STATE OF MICHIGAN

COURT OF APPEALS

VICKI COLLIER,

Plaintiff-Appellant,

v

LINDSAY MONTALVO and ABOOD LAW FIRM, P.C.,

Defendants-Appellees.

UNPUBLISHED
September 23, 2021

No. 353176
Ingham Circuit Court
LC No. 18-000636-NI

Before: BECKERING, P.J., and SHAPIRO and SWARTZLE, JJ.

PER CURIAM.

In this automobile negligence action, plaintiff appeals as of right a judgment of no cause of action entered after a jury trial. We affirm.

I. BACKGROUND

This case arises from an automobile accident on December 7, 2016, when a vehicle driven by plaintiff Vicki Collier collided with a vehicle driven by defendant Lindsay Montalvo, who was running an errand for her employer, defendant Abood Law Firm.[1] The accident occurred at approximately 8:30 a.m., on East Saginaw Street, just east of Abbot Road in East Lansing, Michigan. At the time of the collision, Montalvo had been sent to purchase office supplies at a nearby Rite Aid pharmacy. The law office and the Rite Aid pharmacy are both located on Saginaw Street, but on opposite sides of the street. The law office is on the south side of the street and the pharmacy is on the north side, slightly west of the law firm. At that location, Saginaw Street consists of six traffic lanes: two eastbound travel lanes, two westbound travel lanes, a middle left-turn lane, and a westbound right-turn lane. As Saginaw Street approaches Abbot Road from the east, the right-turn lane begins before the Rite Aid on the right side of the westbound travel lanes. The accident occurred after defendant turned right out of the law firm parking lot, entered the

[1] As used in this opinion, the singular term "defendant" is used to refer to the individual defendant, Montalvo.

center left-turn lane, and then made a left-hand turn into the Rite Aid pharmacy driveway, while moving through the westbound travel lanes of traffic and the westbound right-hand turn lane. Defendant was almost into the Rite Aid parking lot when her car was struck in the rear passenger-side by plaintiff's vehicle, which was traveling straight in the westbound right-turn lane. The collision caused defendant's vehicle to spin around.

The primary factual disputes at trial involved the amount and position of other traffic, and what each driver could or could not see. Defendant testified that traffic in the two westbound travel lanes was backed up and had stopped, and that drivers in the two westbound travel lanes allowed her to make her turn and proceed in front of them. She explained that she slowly proceeded through the two travel lanes and looked into the right-turn lane and did not see any other cars, so she continued forward into the Rite Aid driveway. According to defendant, she was 95% into the Rite Aid driveway when plaintiff's vehicle struck the rear quarter-panel (behind the back tire) and bumper of her car. Conversely, plaintiff testified that there were no cars in front of her as she moved into the right-turn lane and that she saw defendant's car come "just in front" of her right before the accident occurred. She testified that there were no cars in front of her in either of the westbound travel lanes before the accident; the only westbound traffic that had stopped was in the westbound left-turn lane.

At the conclusion of trial, both parties moved for a directed verdict on the issue of defendant's negligence, and the trial court denied both motions. The jury was provided with a special verdict form and found that defendant was not negligent. Consequently, the jury never reached the issue of damages. Afterward, the trial court also denied plaintiff's posttrial motion for judgment notwithstanding the verdict (JNOV). This appeal followed.

II. ANALYSIS

A. DIRECTED VERDICT & JNOV

Plaintiff first argues that the trial court erred when it denied her motions for a directed verdict and JNOV on the issues of liability. We disagree.[2]

"Directed verdicts, particularly in negligence cases, are viewed with disfavor." *Vsetula v Whitmyer*, 187 Mich App 675, 679; 468 NW2d 53 (1991). "In deciding a motion for a directed verdict, the court examines all the evidence presented up to the time of the motion to determine whether a question of fact exists." *Auto Club Ins Ass'n v Gen Motors Corp*, 217 Mich App 594, 603; 552 NW2d 523 (1996). "The testimony and all legitimate inferences that may be drawn from that testimony are viewed in a light most favorable to the nonmoving party." *Id*. at 604. "If the evidence presents material issues of fact upon which reasonable minds can differ, those issues are to be decided by the jury, thereby precluding a directed verdict." *Vsetula*, 187 Mich App at 679.

