

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-101

JANUARY TERM, 2004

	} APPEALED FROM:
	} Chittenden Superior Court
Michael P. Rogers	}
v.	} DOCKET NO. S1213-00Cnc
Jonna D. Ferguson	} Trial Judge: Matthew I. Katz
	}
	}

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

Defendant appeals from a directed verdict for plaintiff on liability in this negligence action involving a collision between defendant= s Jeep and plaintiff= s bicycle. We affirm.

Viewing the evidence in the light most favorable to defendant, see Smith v. Gainer, 153 Vt. 442, 445 (1990), the record reveals that on December 17, 1997, plaintiff was riding his bicycle home from work traveling east on Riverside Avenue in Burlington. Defendant was driving her Jeep in the opposite direction on the same road. It was dark outside, but it was clear and the road was dry. At approximately 6:15 p.m., defendant entered an intersection on a green light intending to turn left across the line of oncoming traffic. Her left turn signal was on, and she waited for approximately thirty seconds for oncoming automobiles to clear before making the left turn. As defendant turned left, she crossed into plaintiff= s lane of traffic. Plaintiff tried to avoid colliding with defendant= s Jeep, but could not. He struck the rear corner of plaintiff= s Jeep and was thrown to the ground. Although plaintiff saw defendant= s vehicle waiting to turn left, defendant testified that she never saw plaintiff.

The evidence shows that plaintiff was wearing dark clothing at the time of the accident. He was also wearing a helmet with a lamp containing a twelve-watt halogen bulb that was about the size of a silver dollar. Plaintiff= s bicycle was equipped with front and rear reflectors, as well as reflectors on the wheels and pedals. Plaintiff wore a blinking red reflector around his waist facing backwards, and had affixed reflective tape to the backpack he was carrying which was also facing behind him. Plaintiff painted the front and rear sections of his bicycle with bright yellow paint to make him more visible.

At the close of defendant= s evidence, the court directed verdict for plaintiff on liability. The court agreed with plaintiff= s argument that the evidence established defendant= s presumptive negligence for violating a safety statute, 23 V.S.A. ' 1047, by failing to yield to oncoming traffic in an intersection. Plaintiff contended that defendant did not present any evidence to rebut that presumption. Defendant responded that she had presented ample evidence of plaintiff= s comparative negligence to warrant giving the case to the jury. Defendant argued that she did not see plaintiff before he hit her Jeep and that he should have taken additional steps to make himself more visible, or at least slow down when he saw defendant= s vehicle waiting to turn left. In addition, defendant argued that she rebutted the presumption of negligence by presenting evidence that the head light plaintiff used did not conform to 23 V.S.A. ' 1361, which requires A every vehicle on wheels@ to A have attached to it a light.@ The court rejected defendant= s argument and entered a verdict for plaintiff. This appeal followed the jury= s decision on damages.

On appeal, defendant repeats her claim that the evidence on plaintiff= s own negligence required sending the liability

question to the jury. We review the trial court's directed verdict by considering the evidence in the light most favorable to defendant, the nonmoving party, and we exclude the effect of modifying evidence. Smith, 153 Vt. at 445. If any evidence reasonably and fairly supports the nonmoving party's claim, a directed verdict is not permitted. Taylor v. Nat'l Life Ins. Co., 161 Vt. 457, 460 (1994). On the other hand, we will uphold a trial court's decision to direct a verdict against a party if that party does not present evidence on an essential element of her claim. Id.

We conclude that the trial court did not err by directing a verdict for plaintiff because defendant's evidence did not rebut her presumptive negligence. Proof that a driver violated a safety statute A makes out a prima facie case of negligence against the driver. Heath v. Orlandi, 127 Vt. 204, 206 (1968). The presumption of negligence is rebuttable, meaning, A [it] shifts the burden of production to the party against whom the presumption operates. Bacon v. Lascelles, 165 Vt. 214, 222 (1996). To nullify the presumption of negligence, the opposing party must produce evidence demonstrating that the fact presumed does not exist. Id. at 222-23; see V.R.E. 301(a).

Here, there was no dispute that defendant made a left turn into plaintiff's lane of travel in violation of 23 V.S.A. ' 1047, creating a presumption that she was negligent. See 23 V.S.A. ' 1047 (a driver intending to turn left within an intersection shall yield the right of way to traffic approaching in the opposite direction). Defendant offered no evidence to counter that presumption. Instead, defendant relied on evidence that plaintiff (1) used a head lamp that defendant contended did not conform to 23 V.S.A. ' 1361, and (2) could have worn additional reflective clothing or taken other steps to make himself more visible. Defendant's theory was that, because she did not see plaintiff, he was not reasonably visible and was, therefore, negligent.

Defendant's reliance on ' 1361 was misplaced, and the trial court correctly rejected her argument. Section 1361 requires wheeled vehicles traveling on public roads to have a light affixed to them. See 23 V.S.A. ' 1361. That statute does not apply to bicycles, however. Section 1141 of Title 23 is the applicable statute for equipment required on bicycles in this State, and it provides that bicycles operated at night must have A a lamp on the front, which emits a white light visible from a distance of at least five hundred feet to the front. Id. ' 1141(a); see also id. ' 1136(b) (providing that subchapter of Title 23 containing ' 1141 applies to bicycles). Plaintiff's evidence established that the lamp he used emitted visible light for approximately twice that distance. Defendant did not present any evidence to rebut that fact. Thus, there was no presumptive negligence on plaintiff's part as a result of the lamp he used on the evening of the accident. The statute does not require that the light be affixed to the bicycle rather than being worn on a bicyclist's head.

Similarly, defendant presented no evidence to rebut the fact that she failed to yield the right of way to plaintiff. Rather, defendant attempted to show that there were other pieces of reflective clothing plaintiff could have worn, but did not, and that since he saw defendant, he should have slowed down to avoid an accident. In essence, defendant contends that the jury should have decided whether her failure to yield was more negligent than plaintiff's failure to wear brighter clothing or to take some step to avoid hitting defendant. We disagree. Defendant introduced no evidence of negligence on plaintiff's part. Plaintiff's bicycle was lighted in accordance with the law, and there was no evidence that he operated the bicycle erratically or at an excessive rate of speed, or that he failed to keep a proper lookout. It was not disputed that the headlamp plaintiff wore emitted a beam of light roughly 1,000 feet in front of him, and defendant offered no expert or other testimony to prove that the light was ineffective. In sum, defendant offered no evidence to create a dispute about how the collision occurred. Moreover, defendant had the duty to yield at the intersection, not plaintiff. Plaintiff was not, therefore, duty bound to slow down or to stop and wait for defendant to turn. To hold otherwise would negate defendant's statutory duty to yield. Because she did not support her claim that plaintiff was comparatively negligent by presenting evidence on that point, it was proper for the trial court to direct a verdict in plaintiff's favor once he established that defendant violated her duty to yield.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice