Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-198

JANUARY TERM, 2002

Joyce Warner	}	APPEALED FROM:
v.	}	Addison Superior Court
Donald F. Swenor	}	
	}	DOCKET NO. 164-7-99 Ancv
	}	Trial Judge: Edward J. Cashman

In the above-entitled cause, the Clerk will enter:

Plaintiff Joyce Warner seeks reversal of a defense jury verdict and a new trial in this action for negligence arising out of an automobile accident on July 3, 1997. Warner claims (1) the jury's verdict is contrary to the weight of the evidence and the law, (2) the trial court abused its discretion by denying her motion for a new trial, and (3) the court's instructions to the jury were erroneous. We affirm.

Construing the evidence in the light most favorable to defendant Donald Swenor as we must, Rash v. Waterhouse, 124 Vt. 476, 478 (1965), the facts are as follows. On the afternoon of July 3, 1997, Warner was driving north in her truck on Route 7 in Middlebury when she drove her truck into the rear of a van waiting to turn left onto Methodist Lane. Swenor was driving a compact car approximately thirty feet, or two car lengths, behind Warner at fifteen to twenty miles per hour, although the speed limit in that area was twenty-five miles per hour. As soon as he saw Warner's brake lights, Swenor engaged his brakes thinking that he would be able to stop in time, but his car slid into the back of Warner's truck. Warner's truck then hit the van in front of her a second time. It was raining very lightly at the time, but the roads were wet from an earlier downpour. Swenor could not see the van in front of Warner's truck because the truck blocked his view. Swenor testified that he could not have turned his car to the left because of oncoming traffic, nor to the right due to a high cement curbing.

Warner eventually sued Swenor for damages alleging that he was negligent by driving too close to her vehicle. At trial, Swenor denied he was negligent, but acknowledged that he had some responsibility for the accident. There was evidence that Warner told Swenor after the accident that she did not see the stopped van in front of her, and when she did, she hit her brakes and slid into the rear of the van. The jury returned a verdict for Swenor, finding that Swenor did not breach his duty of reasonable care to Warner. Warner thereafter moved the court to set aside the verdict and grant a new trial on the grounds that the verdict was contrary to the weight of the evidence and the jury did not understand the law correctly due to errors in the jury instructions. The court denied Warner's request, and she appealed.

Whether to grant a new trial is a matter left to the discretion of the trial court. Gregory v. Vt. Traveler, Inc., 140 Vt. 119, 121 (1981). The court must consider the evidence in the light most favorable to the verdict. Id. If any reasonable view of the evidence can support the verdict, the verdict must stand. Claude G. Dern Elec., Inc. v. Bernstein, 144 Vt. 423, 426 (1984). Further, the jury is responsible for weighing the evidence and determining the credibility of witnesses, including expert witnesses. Id. "No error arises merely because the jury accepted one side's proof over that of the other." Id. at

427.

Warner asserts that the jury's finding that Swenor did not breach his duty of reasonable care to her is not supported by the weight of the evidence because Swenor admitted he was partly at fault and because he drove his car into the back of her truck. Those facts, Warner argues, mean that Swenor was driving too close to her truck and was therefore negligent. The jury was required to assess Swenor's actions, however, in light of all attendant circumstances. See Williamson v. Clark, 103 Vt. 288, 291-93 (1931). Thus, the central question for the jury to determine in this case based on Warner's theory of the case was whether, under the circumstances, Swenor was driving too close to Warner and thus breached his duty of reasonable care by doing so. Although the evidence conflicted on this issue, it was the jury's responsibility as trier of fact to weigh the conflicts, determine the credibility of the various witnesses, and render its decision based on the evidence. See Bernstein, 144 Vt. at 426. The jury's verdict reveals that it believed defendant's version of the events that he was driving at a reasonable speed and distance from Warner's truck and took appropriate evasive action, but because of Warner's actions, Swenor could not avoid the accident. We are not persuaded the verdict was in error.

