

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5893-13T4

ANGELA GONZALEZ-CACERES,

Plaintiff-Appellant,

v.

KENNETH R. MURRAY and
MURRAY'S TRUCKING, INC.,

Defendants-Respondents,

and

ADELFO R. CORRALES,

Defendant.

Argued November 9, 2015 – Decided December 8, 2015

Before Judges Simonelli and Carroll.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-605-12.

Antranig Aslanian, Jr. argued the cause for appellant (Law Offices of Antranig Aslanian Jr., attorneys; Mr. Aslanian and Michael Candelmo, on the briefs).

Kevin D. London argued the cause for respondents (Law Offices of William E. Staehle, attorneys; Mr. London and Peter J. Dahl, on the brief).

PER CURIAM

In this auto accident case, plaintiff Angela Gonzalez-Caceres appeals from July 11, 2014 orders entering judgment in favor of defendants Kenneth R. Murray (Murray) and Murray's Trucking, Inc., and denying a new trial, following the return of a jury verdict of no cause of action. On appeal, plaintiff argues that the trial judge erred in permitting the introduction of evidence, regarding other motor vehicle accidents in which settling co-defendant Adelfo R. Corrales (Corrales) had been involved, to establish that Corrales was not a good driver. We reverse.

I.

These are the most pertinent facts drawn from the trial testimony. The accident occurred on Route 78 in Somerville during the late evening of March 26, 2010. Plaintiff was a rear passenger in a 2008 Toyota Highlander, seated directly behind the driver, Corrales. Plaintiff, who was asleep, was awakened by the impact from a collision involving the Toyota and a tractor-trailer driven by Murray. Plaintiff testified at trial that the impact came "[f]rom the rear from my side."

Plaintiff filed her Law Division complaint on February 1, 2012, alleging that Corrales and Murray negligently operated their vehicles, causing her to sustain severe and permanent injuries. Immediately prior to the June 2014 trial, plaintiff

entered into a settlement with Corrales. Plaintiff then called Corrales as a witness at her ensuing trial against Murray and his company, Murray's Trucking, Inc.

Corrales testified that on March 26, 2010, he was traveling westbound on Route 78 approaching the exit for Newark Airport. He was familiar with the highway since he drove it "three times every day" in connection with his employment as a driver for a cement company. He stated that "[t]here were two lanes that were going into three lanes at that point" and that he was driving in the right lane. As he approached the area where the accident occurred, cars were slowing down ahead and "traffic was moving into the . . . right lane from the left lane." According to Corrales, he remained in the right lane where his vehicle was then struck from the rear by Murray's tractor-trailer. On cross-examination he denied that he had changed lanes immediately before the accident.

Also on cross-examination, defense counsel asked Corrales about a number of other motor vehicle accidents he had been involved in. The questioning included the following:

Q. Mr. Corrales, wasn't there another occasion where you claimed that you were rear-ended by a tractor-trailer?

A. That I alleged or what do you say?

Q. Well, weren't you involved in a tractor-trailer in 2013 that rear-ended you?

A. Yes, that was in Brooklyn, though. In Brooklyn.

Q. The accident happened on the Verrazano Bridge, right?

A. Yes. Yes.

Q. February 2013.

A. I don't recall the date, but it was there. The tractor-trailer hit my car from behind.

Q. Okay. And you were involved in another accident with a tractor-trailer on another time in Elizabeth, correct?

Plaintiff's counsel objected, and the following colloquy ensued during a sidebar conference:

[PLAINTIFF'S COUNSEL]: I know it's cross-examination, but prior accidents how are you tying it into this? I mean, assuming even if he was not negligent, how does it have any relevance to this?

[DEFENDANT'S COUNSEL]: It's all in his deposition, Judge, that he testified that after our accident he had four or five more accidents. He's just not a good driver. It's certainly relevant.

[PLAINTIFF'S COUNSEL]: How do you draw that?

[DEFENDANT'S COUNSEL]: Four [or] five accidents --

[PLAINTIFF'S COUNSEL]: So what.

[DEFENDANT'S COUNSEL]: -- from 2010 to the time of his deposition in 2013, three years? Four or five accidents?

[PLAINTIFF'S COUNSEL]: So what. They're not his fault How is it relevant to this case?

THE COURT: I think it's relevant to the extent that it shows that maybe he's not a good driver I mean, I understand the accidents in and of themselves we can't establish his guilt or innocence on those, but I think the fact that he's been involved with[] prior accidents and with tractor-trailer trucks I think is certainly relevant. It's got probative value. I understand it has some prejudicial value.

[PLAINTIFF'S COUNSEL]: Yeah, it has more prejudicial than probative.

THE COURT: I think the probative value in this case outweighs the prejudice, so I'm going to allow it under [N.J.R.E.] 403.

