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NO. COA11-726  
NORTH CAROLINA COURT OF APPEALS

Filed: 5 June 2012

COREY LAMAR THOMAS,  
Plaintiff,

v.

UNION COUNTY BOARD  
OF EDUCATION,  
Defendant.

North Carolina  
Industrial Commission  
I.C. No. TA-20518

Appeal by plaintiff from order entered 22 March 2011 by the North Carolina Industrial Commission. Heard in the Court of Appeals 30 November 2011.

*DeVore, Acton & Stafford, PA, by Derek P. Adler, F. William DeVore, IV, and Fred W. DeVore, III, for plaintiff-appellant.*

*Attorney General Roy Cooper, by Assistant Attorney General Olga Vysotskaya, for defendant-appellee.*

GEER, Judge.

Plaintiff Corey Lamar Thomas appeals from an order of the North Carolina Industrial Commission denying his claim against defendant Union County Board of Education ("the Board") for injuries sustained in a collision with a school bus. Because we

hold that the trial court's finding that the school bus driver was not negligent is supported by the evidence, we need not address Mr. Thomas' remaining arguments, and we affirm.

Facts

On 30 April 2007, Sonya Greene, who was driving a school bus for the Board, pulled up to a stop sign at the intersection of Brookpath Lane and Stallings Road. Her regular route took her straight through the intersection, across Stallings Road, into a subdivision, and onto Middlesborough Road. There was a curve in Stallings Road over 730 feet from the intersection. After stopping at the stop sign, Ms. Greene pulled up further in order to get a better view of the road and looked both ways to determine if the road was clear. Not seeing any traffic, she proceeded to cross the road. A motorist behind the bus, Steve Osher, testified that Ms. Greene twice stopped and observed the intersection before proceeding across it.

As Ms. Greene's bus was crossing Stallings Road, it was struck from the left by Mr. Thomas' car, which was traveling on Stallings Road. Just before the car struck the bus, an 11-year-old student on the bus saw Mr. Thomas lower his head as he was approaching the bus. Mr. Osher testified that Mr. Thomas' car collided with the bus when the bus was over half way across the road and almost into the subdivision.

Mr. Thomas' car struck with sufficient force to lift the school bus' side rear tires off of the ground. The car was wedged beneath the undercarriage of the bus with the front end of the car protruding from the other side of the bus. Mr. Thomas' car also caught fire. Mr. Thomas suffered serious and disfiguring injuries as a result of the accident and incurred substantial medical expenses.

Mr. Thomas filed a claim under the Tort Claims Act against Ms. Greene's employer (the Board), alleging he was driving to work when Ms. Greene negligently pulled the school bus out in front of him causing the accident. Mr. Thomas' claim was heard by Deputy Commissioner George T. Glenn, II on 24 August 2009. During that hearing, Deputy Commissioner Glenn denied the Board's motion in limine to admit Sergeant John Flynn, the officer who investigated the accident, as an expert in accident reconstruction. Following the hearing, Deputy Commissioner Glenn concluded that "Ms. Greene did not keep a proper lookout and determine that her moving from the stop sign could be done safely" and that "[t]he sole proximate cause of this accident was the negligence of Sonya Greene." Based on his conclusions, Deputy Commissioner Glenn ordered the Board to pay Mr. Thomas \$190,000.00 in damages.

The Board appealed to the Full Commission. Upon review, the Full Commission issued an interlocutory order determining that the deputy commissioner erred in precluding the testimony of Sergeant Flynn and remanding for the sole purpose of taking Sergeant Flynn's testimony as an expert in accident reconstruction. Following the taking of Sergeant Flynn's testimony, the Full Commission entered its order on 22 March 2011, finding that Ms. Greene "did not drive the bus in an unsafe or negligent manner." Further, Ms. Greene "was not negligent in her duty to [Mr. Thomas,] and [Mr. Thomas] did not sustain any injuries as the result of any negligence on the part of Ms. Greene." The Commission also found that "[Mr. Thomas] was contributorily negligent in causing the accident in that he drove his car into the wrong lane and in excess of the posted speed, and that he failed to keep a proper lookout."