Warner also argues that the verdict was contrary to the law. Warner claims Vermont law provides that any time one vehicle hits another vehicle from behind, the driver of the rear vehicle is always negligent. Warner misstates the law. It is true that we have held that a driver must operate her vehicle at a speed and distance behind another vehicle to avoid collision in the event the vehicle in front stops suddenly. Ploesser v. Burlington Rapid Transit Co., 121 Vt. 133, 141 (1959). That requirement does not mean, however, that each rear-end collision is the result of negligence by the driver in the back. The trier of fact must determine whether, under the circumstances, the vehicle's operator was driving at a reasonable speed and at a sufficient distance from the preceding vehicle. See id. at 139-40; see also Young v. Lamson, 121 Vt. 474, 478 (1960) (it was for jury to determine whether driver controlled speed and distance behind vehicle in front so driver could adequately provide for sudden stop). We observe that if the law were as Warner suggests, we could dispense with jury trials on liability altogether in cases involving rear-end collisions because there would be nothing to decide but damages.

Warner next claims the trial court's denial of her motion for a new trial was erroneous because the court did not properly analyze the evidence on the issues of duty and breach. Rather, Warner argues, the court improperly assumed the jury based its decision that plaintiff was more responsible for the accident than was defendant when the jury verdict specifically found that Swenor did not breach his duty of reasonable care to Warner. We disagree with Warner's characterization of the trial court's order. The order makes clear that the trial court determined the jury's verdict "that Mr. Swenor did not breach a duty to Ms. Warner is consistent with defense's version of the evidence." The trial court correctly pointed out that by accepting Swenor's version of the facts the jury did not "disregard[] the reasonable and substantial evidence, or f[i]nd against it, through passion, prejudice, or some misconstruction of that matter." We find no abuse of discretion.

Warner's final claim of error centers on the jury instructions. She alleges that the court's instructions (1) were not clear on when there was a breach of duty, (2) erroneously used the phrase "in the heat of the incident" because it raised the question of the sudden emergency doctrine which the court previously determined was inapplicable in this case, and (3) failed to inform the jury that "prima facie case of negligence" means negligence or breach of duty as a matter of law.

We decline to review the instructions because Warner failed to preserve her objection to them. V.R.C.P. 51(b) requires a party to inform the trial court distinctly of the instruction to which the party objects and the grounds therefor before the jury retires to preserve the alleged error for appellate review. V.R.C.P. 51(b); Bacon v. Lascelles, 165 Vt. 214, 222 (1996). Because the purpose of this rule is to allow the trial court an opportunity to correct any errors before the jury begins deliberation, a general objection to the instructions is insufficient; the objecting party must state the objection distinctly and particularly. Winey v. William E. Daley, Inc., 161 Vt. 129, 137-38 (1993).

Warner did not interpose any objection to the jury charge on the grounds that it failed to clearly explain when to find a breach of duty. Her objection to the "heat of the incident" language was inadequate. That objection consisted of merely the following: "Um, I object to the instruction of, The Heat of the Incident, which is essentially the same as the Emergency. It's different than -." Not only was the objection incomplete, it does not explain why the charge was erroneous so that the court could correct the alleged error before the jury retired.

Nothing in Warner's objection notified the court that she thought the instructions did not properly explain that a prima facie case of negligence means the defendant breached a duty as a matter of law. Even if the objection to "heat of the incident" preserved the issue, it had no merit because the court properly instructed the jury that proof of a violation of a safety statute creates a rebuttable presumption of negligence. The court instructed the jury that, "Violation of the Safety Standard makes out a prima facie case of negligence subject to, of course, the opposite side's right to rebut this presumption of negligence." Thus, the court addressed Warner's position and correctly stated the law. See Bacon, 165 Vt. at 222 (proof of a violation of a safety statute creates a prima facie case of negligence which the opposing party may rebut).

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice