

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

SUSAN CROPPER, et al., :
 :
 Plaintiff-Appellant, : CASE NO. CA2008-09-088
 :
 - vs - : OPINION
 : 7/27/2009
 :
 PAMELA JEWELL, :
 :
 Defendant-Appellee. :

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2004-CVC-01555

T. David Burgess Co., L.P.A., T. David Burgess, 110 North Third Street, Williamsburg, OH 45176-1322, for plaintiff-appellant

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POWELL, P.J.

{¶1} Plaintiff-appellant, Susan Cropper, appeals the judgment of the Clermont County Court of Common Pleas denying her motion for judgment notwithstanding the verdict ("JNOV") and/or motion for new trial.

{¶2} This is a personal injury case resulting from an automobile collision between the parties on February 28, 1999. The evidence adduced at trial reveals that appellant was

driving eastbound on S.R. 125 in Clermont County when she collided with defendant-appellee, Pamela G. Jewell, who was attempting to make a left turn at the intersection of S.R. 125 and S.R. 222 during either a yellow or red light. During trial, each side presented evidence and testimony with respect to the color of the traffic light at the time appellee turned through the intersection, the speed at which each party was traveling, and the resulting damages.

{¶3} At the conclusion of the trial, the jury found no negligence on the part of appellee and awarded appellant no damages. Following the jury verdict and judgment entry in favor of appellee, appellant filed a motion asserting alternative rights to JNOV or a new trial, which the trial court denied. Appellant now appeals, asserting two assignments of error.

{¶4} Assignment of Error No. 1:

{¶5} "THE TRIAL COURT COMMITTED ERROR IN NOT GRANTING APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT."

{¶6} Appellant first argues the evidence presented at trial, as a matter of law, is contrary to the jury's verdict; therefore, the court erred in denying her motion for JNOV.

{¶7} Motions for JNOV are governed by Civ.R. 50(B), and we review the trial court's ruling de novo. *Blatnik v. Avery Dennison Corp.*, 148 Ohio App.3d 494, 2002-Ohio-1682, ¶51. Where a party seeks JNOV, "[t]he 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." *Posin v. A. B. C. Motor Court Hotel, Inc.* (1976), 45 Ohio St.2d 271, 275; see, also, *Coyne v. Stapleton*, Clermont App. No. 2006-10-080, 2007-Ohio-6170, at ¶9.

{¶8} Appellant argues that viewing the evidence in light of the trial court's jury instructions compels a finding of appellee's negligence. In support of her claim that appellee could not have exercised ordinary care while entering the intersection, appellant points to uncontroverted evidence regarding her speed and proximity to the intersection at the time appellee began to make her left turn and appellee's testimony that she did not see appellant's car prior to making the turn. Appellant argues that under the circumstances shown to exist at the time of the collision, her vehicle constituted an immediate hazard, and appellee's failure to yield under those circumstances constitutes negligence as a matter of law.

{¶9} Although appellant correctly indicates that the evidence regarding her speed and distance from the intersection was uncontroverted, this evidence does not necessarily mean her vehicle should be classified as an immediate hazard, as she contends. The mere fact that testimony is uncontroverted does not necessarily require a jury to accept the evidence if the jury found that the testimony was not credible. *Bradley v. Cage*, Summit App. No. 20713, 2002-Ohio-816, citing *Ace Steel Baling, Inc. v. Porterfield* (1969), 19 Ohio St.2d 137, 138.

{¶10} Appellee and defense witnesses, Paul Jewell and Kimberly Jewell, testified that appellee did not start her turn into the eastbound lanes of S.R. 125 until the light was red, and at least two other vehicles coming from appellant's direction had stopped for the red light. Reasonable minds could have therefore come to the conclusion that appellee was exercising ordinary care in seeing the light turn red, noting that other vehicles in the eastbound lanes had come to a stop, and making the left hand turn to clear the intersection, and that appellant entered the intersection after the signal changed and appellee had already begun her turn.

{¶11} Under this set of facts presented, if believed, appellant traveled through the

intersection in an unlawful manner, thereby losing her right of way. See R.C. 4511.42; R.C. 4511.01 (UU)(1). See, also, *Elahab v. Evans* (Jan. 23, 1998), Montgomery App. No. 16501, 1998 WL 22058. In those circumstances, where one vehicle loses its preferential status by unlawfully approaching or crossing an intersection, the respective legal duties of the drivers are determined by common law. *Id.*, citing *Deming v. Osinski* (1970), 24 Ohio St.2d 179, 181-82. The determination of the parties' respective common law standards of care are matters best determined by a jury. *Elahab* at *5, citing *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 286 ("[I]ssues in a negligence case should be withdrawn from a jury only in exceptional cases and never when the facts concerning the conduct of the parties as well as the standard of care that should be exercised are to be determined").

{¶12} Accordingly, we find the trial court did not err in denying appellant's motion for JNOV, as there was substantial evidence presented upon which reasonable minds could conclude appellee did not operate her vehicle in a negligent manner.

{¶13} Assignment of Error No. 2:

{¶14} "THE TRIAL COURT COMMITTED ERROR IN NOT GRANTING APPELLANT'S MOTION FOR NEW TRIAL."

{¶15} Appellant also argues the judgment is not sustained by the weight of the evidence and is contrary to law, and the trial court erred in denying her motion for a new trial, pursuant to Civ.R. 59(A)(6) and (7).

{¶16} When reviewing a trial court's decision to deny a motion for a new trial pursuant to Civ.R. 59, an appellate court may reverse only if the trial court abused its discretion. *Rohde v. Farmer* (1970), 23 Ohio St.2d 82, paragraph one of the syllabus. A trial court's judgment is not against the manifest weight of the evidence when it is supported by competent, credible evidence. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. Since the trier of fact is best able to view the witnesses and observe their demeanor

when weighing the credibility of the offered testimony, there is a presumption that the findings of the trier of fact are correct. Id.

{¶17} Based upon the foregoing discussion, we find that there existed competent, credible evidence upon which the jury could base its finding for appellee, and such finding was not contrary to law. Therefore, the trial court did not abuse its discretion in denying the motion for a new trial.

{¶18} Judgment affirmed.

YOUNG and HENDRICKSON, JJ., concur.

[Cite as *Cropper v. Jewell*, 2009-Ohio-3683.]