steering wheel, did you go over the lane? Had you accomplished the lane beginning to intrude on the right lane?

A. When I started my maneuver I turned my turn signal on. It flashed five to ten times. I started moving over. I pulled in my lane, I turned my signal off and I felt a vibration. I was in the right lane.

Q. You felt a vibration?

A. Yes, sir.

Q. And where was it coming from, what part of your truck?

A. It seemed like it came from the right front.

Q. And what did you think it was?

A. I thought I had a tire going soft on the front or something, some vibration, either a tire going down or something, picked up something, a tire going down. It was just a vibration."

¶ 7 Jackson's Impala came to rest upside down against a concrete barrier in the middle of I-255. Its occupants, including Heard, were transported from the scene by ambulance.

¶ 8 Fudge pled guilty to a traffic citation, received two months of court supervision, and was fined $150. The order indicated that the citation was amended to failure to obey a traffic control device (625 ILCS 5/11-305(a) (West 2012)). The order read: "Defendant disobeyed a traffic control device, specifically a lane line, which resulted in an accident involving another vehicle."

¶ 9 Passengers Heard and Rashad Jackson filed a complaint sounding in negligence against Fudge. Renaldo Jackson filed a separate complaint against Fudge. These complaints were consolidated. Heard and Rashad Jackson filed an amended complaint naming both Fudge and Renaldo Jackson as defendants. Rashad Jackson settled. Heard proceeded to trial on her complaint against Fudge and Renaldo Jackson.

¶ 10 After trial, the jury returned separate verdict forms against Heard for Fudge and Jackson. The verdict forms named the parties, but did not mention negligence. The verdict in favor of Fudge read: "We, the jury, find for ROBERT FUDGE and against

ANGELLA HEARD." Heard filed a posttrial motion for judgment notwithstanding the verdict or alternatively for a new trial. The circuit court denied the motion, ruling:

> "The jury verdict in favor of defendant Reynaldo Jackson was far from being against the manifest weight of the evidence.
>
> As to defendant Robert Fudge, the [c]ourt believes that the jury got it wrong but that is not the standard for a JNOV.
>
> Finally, the [c]ourt followed the IPI when it refused to give the jury the requested transcript. [Heard's] motion for a new trial is denied."

¶ 11 Heard appeals.

¶ 12 ANALYSIS

¶ 13 Judgment notwithstanding the verdict should be granted only when all the evidence if viewed most favorably to the nonmoving party so overwhelmingly favors the moving party that no contrary verdict based on the evidence could ever stand. *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 509, 229 N.E.2d 504, 513 (1967). The consideration of a judgment notwithstanding the verdict does not rest on the credibility of the witnesses or discernment of the weight to be given conflicted evidence. *Maple v. Gustafson*, 151 Ill. 2d 445, 453, 603 N.E.2d 508, 512 (1992). The motion requires the court to limit its consideration to the evidence in the record and any rational inferences in a light most favorable to the nonmoving party. *Maple*, 151 Ill. 2d at 453, 603 N.E.2d at 512. A judgment notwithstanding the verdict is not justified merely because the verdict is against the manifest weight of the evidence. *Maple*, 151 Ill. 2d at 453, 603 N.E.2d at

512. On appeal, a trial court's denial of a motion for judgment notwithstanding the verdict is reviewed *de novo*.

¶ 14 A motion for a new trial requires a trial court to weigh the evidence, set aside a verdict, and order a new trial if a verdict is contrary to the manifest weight of the evidence. A verdict is considered against the manifest weight of the evidence if the opposite result is clearly evident or where the findings of the jury are unreasonable, arbitrary, and not based on the evidence. *Maple*, 151 Ill. 2d at 453, 603 N.E.2d at 512. As the trial court had the opportunity of observing the witnesses, the ruling on motion for a new trial will not be reversed absent an abuse of discretion.

¶ 15 A driver may change lanes "only when such change can be accomplished with due regard to the safety of other motor vehicles." *Hasselbacher v. Mendell*, 119 Ill. App. 2d 90, 94, 255 N.E.2d 484, 486 (1970). The evidence that Fudge negligently changed lanes in breach of this duty is overwhelming.

¶ 16 Fudge admits that the accident happened upon his changing into the right-hand lane. Fudge's excuse is that he actually did look but that "[n]o vehicles ever showed themselves in my mirrors" and that "[t]here ought to be no vehicles sitting beside me at that time." The record belies any claim that Jackson's Impala had just entered onto the side of the truck. The record overwhelmingly indicates that the Impala was almost past the truck, and not just "beside" it. Fudge himself testified that the impact was on the front of his cab, and the physical evidence indicates that point of impact between the two vehicles was the cab of the truck and the rear portion of driver's side of the Impala.

