

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Marla L. Carrozza et al., :
 :
 Plaintiffs-Appellants, : No. 11AP-1009
 : (C.P.C. No. 09CVC-03-4398)
 v. :
 : (REGULAR CALENDAR)
 Ann Margaret Landis et al., :
 :
 Defendants-Appellees. :

D E C I S I O N

Rendered on December 28, 2012

Law Offices of Stanley B. Dritz, Stanley B. Dritz, and D. Chadd McKitrick, for appellants.

Joyce V. Kimbler, for appellee Ann Margaret Landis.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} This is an appeal by plaintiffs-appellants, Marla L. Carrozza, and Teala Carberry (collectively "appellants"), from a judgment of the Franklin County Court of Common Pleas, overruling objections to a magistrate's decision denying appellants' motions for judgment notwithstanding the verdict and for a new trial.

{¶ 2} On April 21, 2008, vehicles driven by appellant Marla Carrozza (individually "Carrozza") and defendant-appellee, Ann Margaret Landis, were involved in an automobile accident at the intersection of North High Street and Charleston Avenue. The vehicles collided as appellee was attempting to make a left hand turn from Charleston Avenue onto North High Street. On March 24, 2009, appellants filed a complaint against appellee, alleging she had negligently operated her motor vehicle.

{¶ 3} By order of reference, the case was set for jury trial before a magistrate of the trial court. On June 25, 2010, the parties filed a joint motion to bifurcate the issues of liability and damages for purposes of trial. The trial court granted the motion, and the matter came for jury trial before a magistrate beginning January 10, 2011. Following opening statements, counsel for appellants made a motion for a directed verdict, which the trial court denied.

{¶ 4} On the date of the incident, Carrozza was driving northbound on North High Street; Carrozza's daughter, appellant Teala Carberry (individually "Carberry"), was a passenger in Carrozza's vehicle. Appellee was traveling westbound on Charleston Avenue. At the intersection, North High Street is a five-lane road, consisting of two northbound lanes, two southbound lanes, and a center turn lane utilized by all traffic on North High Street. Charleston Avenue has a stop sign at the intersection, while North High Street does not have any traffic control devices.

{¶ 5} Just prior to the accident, traffic on North High Street was heavy, causing a backup from a traffic signal at the intersection of North High Street and Broad Meadows Boulevard, located north of the intersection of North High Street and Charleston Avenue. Appellee's vehicle was stopped at the stop sign on Charleston Avenue; according to appellee's testimony, she inched her vehicle out toward the center lane, between stopped traffic, in an attempt to make a left turn on North High Street. As appellee was pulling out, her vehicle collided with the car driven by Carrozza. At trial, Carrozza testified that she was driving in the northbound lane closest to the center turn lane. Appellee, on the other hand, testified that Carrozza was driving in the center turn lane at the time of the collision.

{¶ 6} At the close of the evidence, appellants renewed their motion for a directed verdict, arguing that appellee had violated R.C. 4511.43. The trial court denied the motion. Following deliberations, the jury returned an interrogatory finding that appellants failed to prove, by a preponderance of the evidence, that appellee was negligent, thus rendering a verdict in favor of appellee and against appellants.

{¶ 7} On February 8, 2011, appellants filed a motion for judgment notwithstanding the verdict ("JNOV"), as well as a motion for new trial. On February 18, 2011, appellee

filed a memorandum contra appellants' motions. By decision filed on August 4, 2011, the magistrate denied appellants' motions for JNOV and for a new trial.

{¶ 8} Appellants filed objections to the magistrate's decision. By decision and entry filed on October 21, 2011, the trial court overruled appellants' objections and adopted the magistrate's decision.

{¶ 9} On appeal, appellants set forth the following five assignments of error for this court's review:

ASSIGNMENT OF ERROR NO. 1.

THE TRIAL COURT ERRED IN DENYING APPELLANTS-PLAINTIFFS', MARLA CARROZZA AND TEALA CARBERRY, MOTION FOR DIRECTED VERDICT.

ASSIGNMENT OF ERROR NO. 2.

THE TRIAL COURT ERRED BY DENYING APPELLANTS-PLAINTIFFS', MARLA CARROZZA AND TEALA CARBERRY, MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

ASSIGNMENT OF ERROR NO. 3.

THE TRIAL COURT ERRED IN PREJUDICE TO THE APPELLANTS-PLAINTIFFS, MARLA CARROZZA AND TEALA CARBERRY, BY OVERRULING PLAINTIFFS' OBJECTIONS TO THE JURY INSTRUCTIONS AND INTERROGATORIES CHARGED TO THE JURY.