Following the court's ruling, cross-examination of Corrales continued with the following exchange:

Q. Mr. Corrales, you were involved in an accident with a tractor-trailer in Elizabeth, correct, on Route 1 and 9?

A. Yes. Tractor[-]trailer scratched my car, a Nissan Altima.

Q. That's three accidents involving you driving the vehicle and tractor-trailers, correct?

A. No, two.

Q. Well, the one in Elizabeth on [Route 1 and 9], the one on the Verrazano Bridge, and the accident on Route 78.

A. On the Verrazano, it was not in my car, it was in a cement truck

Q. Okay. You were involved in three different accidents driving some type of vehicle and in each of those three accidents, the other vehicle was a tractor-trailer.

A. Yes.

Defense counsel also asked Corrales about an accident in which he was involved in New York City seven years earlier. Plaintiff's counsel again objected, and the court ruled that the accident was too remote to be relevant.

Murray offered a different version of the accident. He testified that he was a professional truck driver and certified driving instructor and that he traveled Route 78 twice a week. On this evening, the right lane of the roadway was closed. Consequently, traffic was merging from the right lane into the center lane where he was driving. According to Murray, Corrales "just cut right in front of me" and "his left bumper hooked my right bumper."

In his summation, defense counsel commented on the other accidents Corrales was involved in. Twice counsel stated that Corrales "is not a good driver." In contrast, counsel described Murray as "a very good driver."

The jury returned a verdict that plaintiff did not prove by a preponderance of the evidence that Murray was negligent.

Plaintiff subsequently moved for a new trial, arguing that the court's ruling allowing Corrales to be questioned about his driving record "was improper and extremely prejudicial especially when coupled with [d]efendant's summation."

In his written decision denying the new trial motion, the judge stated:

In the instant matter, Mr. Corrales, on cross-examination, testified that he had recently been involved in several other accidents with tractor-trailer trucks changing lanes. Those other accidents were not varied in nature like the accidents in Bogus.¹ They were essentially identical to the accident in this case. The [c]ourt finds that, under these circumstances, where the accidents are substantially similar and in close temporal proximity to the accident that was the subject of this litigation, the testimony was relevant. Therefore, [p]laintiff's counsel's objection, which was based solely on the issue of relevance, was insufficient to exclude the evidence.

The judge further found that the probative value of the evidence outweighed its prejudice. He concluded "that the evidence was not inadmissible under N.J.R.E. 403" and that "admission of the evidence, if erroneous, was harmless given the remainder of the testimony adduced at trial and the jury's finding Mr. Murray to be blameless."

¹ State v. Bogus, 223 N.J. Super. 409 (App. Div.), certif. denied, 111 N.J. 567 (1988).

On appeal, plaintiff renews her argument that the trial judge erred in permitting the introduction of evidence regarding prior motor vehicle accidents in which Corrales was involved. We agree.

II.

We begin with basic principles. Rule 4:49-1(a) provides that a trial judge shall grant a new trial if, "having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law." Jury verdicts are thus "entitled to considerable deference and 'should not be overthrown except upon the basis of a carefully reasoned and factually supported (and articulated) determination, after canvassing the record and weighing the evidence, that the continued viability of the judgment would constitute a manifest denial of justice.'" Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521 (2011) (quoting Baxter v. Fairmont Food Co., 74 N.J. 588, 597-98 (1977)); see also Boryszewski v. Burke, 380 N.J. Super. 361, 391 (App. Div. 2005) ("Jury verdicts should be set aside in favor of new trials only with great reluctance, and only in cases of clear injustice."), certif. denied, 186 N.J. 242 (2006).

In reviewing a trial judge's decision on a motion for a new trial, we view the evidence in the light most favorable to the opposing party. Caldwell v. Haynes, 136 N.J. 422, 432 (1994). We give substantial deference to the trial judge on those matters related to his or her observations during the trial, and their "feel of the case." Carrino v. Novotny, 78 N.J. 355, 360 n.2 (1979) (citing Pressler, Current N.J. Court Rules, Comment to R. 2:10-1 at 301-02 (1979)). We do not accord deference, however, to a trial judge's determination "with respect to which he is no more peculiarly situated to decide than the appellate court." Dolson v. Anastasia, 55 N.J. 2, 7 (1969).

Generally, "[e]videntiary decisions are reviewed under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010). A court abuses its discretion when it makes a clear error of judgment. State v. Marrero, 148 N.J. 469, 483-84 (1997). If an evidentiary ruling was erroneous, the appellate court will not reverse the judgment unless "the error was 'clearly capable of producing an unjust result.'" Manata v. Pereira, 436 N.J. Super. 330, 343-44 (App. Div. 2014) (quoting Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 502 (1999)).