Based on its findings, the Full Commission concluded in relevant part:

5. The named employee, Sonya Greene, while acting within the scope of her employment, had a duty under N.C. Gen. Stat. §20-158(b) to stop at a stop sign at the intersection and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. Ms. Greene's duty was to stop at the stop sign at the intersection and to not enter the intersection until she determined in the exercise of due care that she could do so with reasonable assurance of safety to

herself and others. *Primm v. King*, 106 S.E.2d 223, 249 N.C. 228 (1958). Ms. Greene was entitled to assume and to act upon the assumption that plaintiff would obey the highway regulations as she proceeded across the intersection, absent any contrary indications. *Lewis v. Brunston*, 78 N.C. App. 678, 683, 338 S.E.2d 595, 599 (1986). The evidence clearly indicates that Ms. Greene did not breach her duty of exercising due care. Ms. Greene stopped twice at the stop sign, looked both ways and then proceeded to enter the highway and cross the intersection. Therefore, Ms. Greene, defendant's employee, was not negligent in the operation of the school bus involved [sic] the accident with plaintiff and plaintiff has failed to prove any negligence on the part of the named state employee while acting within the scope of her employment that proximately caused plaintiff's injuries. N.C. Gen. Stat. §143-291 et seq.

6. Even assuming *arguendo* that there was negligence by a named state employee, plaintiff would still be entitled to no damages because plaintiff was contributorily negligent for the injuries he sustained on April 30, 2007. N.C. Gen. Stat. §143-299.1. Contributory negligence does not require that the plaintiff's actions were the sole proximate cause of the injury and/or damages sustained, only that such actions contributed to the injury and/or damages. *Godwin v. Atlantic C.L.R. Co.*, 220 N.C. 281, 285, 17 S.E.2d 137, 139 (1941). Although plaintiff had the right of way at the intersection, it was incumbent upon him to drive at a speed no greater than is reasonable under the conditions then existing, to keep his car under control, to keep a reasonably careful lookout and to take such action as a reasonably prudent person would take to avoid a collision. *Dawson v. Jennette*, 278 N.C. 438, 180 S.E.2d

121 (1971). Plaintiff's actions, including his excessive speed, traveling in the wrong lane, and failure to keep a proper lookout while operating a motor vehicle, were at least a proximate cause of the collision, and thus his acts of contributory negligence bar plaintiff from any recovery. N.C. Gen. Stat. §143-299.1.

The Full Commission, therefore, denied Mr. Thomas' claim and ordered that each side pay its own costs. Commissioner Bernadine S. Balance filed an opinion dissenting from the conclusion that Ms. Greene was not negligent, but concurring that Mr. Thomas was contributorily negligent: "[I]t is unreasonable to conclude that plaintiff would not have seen the school bus moving across the road prior to 'maybe two seconds' before impact had he been maintaining proper lookout as he was required to do. Therefore, defendant has proven that plaintiff's negligence also contributed to the accident and his injury." Mr. Thomas timely appealed to this Court.

#### Discussion

When this Court reviews a decision and order from the Commission, we are "'limited to two questions: (1) whether competent evidence exists to support the Commission's findings of fact, and (2) whether the Commission's findings of fact justify its conclusions of law and decision.'" *Gonzales v. N.C. State Univ.*, 189 N.C. App. 740, 744, 659 S.E.2d 9, 12 (2008) (quoting *Simmons v. Columbus Cnty. Bd. of Educ.*, 171 N.C. App.

725, 728, 615 S.E.2d 69, 72 (2005)). So long as the Commission's decision is supported by competent evidence, it does not matter if some of the evidence could support a conflicting finding. *Simmons*, 171 N.C. App. at 728, 615 S.E.2d at 72. The Commission's conclusions of law are, however, reviewed de novo. *Holloway v. N.C. Dep't of Crime Control & Pub. Safety/N.C. Highway Patrol*, 197 N.C. App. 165, 169, 676 S.E.2d 573, 576 (2009).

We first address the Commission's conclusion that Ms. Greene was not negligent. In order to prevail on a negligence claim, a plaintiff must prove "(1) that defendant failed to exercise proper care in the performance of a duty owed plaintiff; (2) the negligent breach of that duty was a proximate cause of plaintiff's injury; and (3) a person of ordinary prudence should have foreseen that plaintiff's injury was probable under the circumstances." *Lavelle v. Schultz*, 120 N.C. App. 857, 859-60, 463 S.E.2d 567, 569 (1995).

