

Cheryl Annette Carr,)
)
 Plaintiff/Appellant,) Appeal No.
) 01-A-01-9511-CV-00527
 v.)
)
 Ozburn-Hessey Storage Co. and) Circuit Court No.
 Conrad Anthony Guffy,) 93C-3629
)
 Defendants/Appellees.)

FILED

July 10, 1996

Cecil W. Crowson
Appellate Court Clerk

COURT OF APPEALS

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE FIFTH CIRCUIT COURT OF DAVIDSON COUNTY

AT NASHVILLE, TENNESSEE

THE HONORABLE WALTER C. KURTZ, JUDGE

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AFFIRMED AND REMANDED

SAMUEL L. LEWIS, JUDGE

OPINION

This is an appeal by plaintiff/appellant, Cheryl Annette Carr, from a decision of the trial court granting summary judgment in favor of defendants/appellees, Ozburn-Hessey Storage Co. and Conrad Anthony Guffy.

This case involves a car accident which occurred at 3:30 a.m. on 10 December 1992 approximately one-quarter mile west of the Old Hickory Boulevard ("OHB") and Bridgeway Avenue intersection. There is a yield sign at the intersection for the benefit of drivers turning west onto OHB. On the east side of the intersection OHB is flat, but the west side slopes uphill. The posted speed limit on this portion of OHB is 45 miles per hour.

Ms. Carr was driving a 1992 Ford pick-up and was heading west in the right lane of OHB. At the time of the accident, Mr. Guffy was an intercity truck driver for defendant, Ozburn-Hessey Storage Co. ("Ozburn"). He was driving a closed rig with a standard, eight-gear cab. The rig contained twelve large rolls of cloth weighing between 18,000 and 30,000 pounds. When he reached the intersection, he did not see any lights. He rolled onto OHB and headed west in the right lane. He proceeded through the turn slowly to avoid flipping the truck and then began to accelerate. After Ms. Carr rounded the curve, located before the intersection, she proceeded west. She saw the tail lights of Mr. Guffy's truck within fifty feet of her truck. She braked and tried to pass the truck, however, the passenger side of her truck hit the trailer of Mr. Guffy's truck. Ms. Carr claimed to be doing the speed limit. Mr. Guffy estimated his speed at approximately thirty to thirty-five miles per hour, but Ms. Carr claimed Mr. Guffy was traveling between twenty and twenty-five

miles per hour.¹ Both parties stated that they were familiar with this stretch of road.

On 1 December 1993, Ms. Carr filed a complaint alleging that Mr. Guffy was negligent per se and that he negligently operated the truck. Specifically, she alleged that Mr. Guffy failed to use flashing lights or some other type of warning device to alert her of his slow speed and that he violated Tennessee Code Annotated section 55-8-154(a) which provides as follows: "No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law." TENN. CODE ANN. § 55-8-154(a) (1993).

Defendants responded by denying liability and by alleging comparative fault. They claimed that it was necessary for Mr. Guffy to proceed slowly to avoid flipping his truck and that the truck was sufficiently lit. They also alleged that Ms. Carr was negligent because she failed to maintain a proper lookout and because she followed too closely in violation of Tennessee Code Annotated section 55-8-124.

Thereafter, on 28 July 1993, defendants filed a motion for summary judgment. The court entered its final order granting summary judgment in favor of defendants on 29 September 1995. The court specifically found that Ms. Carr was "negligent and that her negligence contributed more than fifty percent (50%) to the accident as a matter of law." Ms. Carr filed her notice of appeal on 5 October 1995. Her only issue was as follows:

Whether the Trial Judge erred in granting summary judgment to the defendants in this case, thereby making a determination of comparative fault, when the Court made no findings of fact to conclude, as a matter of

¹ For the purposes of this appeal, Mr. Guffy concedes that he was traveling between twenty and twenty-five miles per hour.

law, that the plaintiff's comparative fault was at least fifty (50%) percent in causing a motor vehicle accident with the driver, Mr. [Guffy].

The defendants also presented certain issues for this court's review; however, our resolution of Ms. Carr's issue pretermits defendants' issues.

