

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Frederick W. Crow
Young & Young
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Kenneth A. Ewing
McNeelyLaw, LLP
Shelbyville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Scott J. Bastin and Jennifer L.
Bastin,
Appellants-Plaintiffs,

v.

Jaqueliandra V. McClard,
Appellee-Defendant.

August 18, 2021

Court of Appeals Case No.
21A-CT-558

Appeal from the Marion Superior
Court

The Honorable Cynthia J. Ayers,
Judge

Trial Court Cause No.
49D04-1906-CT-25615

Baker, Senior Judge.

Statement of the Case

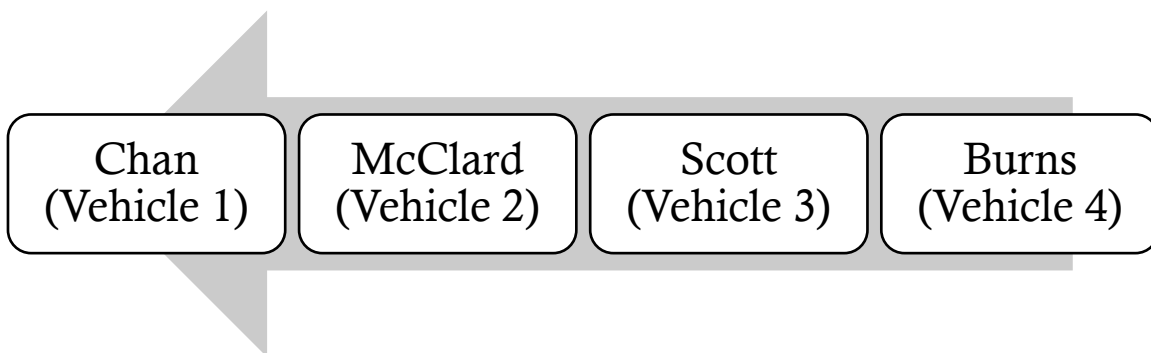
- [1] Scott J. Bastin (“Scott”) and Jennifer L. Bastin (“Jennifer”) sued Jaqueliandra McClard and others after Scott sustained severe injuries in a multi-vehicle auto accident. The Bastins appeal the trial court’s grant of summary judgment in favor of McClard. We affirm.

Issue

- [2] The Bastins present two claims, which we consolidate and restate as: whether the trial court erred in granting McClard’s motion for summary judgment.

Facts and Procedural History

- [3] On the morning of June 6, 2018, rush hour traffic was heavy in downtown Indianapolis at an intersection of Interstate Highways 65 and 70 known as “the north split.” Appellants’ App. Vol. 2, p. 28. The sun was shining, and the pavement was dry.
- [4] This case involves four drivers, all of whom were driving west on Interstate 70 through the north split on that morning: Carl Chan, McClard, Scott, and Blair Burns. They followed one another:



- [5] Chan, in Vehicle 1, noticed traffic was stop and go. Vehicles were going less than fifty miles per hour because drivers did not have opportunities to accelerate. The vehicle in front of Chan suddenly came to a complete stop while partially pulling onto the shoulder. Chan stopped as well, pressing his

brake hard while remaining in his lane. He stopped less than two feet from the vehicle in front of him.

[6] Meanwhile, McClard, in Vehicle 2, noted that the road was “a little curvy,” *id.* at 96, allowing her to better see traffic ahead. She saw two cars in front of her stop “all of a sudden.” *Id.* at 46. When Vehicle 1 stopped, McClard also came to a complete stop in her lane. She later explained that she had to “brace hard” on the brake, *id.* at 8, but did not “slam” on it. Appellee’s App. Vol. II, p. 12. She was far enough back from Vehicle 1 that she could see its rear bumper and license plate when she came to a stop, and she noticed that the vehicles in front of and behind her also came to a complete stop. McClard did not turn on her vehicle’s flashing hazard lights.

[7] In Vehicle 3, Scott saw the two cars in front of him slowing down and stopping. He came to a complete, gradual stop, two car lengths behind McClard. Three or four seconds after McClard and Scott came to a stop, Vehicle 4, which was driven by Burns, drove into the rear of Scott’s vehicle, pushing it into McClard’s vehicle. In turn, McClard’s vehicle was pushed into Chan’s vehicle. Chan, in Vehicle 1, heard the impacts of the repeated collisions before McClard’s vehicle struck his. Chan’s vehicle did not strike the vehicle in front of him.