Our analysis of the trial court's decision to admit evidence of Corrales's other accidents invokes the interplay between several evidence rules. "Except as otherwise provided in these rules or by law, all relevant evidence is admissible." N.J.R.E. 402. "'Relevant evidence' means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. N.J.R.E. 403 provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the risk of (a) undue prejudice, confusion of issues, or misleading the jury or (b) undue delay, waste of time, or needless presentation of cumulative evidence."

In determining whether evidence is relevant, "the trial court should focus on 'the logical connection between the proffered evidence and a fact in issue[,]' or 'the tendency of evidence to establish the proposition that it is offered to prove.'" Wymbs v. Twp. of Wayne, 163 N.J. 523, 534 (2000) (quoting Green, supra, 160 N.J. at 492). In the present case, a logical relationship between Corrales's other accidents and the accident involved here was not established.

At the outset, we note that the trial court found that "Corrales, on cross-examination, testified that he had recently been involved in several other accidents with tractor[-]trailer

trucks changing lanes." This finding is erroneous, and mischaracterizes Corrales's testimony. Rather, Corrales denied that he had changed lanes prior to the March 26, 2010 accident, and he did not know whether Murray had done so, since he was struck from behind and had not previously observed Murray's vehicle.

Similarly, the judge's conclusion that Corrales's other accidents were "essentially identical to the accident in this case" lacks support in the record. Corrales testified that a tractor-trailer changed lanes and "rear-ended" him on the Verrazano Bridge in February 2013. On that occasion, he was driving his work cement truck rather than a passenger vehicle. With respect to the accident in Elizabeth, Corrales testified that he was driving a Nissan Altima and that the tractor-trailer "hit me on the left side of my car." No testimony was elicited that Corrales's car was struck from the rear or that either vehicle changed lanes. Thus, of the three accidents described by Corrales, none occurred in the same manner.

As noted, the trial court based its ruling on N.J.R.E. 403, balancing the probative value of the evidence against its potential for prejudice. However, admission of the evidence regarding Corrales's other accidents to show that he "was not a good driver" also implicates, and violates, N.J.R.E. 404. The

rule generally prohibits "[e]vidence of a person's character . . . including a trait of care or skill or lack thereof . . . for the purpose of proving that the person acted in conformity therewith on a particular occasion" N.J.R.E. 404(a). Evidence of other wrongs or bad acts to prove that a person "acted in conformity therewith" is similarly prohibited unless admitted for other purposes. N.J.R.E. 404(b). While the rule is most commonly applied in the criminal context, it also applies in civil cases. See, e.g., Showalter v. Barilari, Inc., 312 N.J. Super. 494, 511-12 (App. Div. 1998); Burbridge v. Paschal, 239 N.J. Super. 139, 155 (App. Div.), certif. denied, 122 N.J. 360 (1990); Harris v. Peridot Chem. (NJ), Inc., 313 N.J. Super. 257, 277-78 (App. Div. 1998).

We conclude that admission of the evidence of Corrales's other accidents to show that he was a bad driver, and, implicitly, at fault in the accident at issue in this case, was erroneous. Even if the proofs at trial had established that Corrales drove carelessly on those other occasions, "general evidence of careless driving is inadmissible to show how someone drove on a particular occasion." Bogus, supra, 223 N.J. Super. at 428-29.

"While evidence of a character trait generally is inadmissible, evidence pertaining to a 'habit' is permitted

[u]nder N.J.R.E. 406." Showalter, supra, 312 N.J. Super. at 512. The party offering habit evidence must establish conduct that is so uniform that it amounts to a nearly automatic response to a specified situation. Verni v. Harry M. Stevens, Inc. of N.J., 387 N.J. Super. 160, 190-91 (App. Div. 2006), certif. denied, 189 N.J. 429 (2007). Thus, for example, "evidence that an individual repeatedly drove carelessly on a particular part of a particular road is admissible" under the rule. Boqus, supra, 223 N.J. Super. at 429 (citing Evid. R. 49, the prior version of N.J.R.E. 406).

The only issue for which habit evidence arguably could have been relevant in this case was whether Corrales had a specific, routine practice of carelessly cutting in front of tractor-trailer trucks. Here, defendant's proofs failed to demonstrate, with specificity, that Corrales engaged in such habitual conduct.

Rule 2:10-2 provides that "[a]ny error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result" In State v. Bankston, 63 N.J. 263, 273 (1973), the Court stated the "test of whether an error is harmless depends upon some degree of possibility that it led to an unjust

verdict" and "led the jury to a result it otherwise might not have reached."

Here, we cannot conclude that admission of the evidence was harmless. Whether Murray operated his vehicle negligently largely depended on whether the jury found his version of events more credible than Corrales's account. The court's error was magnified during defense counsel's summation, when he highlighted Corrales's involvement in other accidents and portrayed Murray as "a very good driver" and Corrales as "not a good driver." As a consequence, we determine that the evidence was improperly admitted and, in light of the jury's verdict, that its admission likely prejudiced plaintiff.

Reversed and remanded for a new trial.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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