[2] "We review de novo a trial court's denial of a motion for a directed verdict or a motion for judgment notwithstanding the verdict." *Abke v Vandenberg*, 239 Mich App 359, 361; 608 NW2d 73 (2000).

The same standards apply to a motion for JNOV. See *Abke v Vandenberg*, 239 Mich App 359, 361; 608 NW2d 73 (2000).

"To establish a prima facie case of negligence, plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Finazzo v Fire Equip Co*, 323 Mich App 620, 635; 918 NW2d 200 (2018). "In the absence of statutory requirements,[3] it is the motorist's duty in the use and operation of his automobile to exercise ordinary and reasonable care and caution, that is, that degree of care and caution which an ordinarily careful and prudent person would exercise under the same or similar circumstances." *Zarzecki v Hatch*, 347 Mich 138, 141; 79 NW2d 605 (1956).

In this case, the parties gave drastically different accounts of the circumstances surrounding the accident. Defendant testified that when she was in the middle left-turn lane, there was backed-up traffic in the westbound travel lanes. In contrast, plaintiff testified that there was no traffic in the westbound travel lanes as she was approaching the intersection. Thus, defendant's testimony that she made the left turn in front of stopped cars in the westbound lanes is plainly at odds with plaintiff's testimony that there were no vehicles in those lanes.

Plaintiff acknowledges the parties' different accounts but maintains that there was no material question of fact. She argues that, regardless of which party's testimony is correct, no reasonable jury could have found that defendant was not negligent. If defendant's testimony is accepted as true, the argument runs, then defendant made a blind left turn because she could not have seen if there was oncoming traffic behind the two stopped cars in the westbound travel lanes that waived her through. Further, in that event plaintiff could not have seen defendant making the turn in front of the stopped vehicles. Alternatively, plaintiff contends that if her testimony that there were no vehicles in the westbound travel lanes is accepted as true, then defendant "blatantly cut off" plaintiff's right-of-way.

Plaintiff's argument presents two clear-cut versions of events, but this overlooks the multiple factual disputes in this case and that the jury was free to believe in whole or in part any witness testimony. See *Adkins v Home Glass Co*, 60 Mich App 106, 111; 230 NW2d 330 (1975) ("It is fundamental that the fact finder may accept in part and reject in part the testimony of any witness."). In addition to the traffic conditions, there was a factual question regarding whether plaintiff's vehicle was in the right-turn lane to be seen when defendant looked and then crossed that lane into the pharmacy driveway. The jury was presented with defendant's testimony that she

[3] At trial, plaintiff argued that defendant's negligence consisted of two acts: (1) the right turn from the Abood Law Firm parking lot into the middle left-turn lane; and (2) the left turn from the middle lane into the Rite Aid parking lot. As to the first act, plaintiff argued that defendant violated MCL 257.634(2), which generally requires that in a roadway having two or more lanes for travel in one direction "the driver of a vehicle shall drive the vehicle in the extreme right-hand lane available for travel except as otherwise provided in this section." On appeal, plaintiff does not argue negligence per se on the basis of MCL 257.634(2) or address defendant's initial turn out of the Abood Law Firm parking lot. Accordingly, she has abandoned these issues and we will not address them further.

looked into the right-turn lane and did not see any other cars in that lane, and with plaintiff's testimony that she had been in the right-turn lane for about 10 seconds and did not see defendant's car until it turned "just in front" of her before the accident occurred. If the jury credited defendant's testimony, it could have found that defendant properly checked for oncoming vehicles and did not see any before proceeding through the right-hand turn lane. The jury could have also discredited plaintiff's testimony and found instead that she abruptly entered the right-turn lane just before defendant completed her turn, which is why defendant did not see her when defendant proceeded onward. There was also a dispute regarding the exact location of defendant's vehicle at the time of the crash because plaintiff disputed defendant's testimony that she was 95 percent into the pharmacy driveway. Plaintiff contends that this factual question was also not material, but how close defendant was to completing the turn was relevant to the reasonableness of her actions.

In sum, whether it was reasonable for defendant to make the left-hand turn depended on the surrounding circumstances, and the parties presented vastly different accounts of those circumstances. Given the substantial differences in testimony, we cannot conclude that this is one of the atypical cases where the trial court rather than the jury should have decided the issue of negligence. See *Marietta v Cliff's Ridge, Inc*, 385 Mich 364, 370; 189 NW2d 208 (1971) ("The question of whether the defendant in fact met the standard of reasonable prudence required of him is ordinarily one for the jury[.]"); *Davis v New York Central R Co*, 348 Mich 262, 268; 83 NW2d 271 (1957) ("[A]s a general rule the question of negligence is one of fact and not of law."). Accordingly, the trial court did not err by denying plaintiff's motions for a directed verdict and JNOV.