ASSIGNMENT OF ERROR NO. 4.

THE TRIAL COURT ERRED BY DENYING APPELLANTS-PLAINTIFFS', MARLA CARROZZA AND TEALA CARBERRY, MOTION FOR NEW TRIAL.

ASSIGNMENT OF ERROR NO. 5.

THE TRIAL COURT ERRED BY OVERRULING APPELLANTS-PLAINTIFFS', MARLA CARROZZA AND TEALA CARBERRY, OBJECTIONS TO THE MAGISTRATE'S DECISION.

{¶ 10} Appellants' first, second, fourth, and fifth assignments of error are interrelated and will be considered together. Under these assignments of error,

appellants argue that the trial court erred in denying their motions for directed verdict, JNOV, and for a new trial, and further argue that the court erred in overruling their objections regarding these motions.

{¶ 11} In *Posin v. A.B.C. Motor Court Hotel, Inc.*, 45 Ohio St.2d 271, 275 (1976), the Supreme Court of Ohio held in part:

The test to be applied by a trial court in ruling on a motion for judgment notwithstanding the verdict is the same test to be applied on a motion for a directed verdict. The evidence adduced at trial and the facts established by admissions in the pleadings and in the record must be construed most strongly in favor of the party against whom the motion is made, and, where there is substantial evidence to support his side of the case, upon which reasonable minds may reach different conclusions, the motion must be denied. Neither the weight of the evidence nor the credibility of the witnesses is for the court's determination in ruling upon either of the above motions.

{¶ 12} Civ.R. 59(A) addresses motions for new trial, and states in part:

A new trial may be granted to all or any of the parties and on all or part of the issues upon any of the following grounds:

(1) Irregularity in the proceedings of the court, jury, magistrate, or prevailing party, or any order of the court or magistrate, or abuse of discretion, by which an aggrieved party was prevented from having a fair trial;

* * *

(6) The judgment is not sustained by the weight of the evidence.

(7) The judgment is contrary to law.

{¶ 13} Appellants contend that the evidence at trial established appellee traveled through the intersection of North High Street and Charleston Avenue without first yielding the right-of-way to motor vehicles in the intersection. Appellants argue that Carrozza's vehicle had the right-of-way at the time of the accident, and that such right-of-way under R.C. 4511.43 is absolute. Appellants maintain that appellee was negligent per se, and therefore appellants were entitled to a directed verdict, as well as JNOV, entered

in their favor. Appellants further contend that appellee failed to demonstrate that Carrozza operated her motor vehicle in an unlawful manner.

{¶ 14} R.C. 4511.43(A) states as follows:

Except when directed to proceed by a law enforcement officer, every driver of a vehicle or trackless trolley approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.

{¶ 15} Pursuant to R.C. 4511.01(UU), "right-of-way" is defined as follows: "The right of a vehicle * * * to proceed uninterruptedly in a lawful manner in the direction in which it or the individual is moving in preference to another vehicle * * * approaching from a different direction into its or the individual's path." *See also Vavrina v. Greczanik*, 40 Ohio App.2d 129, 135 (8th Dist.1974) (under Ohio law, "[a] motor vehicle that has the right of way has the right to proceed uninterruptedly in a lawful manner in the direction in which it is moving in preference to another vehicle approaching from a different direction into its path"). However, "[i]n order for a person to keep his right of way, such preferred party must operate his vehicle and proceed in a lawful manner as he approaches and crosses an intersection." *Id.* Thus, "[t]he law gives to the operator of a vehicle on the highway who has the right of way a shield, an absolute right to proceed uninterruptedly, but he forfeits the shield if he fails to proceed in a lawful manner." *Id.* Finally, "[i]n order to proceed in a lawful manner, a person must be complying with Ohio traffic laws." *Cramer v. Detrick*, 2d Dist. No. 13583 (Nov. 10, 1993). *See also Morris v. Bloomgren*, 127 Ohio St. 147 (1933), paragraph three of the syllabus (if a vehicle is not proceeding in a lawful manner in approaching or crossing an intersection, but is proceeding in violation of a law or ordinance, "such vehicle loses its preferential status").

{¶ 16} R.C. 4511.33(A)(2) states as follows:

Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle or

trackless trolley shall not be driven in the center lane except when overtaking and passing another vehicle or trackless trolley where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or when preparing for a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle or trackless trolley is proceeding and is posted with signs to give notice of such allocation.