[8] Officer Pfaff of the Indiana State Police arrived at the scene and prepared a crash report. He determined the accident was caused by Burns, Scott, and McClard “Following Too Closely.” Appellants’ App. Vol. 2, p. 135. Scott

complained of pain and was transported from the scene by ambulance. He is paralyzed from the waist down due to the accident.

- [9] On June 25, 2019, the Bastins sued McClard, Chan, Burns, and the Indiana Department of Transportation, alleging negligence and loss of spousal consortium. McClard filed a motion for summary judgment. The trial court granted McClard’s motion after a hearing, determining: (1) McClard’s duty of care to Scott did not include any obligation to pull off the road or to turn on her hazard lights when she came to a stop; and (2) McClard did not otherwise breach the duty of reasonable care she owed to Scott. Further, in the absence of a negligence claim, McClard was also entitled to judgment on Jennifer’s claim for loss of spousal consortium. This appeal followed.¹

Discussion and Decision

- [10] We review summary judgment orders de novo and apply the same standard of review as the trial court. *AM Gen., LLC v. Armour*, 46 N.E.3d 436, 439 (Ind. 2015). The party moving for summary judgment must show through designated evidence “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Ind. Trial Rule 56(C). Upon this showing, the nonmoving party then has the burden to demonstrate there is a genuine issue of material fact. *AM Gen.*, 46 N.E.3d at

¹ Although the Bastins’ claims against the remaining defendants apparently have yet to be resolved, the trial court’s grant of summary judgment in favor of McClard was an appealable order because the court directed the entry of judgment in favor of McClard pursuant to Trial Rule 54(B).

439. All facts and reasonable inferences drawn from those facts are construed in favor of the nonmoving party. *Colonial Penn Ins. Co. v. Guzorek*, 690 N.E.2d 664, 667 (Ind. 1997).

[11] On appeal, the nonmoving party must persuade us that the trial court's grant of summary judgment was erroneous, but we carefully assess the trial court's decision to ensure that the nonmoving party was not improperly denied a trial. *Shenmei Yuan v. Wells Fargo Bank, N.A.*, 162 N.E.3d 481, 485 (Ind. Ct. App. 2020). We will affirm the summary judgment ruling on any basis supported by the designated evidence. *Id.* We are not bound by the trial court's findings of fact and conclusions thereon, but they facilitate our review by providing insight into the trial court's rationale for its decision. *McDonald v. Lattire*, 844 N.E.2d 206, 211 (Ind. Ct. App. 2006).

[12] The elements of a negligence claim are the existence of a duty, breach of the duty by the defendant, and damages proximately caused by the defendant's breach. *Jones v. Hancock Cnty. Bd. of Comm'rs.*, 55 N.E.3d 311, 316 (Ind. Ct. App. 2016). Generally, whether a duty exists is a question of law for the court to decide. *Rhodes v. Wright*, 805 N.E.2d 382, 386 (Ind. 2004). By contrast, the determination of whether a defendant breached the duty of care is generally a question of fact. *Springman by Springman v. Hall*, 642 N.E.2d 521, 523 (Ind. Ct. App. 1994). Summary judgment is rarely appropriate in negligence cases. *Daisy v. Roach*, 811 N.E.2d 862, 864 (Ind. Ct. App. 2004).

[13] McClard concedes she owed Scott “a duty to maintain proper lookout and a duty to reasonably control her vehicle” prior to the collision. Appellee’s Br. p. 7. This duty is well-established in case law. *See Cole v. Gohmann*, 727 N.E.2d 1111, 1115 (Ind. Ct. App. 2000) (a motorist has a duty to “use due care to avoid a collision,” to “maintain his automobile under reasonable control,” and to “maintain a proper lookout”).

[14] The Bastins argue there are several disputes of material fact as to whether McClard breached her duty of reasonable care. They first say McClard should have pulled over to the side of the road when traffic came to a stop. McClard responds that her duty of reasonable care did not include an obligation to pull over.

[15] Under the circumstances of this case, we agree with McClard. It is undisputed that traffic was stop and go, and there was no reason to believe that Chan and others had come to anything more than a momentary stop at the time the collision occurred. *Cf. McKinney v. Pub. Serv. Co. of Ind., Inc.*, 597 N.E.2d 1001, 1008 (Ind. Ct. App. 1992) (reversing grant of summary judgment in negligence case arising out of multi-vehicle accident; two drivers had stopped their vehicles on an interstate highway in a traffic lane to change a tire, giving rise to a dispute of material fact as to whether they were negligent), *trans. denied*. McClard came to a stop quickly, but she did not need to swerve onto the side of the road to avoid colliding with Chan. To the contrary, she stopped far enough behind Chan’s vehicle to see its license plate and rear bumper.