B. DEMONSTRATIVE EVIDENCE

Plaintiff next argues that the trial court erred when it refused to admit as demonstrative evidence Figure 4.7 on page 34 of the Michigan Secretary of State's publication, *What Every Driver Must Know*. We again disagree.[4]

Plaintiff argues that she should have been allowed to introduce Figure 4.7 on page 34 of the Secretary of State's publication as demonstrative evidence because the depiction and accompanying statements set forth the respective duties and rights-of-way in circumstances similar to the instant case. Demonstrative evidence is admissible when it may aid the fact-finder in reaching a conclusion on a matter material to the case. *People v Castillo*, 230 Mich App 442, 444; 584 NW2d 606 (1998). "[D]emonstrative evidence . . . must satisfy traditional requirements for relevance and probative value in light of policy considerations for advancing the administration of justice." *Id.* " 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. However, even relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice,

[4] A trial court's decision whether to admit or exclude evidence is reviewed for an abuse of discretion. *Rock v Crocker*, 499 Mich 247, 255; 884 NW2d 227 (2016). "A trial court does not abuse its discretion when its decision falls within the range of principled outcomes." *Id.*

confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MRE 403.

We agree with the trial court that Figure 4.7 was not representative of the actual circumstances of the accident in this case, and was also cumulative of other more accurate information about the intersection, and thus could lead to juror confusion. Although Figure 4.7 depicts a five-lane road with a middle turn lane like the instant case, it does not include a right-turn lane, which is where the accident at issue in this case occurred. Moreover, Figure 4.7 depicts two lanes of approaching traffic in the oncoming lanes. According to defendant's testimony, the cars in the two westbound travel lanes had stopped and allowed her to proceed through, and she was able to determine that there were no approaching vehicles in the right-turn lane as she proceeded through into the Rite Aid driveway. Conversely, plaintiff denied that there were any vehicles in the two westbound travel lanes. Thus, Figure 4.7 does not accurately depict the conditions described by either of the parties. Therefore, despite some similarities between Figure 4.7 and the circumstances in the instant case, the trial court did not err when it found that the introduction of this exhibit could confuse the jury.

In addition, the caption to Figures 4.6 and 4.7 discusses the need to watch out for "hidden" cars as one proceeds. That defendant had an initial duty to yield to oncoming traffic was explained to the jury during jury instructions. Moreover, the parties presented their own demonstrative diagrams depicting the roadway and their versions of the surrounding traffic, and the trial court instructed the jury on the parties' respective duties of care. It was reasonable for the trial court to find that Figure 4.7, in addition to not being an accurate depiction of the actual location and conditions surrounding the accident, would have been cumulative of the parties' other demonstrative exhibits. As such, the trial court's decision to exclude Figure 4.7 was not outside the range of principled outcomes. Further, considering that the parties were able to present their theories of the accident through their own demonstrative exhibits, the exclusion of this exhibit did not affect plaintiff's substantial rights. Therefore, any error was harmless. MCR 2.613(A) ("An error in the . . . exclusion of evidence . . . is not a ground for granting a new trial . . . unless refusal to take this action appears to the court inconsistent with substantial justice."). See also *Ykimoff v W A Foote Mem Hosp*, 285 Mich App 80, 103; 776 NW2d 114 (2009).

Plaintiff raises two additional issues involving her entitlement to damages. Having found no error in the jury's determination that defendant was not negligent, it is not necessary to consider these issues, as they are moot. "An issue is moot when an event occurs that renders it impossible for a reviewing court to grant relief." *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). This Court generally does not decide moot issues. *Id*. Because we are affirming the judgment for defendants on the issue of liability, there is no meaningful relief we can provide even if we were to agree with plaintiff that the trial court erred by limiting the jury's consideration of damages. Accordingly, we decline to address plaintiff's remaining issues.

Affirmed.

/s/ Jane M. Beckering
/s/ Douglas B. Shapiro
/s/ Brock A. Swartzle