We review the record of a case decided on a motion for summary judgment "without attaching any presumption of correctness to the trial court's judgment. . . ." **McCall v. Wilder**, 913 S.W.2d 150, 153 (Tenn. 1995). As with any motion for summary judgment, there are two questions which the trial court must answer before it can grant the motion. First, the court must determine that there are no genuine issues of material fact. Second, the court must determine, based on the undisputed material facts, that the moving party is entitled to a judgment as a matter of law. **Byrd v. Hall**, 847 S.W.2d 208, 214 (Tenn. 1993). "A disputed fact is material if it must be decided in order to resolve the substantive claim or defense at which the motion is directed." **Id.** at 215. A genuine issue exists when "a reasonable jury could legitimately resolve that fact in favor of one side or the other." **Id.** Summary judgment is appropriate when there are no genuine issues. **Id.** When making any determination in regard to a summary judgment motion, the court "is to view the evidence in a light favorable to the nonmoving party and allow all reasonable inferences in his favor." **Id.**

The issue in this case involves the apportionment of fault. Prior to the adoption of comparative fault, Tennessee's courts applied contributory negligence. Pursuant to this doctrine, a trial court could grant a defendant's motion for summary judgment if the court found that all reasonable jurors would agree that the plaintiff was guilty of negligence. In other words, if the

court found that there was no genuine issue as to whether the plaintiff was contributorily negligent, it could render a judgment in favor of the defendant. After the supreme court adopted the doctrine of comparative fault in 1992, the court addressed the general issue of when "a trial or appellate court may hold, as a matter of law, that the plaintiff's degree of fault is equal to or greater than the defendant's." **Eaton v. McLain**, 891 S.W.2d 587, 590 (Tenn. 1994). Under the new doctrine, the trial court must decide whether all reasonable jurors would agree, assuming that both plaintiff and defendant were guilty of negligent conduct that proximately caused the injuries, that the fault attributable to the plaintiff equaled or was greater than the defendant's degree of fault. **See id.** If the court determines that all reasonable jurors would find the plaintiff's fault was fifty percent or more, it must grant summary judgment because when the plaintiff's fault is fifty percent or more he or she can not recover and there is nothing for the jury to decide. **See McIntyre v. Balentine**, 833 S.W.2d 52, 57 (Tenn. 1992).

The undisputed facts are as follows. The accident occurred one-quarter mile past the intersection. This stretch of road is straight and slopes uphill. The weather was clear although it was 3:30 a.m. Mr. Guffy approached the intersection and looked for oncoming traffic. There were no lights so he proceeded to turn into the right lane. He accelerated slowly to avoid flipping his truck. At the time, he had on the truck's headlights, taillights, and running lights. Ms. Carr was traveling in the right lane. After negotiating the curve and passing the intersection, Ms. Carr saw the truck's lights approximately fifty feet in front of her. She braked and attempted to pass the truck. She was unable to avoid the truck and struck the rear of it. There was no evidence that either

driver was speeding.

It is the opinion of this court that the undisputed facts establish that Ms. Carr's negligence was greater than that of Mr. Guffy. No reasonable jury could find that Mr. Guffy, who drove a heavily loaded truck approximately twenty to twenty-five miles per hour on an uphill slope from an almost complete stop, was more negligent than Ms. Carr, who failed to notice a fully lit tractor-trailer on a familiar, unobstructed stretch of highway in clear weather until it was too late to avoid crashing into it. The evidence that Ms. Carr's negligence was equal to or greater than that of Mr. Guffy is overwhelming. Reasonable minds could not differ as to the legal conclusions that must be drawn. Therefore, the issue of apportionment of fault was properly withdrawn from the jury and determined by the court as a matter of law.

For the foregoing reasons, the decision of the trial court is affirmed, and the case is remanded to the trial court for any further proceedings. Costs of appeal are taxed to the plaintiff /appellant, Cheryl Annette Carr.

SAMUEL L. LEWIS, JUDGE

CONCUR:

HENRY F. TODD, P.J., M.S.

WILLIAM C. KOCH, JR., J.