

RENDERED: JANUARY 17, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000245-MR

JOYCE MARSHALL EBBS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS McDONALD, JUDGE
ACTION NO. 99-CI-003646

TRANSIT AUTHORITY OF RIVER CITY
and SHIRLEY JOHNSON

APPELLEES

OPINION
VACATING AND REMANDING
** **

BEFORE: COMBS, McANULTY, and MILLER, Judges.

COMBS, JUDGE: Joyce Marshall Ebbs, the appellant, filed a lawsuit against the Transit Authority of River City ("TARC") and Shirley Ann Johnson, a city bus driver, to recover damages for personal injuries allegedly sustained on April 10, 1998. After the presentation of the plaintiff's case, the trial court directed the jury to find for the defendants. The only issue on appeal is whether the entry of a directed verdict was proper.

On the evening of April 10, 1998, Ebbs boarded a westbound TARC bus at the east side of 39th Street and Broadway

in Louisville. She was carrying her purse and a small sack of sandwiches. The area was well illuminated by street lamps, the road was dry, and there was no evidence to suggest that traffic was particularly busy. As the driver pulled the bus away from the curb, she noticed a passenger truck near the front of the bus. She suddenly and forcefully applied the brakes, causing Ebbs to be thrown to the front of the bus and into the stairwell. According to Ebbs, she suffered personal injuries as a result of the fall.

Ms. Johnson, the bus driver, gave a detailed account of what transpired. Once Ebbs had boarded the bus and paid her fare, Johnson began to prepare to enter her lane of traffic. She checked both mirrors and saw a passenger truck approaching the rear of the bus in the lane of traffic. Johnson released her brake. When she re-checked the mirrors, Johnson failed to locate the passenger truck. She began to move the bus away from the curb. When the bus had travelled only "some inches," the passenger truck suddenly reappeared near the front bumper of the bus. Johnson very abruptly applied the brakes to avoid colliding with the truck.

According to Ebbs, this testimony demonstrates that the bus driver failed to operate the bus with the proper degree of care reasonably to be expected from a common carrier. She contends that the evidence would support a jury's finding of negligence and that the trial court erred by directing a verdict against her. TARC and its driver contend that the decision to

apply the brakes abruptly was reasonable in order to avoid a collision. They argue that the evidence fails to establish that the driver's actions were careless and that absent proof of carelessness, they were entitled to a directed verdict.

In ruling on a motion for a directed verdict, the trial court must consider the evidence in the strongest possible light in favor of the party opposing the motion. Everley v. Wright, 872 S.W.2d 95 (1993). A directed verdict must not be entered unless there is "a complete absence of proof on a material issue in the action, or if no disputed issue of fact exists upon which reasonable men could differ." Taylor v. Kennedy, Ky. App., 700 S.W.2d 415, 416 (1985); Mason v. Keltner, Ky. App., 854 S.W.2d 780 (1992). The trial court is required to give the non-moving party the advantage of every fair and reasonable inference which can be drawn from the evidence. Mason v. Keltner, Ky. App., 854 S.W.2d 780 (1992).

Having reviewed Johnson's testimony in the strongest possible light in favor of Ebbs, we agree that a jury might reasonably have found that a greater degree of caution on Johnson's part could have averted the necessity of a stop sudden enough to throw Ebbs to the floor. The evidence indicates that it is possible and would be reasonable for a jury to determine that Johnson's decision to pull away from the curb without first having ascertained the location of the passenger truck, which she had already observed travelling close by, arguably constituted negligence. Consequently, the appellees were not entitled to a

directed verdict, and the jury should have been at liberty to evaluate the evidence.

The order of the Jefferson Circuit Court is vacated, and this matter is remanded for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT:

Martin N. Kute
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BRIEF FOR APPELLEES:

R. Allen Button
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