{¶ 17} As noted under the facts, there was conflicting evidence presented as to the lane Carrozza was traveling in at the time of the collision. Specifically, appellants testified that their vehicle was traveling in a northbound through lane, not the center turn lane, when the accident occurred. Appellee, on the other hand, testified that Carrozza was driving in the center turn lane; appellee's theory was that Carrozza was using the center turn lane unlawfully as a travel lane, i.e., as a means to travel further north to Broad Meadows Boulevard, where she intended to turn left.

{¶ 18} The magistrate ruled that liability under R.C. 4511.43(A) is not absolute, and that a factual determination must be made "as to whether the driver forfeited the protections of the statute," i.e., whether an unlawful manner of operation occurred. Based upon the evidence presented, the magistrate found that sufficient circumstantial evidence was introduced by appellee to allow the jury to consider in which lane Carrozza was traveling at the time of the accident and whether she was proceeding unlawfully. The magistrate determined that evidence was presented whereby it was up to the trier of fact to determine whether Carrozza violated R.C. 4511.31 "by using the center lane for an unrecognized purpose." Thus, the magistrate found that this case "does not qualify as one that after testing the legal sufficiency of the evidence, only one outcome remains. Rather, the evidence requires weighing by the finder of fact and a determination of the credibility of the witnesses."

{¶ 19} In considering the evidence presented, the magistrate concluded:

[I]t appears the jury was not persuaded that Plaintiff Carrozza was operating her vehicle lawfully. Circumstantial evidence does exist whereby the jury could be persuaded that rather than wait for traffic in the two primary northern-bound lanes of North High Street, Plaintiff expedited her travel by utilizing the center turn lane as [a] substitute means to travel North, at a point where it would be premature to begin to move over to initiate her turn onto Broadmeadows Boulevard.

{¶ 20} The trial court, in addressing appellants' objections, also noted that the jury heard conflicting testimony as to the lane in which Carrozza operated her vehicle at the time of the accident. The trial court found that appellee's testimony, if believed, raises a question as to the proximate cause of appellants' injuries, and that appellants' reliance upon an alleged violation of R.C. 4511.43(A) "is not enough." The trial court also addressed appellants' contention that there was insufficient evidence that Carrozza operated her motor vehicle in an unlawful manner. The court noted that, under the applicable statute (R.C. 4511.33(A)(2)), driving in a center turn lane is only permissible under three scenarios, i.e., (1) when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance, (2) when a driver is preparing for a left turn, and (3) where the center lane is posted with signs that exclusively limit traffic to move in the same direction in which the vehicle is traveling.

{¶ 21} The trial court held that once appellee presented testimony that Carrozza was in the center lane, a question arose as to whether Carrozza had a permissible purpose in driving in that lane. The court noted that Carrozza and her passenger, Carberry, both testified that Carrozza was planning on making a left hand turn north of the collision site, at the intersection of North High Street and Broad Meadows Boulevard. The court further noted that a review of an aerial photograph of the collision site, admitted as an exhibit at trial, indicated that "a dedicated left turn lane" for Broad Meadows Boulevard "does not begin until farther north" of the North High Street and Charleston Avenue intersection. Thus, based upon the evidence presented, the trial court held that "a jury could properly conclude that [Carrozza] was not using the middle lane for any permissible purpose."

{¶ 22} Based upon this court's review of the record, we similarly find that there was conflicting evidence as to whether Carrozza was operating her vehicle in a lawful manner, and thus a question for the trier of fact as to whether Carrozza forfeited the right-of-way. While Carrozza testified that she was driving in the left-hand through lane at the time of the accident, appellee presented contrary evidence for the jury's consideration. According to the testimony of appellee, drivers at the intersection of Charleston Avenue and High Street "left the intersection open * * * in order to leave that clear for me to make my turn," and that both lanes of northbound traffic "were at a complete stop." (Tr. 75.) Appellee

testified that Carrozza's vehicle was traveling northbound "through the turn lane and was not turning" at the time of the accident. (Tr. 76.) According to appellee, she did not expect drivers to be using the center lane "as a throughway to * * * travel north." (Tr. 76.)

{¶ 23} Here, the conflicting evidence presented questions for the trier of fact as to whether Carrozza was in the center turn lane and whether she was using that lane as a travel lane to pass vehicles backed up at the intersection of North High Street and Charleston Avenue (and not making a left hand turn at that intersection). Where the record contains sufficient evidence such that reasonable minds could differ as to whether Carrozza forfeited her preferential status by proceeding in an unlawful manner, submission of this evidence to the jury was proper. Upon review, we agree with the trial court that the evidence before the jury raised a question as to the proximate cause of the accident, and that there was substantial evidence upon which the jury could conclude Carrozza was not using the center lane for a permissible purpose.

