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# ARKANSAS COURT OF APPEALS

DIVISION I
**No.** CA09-853

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| CLAUDIA MARRON<br>APPELLANT<br><br>V.<br><br>BRANDON T. WILLIAMS and MOORE<br>US MAIL CONTRACTOR, INC.<br>APPELLEES | **Opinion Delivered** March 10, 2010<br><br>APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT<br>[NO. CV 2008-376-4]<br><br>HONORABLE MARY ANN GUNN, JUDGE<br><br>AFFIRMED |

**JOSEPHINE LINKER HART, Judge**

This appeal involves a defendant's verdict in a cause of action for negligence arising from an automobile accident. Claudia Marron appeals from an order of the Washington County Circuit Court denying her motion for a new trial, which alleged that the jury verdict was clearly contrary to the preponderance of the evidence. On appeal, Marron argues that the trial court erred in (1) denying her new-trial motion alleging that the jury verdict was not supported by substantial evidence; and (2) admitting evidence concerning her consumption of alcoholic beverages.[1] We affirm.

A few facts in this case are not disputed. The accident occurred on Highway 62 in

[1] This evidentiary issue was not mentioned in Marron's new-trial motion. However, it is properly before us because Marron's timely filed Notice of Appeal encompassed all properly preserved allegations of trial error.

Lincoln on December 22, 2007, at approximately eight o'clock in the morning. Appellee Brandon Williams was driving a white, thirty-two-foot-long truck, that was attempting to cross Highway 62 at the intersection of Southwest Avenue. Williams had a stop sign at the intersection. Williams had nearly made it completely through Marron's lane at the time of the collision; she struck a lift mounted on the rear of the truck. There was no evidence of skid marks at the scene.

Williams testified that he stopped at the stop sign, looked both ways and saw no cars coming, then proceeded slowly through the intersection. He asserted that from a stop, the truck was only able to move very slowly. As he was crossing the center lane, he saw a car coming, that he thought would have adequate time to stop or move out of the way. He estimated that he had approximately 500 feet of visibility to view on-coming traffic at the intersection. Williams could not estimate Marron's speed, but opined that she was moving "pretty fast."

Marron claimed that she was very familiar with the portion of Highway 62 through Lincoln. She stated that she was going the posted speed limit of thirty-five miles per hour, and in fact, verified that was her speed about a block prior to the intersection with Southwest Avenue. She claimed she did not see the truck until she was only two car-lengths away. Marron testified that "all of a sudden" the truck pulled out in front of her. She braked as hard as she could and at the same time, darted to the right. Nonetheless, she hit the lift on the back of the truck. On cross-examination, she admitted that the truck was moving very slowly.

The jury found that Williams was not negligent. Marron timely filed a motion for a new trial, which was denied. She then filed this appeal.

On appeal, Marron argues that the trial court erred in denying her motion for a new trial because Williams failed to yield to her, and failed to maintain a "proper lookout." This argument is not persuasive.

The standard of review for the denial of a motion for new trial is whether the verdict was supported by substantial evidence. *Thomas v. Olson*, 364 Ark. 444, 220 S.W.3d 627 (2005). Substantial evidence is defined as evidence of sufficient force and character to compel a conclusion one way or the other with reasonable certainty; it must force the mind to pass beyond suspicion or conjecture. *Id.* Additionally, in determining whether there is substantial evidence, we view the evidence and all reasonable inferences arising therefrom in the light most favorable to the party receiving the judgment. *Id.* The supreme court has acknowledged that generally, a defense verdict will almost always be supported by substantial evidence, because the plaintiff has the burden of proof, and the jury is the sole judge of credibility of witnesses and the weight and value of the evidence. *Id.*

We believe that the jury's verdict is supported by substantial evidence. Williams testified that he stopped at the stop sign and looked both ways before proceeding. He claimed that he could not see another vehicle coming and had an unobstructed view for 500 feet. Subsequently, Williams did see Marron's car, and he opined that it was traveling "pretty fast." Nonetheless, he believed that Marron had ample opportunity to avoid an accident. Further,

by her own testimony, Marron did not see the slow-moving truck until it was only two car-lengths away. Accordingly, this testimony is sufficient for a jury to find that Williams maintained a proper lookout, whereas Marron did not. Moreover, the evidence supports a reasonable inference that Williams properly yielded to on-coming traffic, and it was only Marron's excess speed that brought her to the point of impact, which she inadequately attempted to avoid. In sum, we hold that the trial court did not err in denying Marron's new-trial motion.

For her second point, Marron argues that the trial court erred in admitting evidence of her consumption of alcoholic beverages on the night before the accident. We will supply some additional facts that are relevant to this point.

Prior to trial, the trial judge denied Marron's motion in limine in which she asserted that the evidence of her consumption of alcohol was too remote in time to be relevant. While arguing for the motion, Marron's trial counsel noted that there was no evidence that she was under the influence of intoxicants at the time and only admitted to drinking the night before, ceasing at approximately 10:00 p.m. She claimed she was neither "partying" nor "up all night." Williams disputed the time line and argued that the purported lack of evidence of intoxication was not as clear-cut as Marron asserted because Marron was immediately transported by ambulance to the hospital. In making its ruling, the trial court noted that it was uncertain as to how the evidence of Marron's drinking would be adduced.

At trial, Marron testified that on the evening before the accident, she arrived at a friend's

house at approximately 7:00 p.m. She admitted to drinking "two or three beers," but denied being intoxicated. On cross-examination, however, she was confronted with her deposition in which she stated that she was unable to say how much she drank, when she started drinking, and when she stopped drinking.

On appeal, she argues, as she did during the hearing on her motion in limine, that the evidence was irrelevant because it was too remote in time and there was no evidence that she was impaired. She also asserts that even if it was relevant, it was unfairly prejudicial. We disagree.

The trial court has discretion in determining the relevance of evidence and in gauging its probative value against unfair prejudice. *Oxford v. Hamilton*, 297 Ark. 512, 763 S.W.2d 83 (1989). Marron chose to bring up her consumption of alcohol prior to the accident as a matter of trial strategy, casting it in the best light. Her testimony, however, was contrary to the statements she made in her deposition. The evidence presented by Williams was therefore admissible as a prior inconsistent statement, and highly probative because it tested Marron's credibility. Generally, matters affecting the credibility of a witness are always relevant. *Swinford v. State*, 85 Ark. App. 326, 154 S.W.3d 262 (2004). Under these circumstances, we cannot say that the trial court abused its discretion in admitting the testimony.

Affirmed.

GLADWIN and BROWN, JJ., agree.