THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Chelsea Abdelgheny f/k/a Chelsea Jackson, Appellant,

v.

Gerald L. Moody, Respondent.

Appellate Case No. 2018-000102

Appeal From Pickens County
Perry H. Gravely, Circuit Court Judge

Opinion No. 5780
Heard September 10, 2020 – Filed October 28, 2020

REVERSED

Raymond Talmage Wooten, of Smith, Jordan and Lavery, P.A., of Easley, for Appellant.

Thomas Frank Dougall, of Dougall & Collins, of Elgin; Chad McQueen Graham, of The Ward Law Firm, P.A., of Spartanburg; and Langdon Cheves, III, of Turner Padget Graham & Laney, P.A., of Greenville, all for Respondent.

HILL, J.: A little before 8:00 p.m. on October 26, 2015, Chelsea Abdelgheny had just finished teaching a Zumba class at Mission Fitness in Easley when her boss asked her to check on an order he had placed at the sign store across the street. Wearing a neon pink hooded sweatshirt and bright blue exercise pants, Chelsea ventured across the street, a broad, four-lane section of Highway 8 with a wide center median. The highway serves as the main thoroughfare between Easley and

the city of Pickens, which lies eight miles north. Chelsea chose to cross the highway at the point closest to her in front of Mission Fitness. The nearest cross walk was several hundred yards to the northwest, at a signaled intersection next to an American Waffle restaurant, well above the sign store. It was dark, and a moderate to heavy rain was falling. The traffic was also moderate. Chelsea, who was talking to her boss on her cell phone, reached the center median and stopped to look to make sure all was clear before crossing the southbound lanes.

Driving a pickup truck in the far right southbound lane, Gerald L. Moody was returning from Pickens to Easley. Resuming his journey after stopping for a light at the American Waffle intersection, he reached a speed of twenty-five to thirty miles per hour, his windshield wipers beating, the truck's low beams fixed on a straight stretch of road when he "looked up and . . . saw this lady in front of my driver's headlight with her hand up. She turned and looked at me and made approximately two fast steps, and I hit her with the right passenger headlight." Moody testified that when he looked up and saw Chelsea, she was only ten feet in front of his truck; he hit the brakes but still struck her. The point of impact was the passenger side headlight. Chelsea, her memory of the crash fuzzy, testified she first saw Moody's truck when it hit her. The impact broke her right hip and caused her other significant injuries.

Chelsea brought this negligence action against Moody. Moody's answer averred comparative negligence. The trial court granted Moody summary judgment, ruling Chelsea's negligence in not using the crosswalk exceeded fifty percent of the total fault, and therefore, the doctrine of comparative negligence barred recovery. Chelsea now appeals.

I.

We review a grant of summary judgment using the same yardstick as the trial court: we view the facts in the light most favorable to Chelsea, the non-moving party, and draw all reasonable inferences in her favor. *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). Moody is entitled to summary judgment only if "there is no genuine issue as to any material fact . . . ." Rule 56(c), SCRCP. Summary judgment is a drastic remedy to be invoked cautiously and must be denied if Chelsea demonstrates a scintilla of evidence in support of her claims. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

To survive summary judgment on her negligence claim, Chelsea must put forth a scintilla of evidence as to each element, including that Moody breached a duty of

care he owed to her. The duty at issue here is the duty to act as a reasonably prudent driver would have under the same circumstances. Even if Moody was negligent, the comparative negligence doctrine bars Chelsea from recovery if her own negligence amounted to more than fifty percent of the total fault.

Because reasonableness depends upon the evidence and the rational inferences that may be drawn from them in their context, granting summary judgment in a negligence case is infrequent, for the court's duty at this stage is to presume the credibility of the evidence. When inferences conflict as to a material fact in a comparative negligence case, choosing between them—that is, choosing the facts that bear upon the percent of negligence attributable to the plaintiff and to the defendant—is up to the jury, whose duty is to decide what the facts are, not what they are presumed to be. *Berberich v. Jack*, 392 S.C. 278, 286, 709 S.E.2d 607, 611 (2011). If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied. *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002). It is only in the "rare" instance—when the evidence generates only a single inference—that summary judgment is proper in a comparative negligence action. *Bloom v. Ravoira*, 339 S.C. 417, 424–25, 529 S.E.2d 710, 714 (2000).

II.

We agree with the trial court that by crossing the highway outside a crosswalk, Chelsea was negligent. *See* S.C. Code Ann. § 56-5-3150(c) (2018) ("Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk."). But we cannot agree that the only inference a reasonable juror could make is Chelsea's own negligence accounted for more than fifty percent of the fault.

Chelsea and Moody owed each other the duty to keep a proper lookout. Chelsea's unfortunate choice to not use the crosswalk did not excuse Moody from his urgent duty to not only look, but to see. *See Thomasko*, 349 S.C. at 11–12, 561 S.E.2d at 599 (whether driver kept a proper lookout is a jury question if the evidence yields multiple inferences); *Mahaffey v. Ahl*, 264 S.C. 241, 248, 214 S.E.2d 119, 122 (1975) ("It is inescapable that the respondent was in the road to be seen. Whether the driver-appellant should have seen him in time to stop or slow down to avoid the accident was a question of fact for the jury."); *see also* S.C. Code Ann. § 56-5-3230 (2018) ("[E]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian . . . ."). The law also obligates a driver to adjust his speed to the road conditions. S.C. Code Ann. § 56-5-1520(A) (2018) ("A person

shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing."). A reasonable juror could interpret Moody's testimony that he first saw Chelsea when he "looked up" to find her walking ten feet in front of his truck as incompatible with a careful lookout. The same reasonable juror might infer Moody's speed was too fast for the rainy and dark conditions if his range of vision was a mere ten feet. An equally reasonable juror might deem Moody's driving perfectly prudent, or at least less negligent than Chelsea's walking.

Moody sees little difference between his facts and those justifying summary judgment to the driver who struck a pedestrian in *Bloom v. Ravoira*. We see many, starting with the contrast between the broad upland expanse of Highway 8 and the narrowness of the dense, two-lane urban byway of downtown Charleston's Meeting Street, clogged as it was by cars parked upon it. Mr. Bloom, the pedestrian, was wearing dark clothes, the rain more an Irish mist than the downpour here, and Bloom "ran" into the street between two parked cars. 339 S.C. 417, 419–21, 529 S.E.2d 710, 711–12. The driver's speed was five miles per hour less than Moody's. Bloom was struck a "split second" after he ran into the street without warning (but with a taxidermied pig tucked under his arm), while here Chelsea was wearing bright clothes, had managed to cross two lanes of traffic without incident, and paused in the median to look out before proceeding.

We understand how the trial court could have concluded Chelsea's negligence exceeded Moody's and amounted to more than fifty percent of the comparative fault. But arriving at that conclusion required choosing between the multiple inferences emerging from the evidence. Rule 56, SCRCP, reserves that choice to the jury.

The order of summary judgment is

REVERSED.

THOMAS and HEWITT, JJ., concur.