[16] The Bastins argue that if McClard had pulled to the side of the road, there would have been “more room” for Scott and Burns to maneuver, and they would have been alerted to a possible hazard ahead. Appellants’ Br. p. 9. But Scott stated that he was able to bring his car to a gradual stop after he saw the brake lights of vehicles in front of him, and the Bastins provided no evidence as to what Burns saw prior to the collision.

[17] The Bastins further argue McClard violated a statute, Indiana Code section 9-21-16-1 (1991), by failing to pull over to the side of the road. The violation of a motor vehicle safety statute creates a rebuttable presumption of negligence. *McKinney*, 597 N.E.2d at 1007. The Bastins raised this argument for the first time in their reply brief, thereby waiving it. *See Monroe Guar. Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005) (“grounds for error may only be framed in an appellant’s initial brief”).

[18] Next, the Bastins claim there is a dispute of material fact as to whether McClard breached her duty of reasonable care by failing to activate her flashing hazard lights when she came to a stop. McClard responds that under the circumstances of this case, her duty of reasonable care to Scott did not include an obligation to activate her hazard lights. We agree with McClard. Her brake lights activated as she pressed on the brake pedal and came to a stop. The Bastins state that if McClard had also activated her emergency lights, it would have alerted Scott, Burns, and other motorists “that there was a hazard ahead and give them more time to react.” Appellants’ Br. p. 17. It is undisputed that Scott was able to bring his car to a stop based on observing McClard’s brake

lights alone in the few seconds before the collisions occurred, and it is unclear how flashing hazard lights would have improved his ability to stop. Further, the Bastins provided no evidence of what other motorists saw.

[19] The Bastins further claim McClard violated Indiana Code section 9-21-7-11 (2012), a motor vehicle safety statute, by failing to activate her hazard lights. Indiana Code section 9-21-7-11 provides, in relevant part, “Flashing lights *may* be displayed on a vehicle . . . [a]s a means of indicating the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing” (emphasis added). The statute does not mandate the display of emergency lights when a motorist notes a possible vehicular traffic hazard, and as a result McClard did not violate the statute.

[20] For their final claim of error, the Bastins claim McClard breached her duty of care by following Chan too closely, noting that she stated she had to brace hard when she came to a stop. In addition, an officer cited her and others for following one another too closely. The Bastins argue McClard’s act of driving too closely demonstrates a failure to use ordinary care.

[21] The Bastins cite *Romero v. Brady*, 5 N.E.3d 1166, 1169 (Ind. Ct. App. 2014), *trans. denied*, in which a panel of this Court stated: “whether a motorist was following another motorist too closely goes to the issue of breach.” However, that case is factually distinguishable from the current case. In *Romero*’s case, her vehicle was struck by Brady’s vehicle after a third party swerved into her lane as they all drove on an interstate. *Romero* claimed Brady had been

following the third party too closely and did not allow himself sufficient time to stop and avoid striking Romero. A panel of this Court concluded there was a material dispute of fact on that point.

[22] In the current case, even if McClard was following Chan too closely, there is no dispute of material fact that Scott took note of McClard's brake lights and was able to gradually stop his car, two car lengths behind McClard's vehicle. Further, unlike in the *Romero* case, McClard's vehicle did not strike Scott's vehicle.

[23] It is possible that McClard could have violated her duty of care to Scott by driving in a manner that caused Burns to strike Scott, setting off the chain reaction of collisions, but the Bastins did not submit any evidence as to what Burns saw prior to the collision. McClard had the right to assume that Burns would exercise due care in maintaining a proper lookout. *See McDonald*, 844 N.E.2d at 214 (affirming grant of summary judgment in negligence case arising from multi-vehicle collision; defendant Lattire had the right to assume a third-party vehicle would exercise a duty of care to avoid colliding with him). Under these circumstances, the Bastins have failed to demonstrate a dispute of material fact as to whether McClard breached her duty of care. The trial court did not err in granting summary judgment on Scott's negligence claim, and as a result McClard was also entitled to summary judgment on Jennifer's dependent claim for loss of spousal consortium.

Conclusion

[24] For the reasons stated above, we affirm the judgment of the trial court.

[25] Affirmed.

Bradford, C.J., and Weissmann, J., concur.