With respect to whether Ms. Greene breached her duty of care, the Commission acknowledged: "Ms. Greene's duty was to stop at the stop sign at the intersection and to not enter the intersection until she determined in the exercise of due care that she could do so with reasonable assurance of safety to

herself and others. *Primm v. King*, 106 S.E.2d 223, 249 N.C. 228 (1958)."

The Commission, in concluding that Ms. Greene did not breach that duty of care, found:

3. The stop sign on Brookpath Lane is slightly recessed from the intersection. Ms. Greene pulled up to the stop sign, stopped the bus for several seconds, and looked to her left and right and checked for oncoming traffic on Stallings Road. Ms. Greene preceded [sic] forward a couple of feet and made a second complete stop to observe the intersection again prior to crossing. The school bus remained stopped for approximately five seconds before proceeding to cross Stallings Road.

4. From the vantage point of the driver's seat of the bus, Ms. Greene had an unobstructed view of Stallings Road in the direction of travel of the plaintiff for approximately 700 feet. Ms. Greene looked both left and right twice before proceeding to cross the intersection. Ms. Greene did not see any oncoming traffic after her second stop and then proceeded across the intersection.

5. Ms. Greene was more than half way across Stallings Road, beginning to enter Madison Ridge subdivision onto Middlesborough Drive when she saw plaintiff's car rapidly heading towards the bus. Plaintiff was driving a 1999 Chrysler Sebring convertible. Plaintiff's car struck the school bus in the middle of the bus between the front and rear tires on the driver's side. Plaintiff was driving in a northerly direction on Stallings Road.

. . . .



23. Ms. Greene was required to yield the right of way to oncoming traffic on Stallings Road, which was the dominant highway. Ms. Greene properly controlled her vehicle when approaching, stopping and crossing the intersection. Ms. Greene properly stopped at the stop sign of the intersection. Ms. Greene actually made two separate stops at the stop sign. Ms. Greene did keep a proper lookout and determined that moving from the stop sign could be done safely as she did not see any oncoming traffic when she began crossing the intersection. Ms. Greene did not drive the bus in an unsafe or negligent manner.

24. Ms. Greene was not under a duty to anticipate that plaintiff, as he drove his car on the dominant highway, would fail to observe the rules of the road, including following speed regulations, remaining in his driving lane or keeping a proper look out.

25. The Full Commission finds by the greater weight of the evidence that Ms. Greene acted properly entering and crossing the intersection of Stallings Road. As a result[,] defendant's named employee was not negligent in her duty to plaintiff and plaintiff did not sustain any injuries as the result of any negligence on the part of Ms. Greene.

The Commission's findings of fact were sufficient to support its conclusion that Ms. Greene did not breach her duty of care. This Court has previously held that "[w]here the driver on the servient street is already in the intersection before the vehicle approaching on the dominant street is near enough the intersection to constitute an immediate hazard, the

driver on the servient street has the right-of-way." *Farmer v. Reynolds*, 4 N.C. App. 554, 561, 167 S.E.2d 480, 485 (1969) (holding that evidence was sufficient to show that driver on servient street had right of way when car on dominant street collided with other car only after servient street car had already passed midportion of intersection).

In *Smith v. Stocks*, 54 N.C. App. 393, 283 S.E.2d 819 (1981), this Court applied this principle when considering evidence almost identical to the Commission's findings in this case. In *Smith*, this Court held that a defendant's evidence was sufficient to support a finding that she was not negligent when that evidence showed that she came to a full stop at an intersection, she looked to her left and to her right, she determined that it was safe to proceed across the intersection, the plaintiff's truck was not in sight or not close enough to be a hazard, and the plaintiff collided with the defendant after the defendant had already crossed the median of the road on which the plaintiff was travelling. *Id.* at 397, 283 S.E.2d at 821.

Because the Commission's findings are materially indistinguishable from the evidence in *Smith* that was held sufficient, if believed, to prove that the defendant was not negligent, the Commission's findings necessarily are sufficient

to support its conclusion that Ms. Greene was not negligent. Mr. Thomas, however, argues that the Commission erred in not adopting the deputy commissioner's findings, which were consistent with the evidence.

