

RENDERED: February 4, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-002333-MR

SUE EDMONDSON

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE TOM McDONALD, JUDGE
ACTION NO. 00-CI-006078

BONNIE ROBERSON¹ and
STATE FARM INSURANCE COMPANY

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE AND McANULTY, JUDGES; EMBERTON, SENIOR JUDGE.²

McANULTY, JUDGE: Sue Edmondson (Edmondson) appeals from a judgment entered on a jury verdict for Bonnie Roberson (Roberson) in her action against Roberson for damages resulting from an automobile collision. The only question before this Court is whether Edmondson was entitled to a directed verdict of liability against Roberson. Because we conclude that the

¹ Edmondson listed Roberson's name as Robertson on the Notice of Appeal, but Roberson gave the correct spelling at trial as "Roberson."

² Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

verdict was not palpably or flagrantly against the evidence so as to indicate that it was reached as a result of passion or prejudice, we affirm.

The automobile accident that is the subject of this case occurred at the intersection of Shady Lane and Ridge Road in Jefferson County, Kentucky. Running east and west, Ridge Road is a two-lane roadway. About 80 to 100 feet west of the intersection where the accident occurred is a slight curve. Shady Lane is a small intersecting lane, which makes a T-intersection with Ridge Road.

The accident occurred on a clear afternoon on October 15, 1999. Roberson was traveling west on Ridge Road, and Edmondson was traveling in the opposite direction on Ridge Road. Roberson made a left-hand turn onto Shady Lane, and Edmondson hit Roberson in the middle of Roberson's minivan on the passenger side.

Edmondson brought this action against Roberson and State Farm Insurance Company, Edmondson's underinsured motorist insurer. The case proceeded to trial.

At the conclusion of the proof at the trial, Edmondson made a motion for a directed verdict on the issue of liability in favor of Edmondson. In support, she argued that Roberson was negligent as a matter of law because KRS 189.330(9) and KRS 189.380(1) impose a duty on Roberson, as the left turning

driver, to yield to oncoming traffic and not turn until movement can be made with reasonable safety. If Roberson had looked, then she ought to have seen Edmondson's car. Thus, Roberson's statement that she looked but did not see Edmondson's car is not worthy of belief especially when Roberson admitted that she could see a great distance down the road. Finally, under Kentucky case law, "[w]hen there is nothing to prevent the left turning driver from observing the imminent approach of a vehicle which is traveling in a straight course, the left turning driver is negligent as a matter of law when a collision results." Covington v. Friend Tractor and Motor Co., Inc., 547 S.W.2d 771, 775 (Ky.App. 1977).

The trial court denied Edmondson's motion for a directed verdict. The jury returned a verdict absolving Roberson of liability for the accident. Later, Edmondson filed a motion for judgment notwithstanding the verdict and for a new trial, which motion the trial court also denied, precipitating this appeal.

The standard of review of a denial of a directed verdict is stated in Lewis v. Bledsoe Surface Mining Co., 798 S.W.2d 459, 461-62 (Ky. 1990):

Upon review of the evidence supporting a judgment entered upon a jury verdict, the role of an appellate court is limited to determining whether the trial court erred in failing to grant the motion for directed

verdict. All evidence which favors the prevailing party must be taken as true and the reviewing court is not at liberty to determine credibility or the weight which should be given to the evidence, these being functions reserved to the trier of fact. The prevailing party is entitled to all reasonable inferences which may be drawn from the evidence. Upon completion of such an evidentiary review, the appellate court must determine whether the verdict rendered is "palpably or flagrantly" against the evidence so as "to indicate that it was reached as a result of passion or prejudice." If the reviewing court concludes that such is the case, it is at liberty to reverse the judgment on the grounds that the trial court erred in failing to sustain the motion for directed verdict. Otherwise, the judgment must be affirmed.

(Citations omitted.)

In reviewing the facts, we must afford Roberson the benefit of all reasonable inferences that may be drawn from the evidence. Roberson testified that just before the accident happened, she had dropped off her grandson at a friend's house to pick up his bike. The grandson then rode his bike on a bike path that runs parallel to Ridge Road along the eastbound lane. Roberson drove slowly alongside her grandson, then started to make her left-hand turn. Before making the turn, she looked ahead and did not see any cars coming in the opposite direction. She then turned very slowly so that her grandson would know that she was turning and stop his bike at the intersection. Before she completed her turn, she heard brakes screeching and felt the

impact of Edmondson's car hitting her van. The collision occurred entirely in Edmondson's lane of travel. According to Roberson, the visibility on Ridge Road is not that clear because the road elevates and turns.

The speed limit on Ridge Road is 35 mph. Edmondson stated that she was traveling 30-35 mph. When she first saw Roberson's van, it was 5 to 6 car lengths away, but later stated on cross-examination that it could have been 6 or 7 car lengths away. She estimated a car length to be about 10 to 15 feet. And the first time she saw Roberson's van, it was already in the process of turning and was in Edmondson's lane of travel. Edmondson corroborated Roberson's testimony that Ridge Road curved. Edmondson estimated that the curve was about 8 to 10 car lengths from the intersection where the accident occurred.

When Edmondson first saw Roberson's van, Edmondson did not slow her car down because she assumed that she would complete her turn. According to Edmondson, Roberson stopped, and Edmondson slammed on her brakes at about 1 car length away. But at that point, she did not have enough time to come to a complete stop before impact and had nowhere to go to avoid the collision.

Given these facts, which we believe fairly afford Roberson the benefit of all inferences that may be drawn from the testimony at trial, we cannot say that Roberson was

negligent as a matter of law. The issue of liability for this accident was properly submitted to the jury. We believe the jury could see this as a case in which a curve prevented Roberson from seeing Edmondson's approaching vehicle. Thus, it is factually distinct from those cases cited by Edmondson in which a directed verdict is warranted because a left turning vehicle turns in front of an approaching vehicle. See Covington, 547 S.W.2d 771.

But Edmondson argues that Roberson's assertion that the curve in the road prevented her from seeing Edmondson is without factual basis and contradicts Roberson's testimony at trial. We disagree. Roberson stated that visibility on Ridge Road is not great because the road elevates and turns. And contrary to Edmondson's assertions in this appeal, Roberson did not state that she could see a "great distance" down Ridge Road in the direction from which Edmondson was traveling. She simply said there was no one in her view when she looked before making the turn, and she would not guess as to how far that might be.

Because we conclude the trial court properly denied Edmondson's motion for a directed verdict and submitted the issue of liability to the jury, we affirm. And we affirm the trial court's denial of Edmondson's motion for judgment notwithstanding the verdict and for a new trial.

ALL CONCUR.

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