¶ 17 Moreover, Fudge's assertion that he looked in his mirror does not make this a matter of credibility. In *Grass*, the appellate court reversed judgment on a jury verdict rendered in favor of the defendant. *Grass v. Hill*, 94 Ill. App. 3d 709, 714, 418 N.E.2d 1133, 1137 (1981). The defendant had attempted to pass three slow-moving vehicles within 100 feet of an intersection and claimed that the vehicles he was passing obstructed his view of the intersection. Despite the defendant's claim that he was on proper lookout, the court in *Grass* found that his negligence should have been found as a matter of law, holding:

> "It is well established that a motorist will be deemed to have observed that which he would necessarily have seen if he had looked, and testimony that he looked but did not see will not absolve him of the charge of negligence occasioned by his failure to look. In other words, one cannot look with an unseeing eye and not see that which he could have viewed by the proper exercise of his sight." *Grass*, 94 Ill. App. 3d at 714-15, 418 N.E.2d at 1137.

¶ 18 Fudge's obvious negligence is not dependent on his having pled guilty to a traffic citation. This court has long recognized that a violation of the Illinois Rules of the Road does not constitute negligence *per se*. *Hitt v. Langel*, 93 Ill. App. 2d 386, 396, 236 N.E.2d 118, 123 (1968). Although a plea to a traffic citation is *prima facie* evidence of a defendant's negligence and is admissible in a subsequent suit, it is persuasive evidence and not conclusive proof. *Wright v. Stokes*, 167 Ill. App. 3d 887, 892, 522 N.E.2d 308, 311 (1988). A guilty plea may be explained away at a subsequent proceeding. *Hartigan*

v. Robertson, 87 Ill. App. 3d 732, 738, 409 N.E.2d 366, 371 (1980). In the case at hand, Fudge having pled guilty to a traffic citation merely added to the record of his negligence.

¶ 19 This court's conclusion that Fudge was negligent is based on the overwhelming evidence that he breached his duty to drive safely. Defendants incorrectly assert that a claim for negligence on the part of either of them rests on a presumption of negligence upon the occurrence of an automobile accident. *Krump* defined this presumption:

> "Where two automobiles collide, under normal conditions, it will be presumed that the collision occurred from the negligent operation of one or both colliding automobiles." *Krump v. Highlander Ice Cream Co.*, 30 Ill. App. 2d 103, 106, 173 N.E.2d 822, 824 (1961).

¶ 20 Defendants assert that *Krump* and its progeny rest on a discredited application of *res ipsa loquitur* to automobile accidents. *Anderson v. Anderson*, 2011 IL App (1st) 110034, ¶ 38, 959 N.E.2d 1167. *Anderson*, however, considered the concept of alternative liability and noted that concept did not relieve a plaintiff's burden of proving negligence prior to shifting the burden of proving causation to various tortfeasors. *Anderson* is not a *res ipsa* case. Interestingly, *Anderson* criticized several aspects of the plaintiffs' case such as evidence that they did not wear seat belts and conflicts between their testimony and the police report. In *Anderson*, even the number of passengers was in doubt.

¶ 21 Nonetheless, as the record overwhelmingly evidences Fudge's negligence, the issue of whether negligence should always be presumed in a two-vehicle accident is not before this court. Under either *Krump* or *Anderson*, the result is the same for Fudge.

This court's decision that the record dictates a finding of negligence on the part of Fudge does not rest on a theory of alternative liability or *res ipsa*, but upon the strength of the evidence against him.

¶ 22 In contrast, a finding that Jackson was not negligent is not against the manifest weight of the evidence. The record before this court would have been sufficient to support a finding that Jackson was also negligent and that this contributed to Heard's injuries, but the jury did not reach such a determination. As such, the verdict in favor of Jackson must stand.

¶ 23 As the record clearly established the negligence of Fudge, but left a question open regarding whether Jackson contributed to the accident, this court need not resolve another aspect of *Anderson*. After discussing the theory of alternative liability and *Krump*, *Anderson* proceeded to find that verdicts in favor of both drivers were not legally inconsistent. Relying on our Illinois Supreme Court's decision in *Redmond*, *Anderson* noted that a jury may decline imposing liability on any driver in an automobile accident even when " 'the sole cause of the accident was the negligence of either or both parties.' " *Anderson*, 2011 IL App (1st) 110034, ¶ 48, 959 N.E.2d 1167 (quoting *Redmond v. Socha*, 216 Ill. 2d 622, 646, 837 N.E.2d 883, 897 (2005)).

¶ 24 Our decision in the case at hand does not conflict with the holding in *Anderson.* *Anderson* justified its holding on the ground that a " 'jury may well have felt that the evidence of which vehicle had the green light was so conflicting, inconclusive, and unsatisfactory that it simply could not determine from the evidence presented which party was negligent.' " *Anderson*, 2011 IL App (1st) 110034, ¶ 48, 959 N.E.2d 1167 (quoting

Barrick v. Grimes, 308 Ill. App. 3d 306, 310, 720 N.E.2d 280, 283 (1999). In the case at hand, the evidence against Jackson was indeed conflicted and inconclusive. On the other hand, the evidence of Fudge's negligence was far from inconclusive. Indeed, the evidence of Fudge's negligence is overwhelming.

¶ 25 As such, the trial court erred by not granting judgment notwithstanding the verdict against Fudge on the issue of liability.

¶ 26 Accordingly, the cause is affirmed as to Jackson and reversed as to Fudge. Judgment is entered in favor of plaintiff and against Fudge on the issue of liability, and the cause is remanded for a new trial only on the issue of plaintiff's damages.

¶ 27 Affirmed in part and reversed in part; remanded with instruction.