{¶ 24} Appellants further argue that the trial court engaged in irregularities that prevented a fair trial. Appellants first note that, during direct examination, appellee was asked whether she had been cited for the accident. Appellee responded, "No, not --," at which time counsel for appellants raised an objection which the trial court sustained. (Tr. 78.) Following a side conference, counsel for appellants requested a mistrial, which the magistrate denied. The trial court then admonished the jury "that you're not to consider any questions or responses having to do with citation as to any of the parties and the question asked about citation is stricken from the record." (Tr. 80.)

{¶ 25} In addressing appellants' objection on this issue, the trial court noted that "[t]he record indicates that the Magistrate struck the exchange, and instructed the jury to disregard it. Plaintiff provides no other support to demonstrate prejudice."

{¶ 26} Under Ohio law, it is presumed that a jury will obey a trial court's instruction and admonishment. *Austin v. Kluczarov Constr.*, 9th Dist. No. 02CA0103-M, 2004-Ohio-593, ¶ 13. Upon review, we find no error by the trial court in overruling this objection.

{¶ 27} Appellants also argue it was prejudicial to allow a police officer, Damian St. John, to testify while in uniform. In the magistrate's decision denying appellants' motions for JNOV and new trial, the magistrate noted that the officer had arrived "straight from

work" to testify, and that appellants' concern "was not subject to any previous motion in limine or request at outset of trial" so as to give appellee fair warning to anticipate an objection. The magistrate further observed that appellants' request, "if sustained, would have necessitated an impromptu wardrobe change or the rescheduling of the witness's testimony." The magistrate also noted that the court had admonished the jury several times that the witness was offering lay testimony.

{¶ 28} In their objection to the magistrate's decision, appellants argued before the trial court that the mere presence of a police officer in uniform created "additional undue inferences" against appellants. The trial court, in considering appellants' objection, found appellants' claim of undue inferences to be speculative.

{¶ 29} It is the duty of the trial court to "supervise, in an orderly manner, the proceedings before it." *State ex rel. Butler v. Demis*, 66 Ohio St.2d 123, 128 (1981). Similarly, a magistrate is "authorized to regulate the proceedings and to do everything necessary for the efficient performance of its responsibilities." *Loewen v. Newsome*, 9th Dist. No. 25559, 2012-Ohio-566, ¶ 15, citing Civ.R. 53(C)(2). The record before this court on appeal fails to indicate prejudice arising from the officer's appearance in his uniform, and we find no abuse of discretion by the trial court in overruling this objection.

{¶ 30} Based upon this court's review, the trial court did not err in overruling appellants' objections to the magistrate's denial of appellants' motions for directed verdict, JNOV, and for a new trial. Accordingly, appellants' first, second, fourth, and fifth assignments of error are without merit and are overruled.

{¶ 31} Under their third assignment of error, appellants assert that the trial court erred in overruling appellants' objections to jury instructions and interrogatories. Appellants again argue that there was no evidence that Carrozza violated any traffic laws at the time of the accident. Appellants thus argue there was insufficient evidence relating to the issues of "ordinary care" and "marked lanes" to permit reasonable minds to reach different conclusions on these issues.

{¶ 32} The trial court, in addressing appellants' third objection pertaining to specific jury instructions given by the magistrate, noted that appellants failed to identify which instructions they deemed improper, "beyond a vague generalization that they did not 'correlate with' §4511.43." The trial court found that Civ.R. 53(D)(3)(b)(ii) "requires

the objections to be specific and state with particularity the grounds for objection," and the court found that appellants had failed to comply with the requirements of that rule.

{¶ 33} On appeal, appellants note that, during trial, the parties took issue with several instructions regarding the issues of ordinary care and marked lanes. Appellants argue that there was no evidence Carrozza violated any traffic law at the time of the collision and, therefore, there was insufficient evidence relating to those issues. As discussed under the prior assignments of error, however, there was sufficient evidence presented upon which the jury could conclude Carrozza was not using the center lane for a permissible purpose. Further, we have reviewed the instructions provided and find them to be a correct statement of Ohio law, and we find no error by the trial court in overruling appellants' objections to the instructions provided by the magistrate.

{¶ 34} Accordingly, appellants' third assignment of error is without merit and is overruled.

{¶ 35} Based upon the foregoing, appellants' first, second, third, fourth, and fifth assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

FRENCH and DORRIAN, JJ., concur.