He points to evidence that Ms. Greene would have had 11 seconds to observe Mr. Thomas' car if he was travelling at 45 m.p.h. -- as he claimed -- or 7 seconds if he was driving 60 m.p.h. He contends that since Ms. Greene testified that she did not see Mr. Thomas approaching until approximately 2 seconds before the accident, Ms. Greene did not keep a proper lookout. He further challenges the finding that the school bus was past the midsection of the intersection, pointing to his testimony that he saw the bus sitting at the stop sign and that his last memory before the collision was seeing the movement of a large orange object in the right corner of his vision. Finally, Mr. Thomas points to the 11-year-old's testimony that he saw Mr. Thomas bending down immediately before the accident. Mr. Thomas characterizes this movement as being consistent with his bracing for the accident.

Mr. Thomas' factual arguments disregard the standard of review. While Mr. Thomas presented evidence supporting his version of the accident, the Commission's findings -- establishing a lack of negligence by Ms. Greene -- are supported

by evidence from Ms. Greene and Mr. Osher, the driver directly behind the school bus. The Commission summarized Mr. Osher's testimony as follows:

6. Steve Osher was a witness in a vehicle about twenty feet directly behind the school bus driven by Ms. Greene at the stop sign on Brook Path Lane. Mr. Osher indicated Ms. Greene stopped, pulled forward several feet and stopped again at the stop sign, prior to crossing the intersection. Mr. Osher stated that the school bus was more than half way across the road and almost into the other subdivision when plaintiff's car collided with the school bus.

As for Mr. Thomas' testimony to the contrary, the Commission did not find that testimony credible, "because [Mr. Thomas] hit the middle of the bus, while half the bus was already across the intersection." Finally, the Commission was not required to infer from the student's testimony that Mr. Thomas was bracing for the accident as opposed to not keeping a proper lookout.

Mr. Thomas' arguments regarding negligence ask this Court to reweigh the evidence and reassess the credibility of the witnesses. We may not do so. *See, e.g., Sprinkle v. N.C. Wildlife Res. Comm'n*, 165 N.C. App. 721, 726, 600 S.E.2d 473, 476 (2004) ("On appeal, the Court does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains any evidence tending to support the

finding." (internal quotation marks omitted)); *Norman v. N.C. Dep't of Transp.*, 161 N.C. App. 211, 224, 588 S.E.2d 42, 51 (2003) ("The decision regarding which inference to draw was for the Commission and may not be overturned on appeal."); *Fennell v. N.C. Dep't of Crime Control & Pub. Safety*, 145 N.C. App. 584, 591, 551 S.E.2d 486, 491 (2001) ("Furthermore, although contrary evidence exists, some competent evidence of record supports the Commission's finding as to [the witness'] credibility, and therefore, the finding is conclusive on appeal.").

While Mr. Thomas asserts that "[e]very motorist has a duty to keep a proper lookout and to see what can be seen[,] " the Commission correctly determined that Ms. Greene was not required to anticipate that Mr. Thomas might be speeding or that he might cross the centerline of the road. As this Court has explained, "[t]he automobile driver on the servient intersecting highway . . . is not under a duty to anticipate that the automobile driver on the dominant highway, approaching the intersection of the two highways, will fail to observe the speed regulations, and the rules of the road, and, in the absence of anything which gives or should give notice to the contrary, he is entitled to assume and to act upon the assumption that the automobile driver on the dominant highway will obey such regulations and the rules of the

road." *Lewis*, 78 N.C. App. at 683, 338 S.E.2d at 599 (internal quotation marks omitted).

Because the record contains evidence supporting the Commission's findings of fact regarding Ms. Greene's conduct, those findings are sufficient to support the conclusion that she was not negligent. Although Mr. Thomas argues vigorously on appeal that the Full Commission erred in allowing Sergeant Flynn to testify as an expert witness, we need not address that question because the officer's testimony was the basis for the Commission's finding that Mr. Thomas was contributorily negligent, an immaterial issue since we have upheld the Commission's conclusion that Ms. Greene was not negligent. Accordingly, we affirm the Commission's order denying Mr. Thomas' claim.

Affirmed.

Judges ROBERT C. HUNTER and ROBERT N. HUNTER, JR. concur.

Report per Rule 30(e).