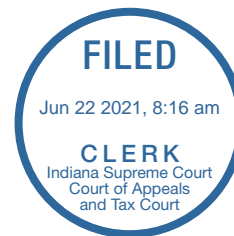


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

Princess Daniels-Porter,
Appellant-Plaintiff,

v.

City of West Lafayette,
Appellee-Defendant.

June 22, 2021

Court of Appeals Case No.
21A-CT-78

Appeal from the Tippecanoe
Superior Court

The Honorable Randy J. Williams,
Judge

Trial Court Cause No.
79D01-2001-CT-11

Altice, Judge.

Case Summary

- [1] Princess Daniels-Porter filed a complaint against the City of West Lafayette (the City) after she, while walking in a pedestrian crosswalk, was struck and

knocked to the ground by a police car operated by an officer with the City's police department. The City filed a motion for summary judgment based on contributory negligence. Following a hearing, the trial court granted summary judgment in favor of the City. Daniels-Porter appeals, presenting three issues, which we consolidate and restate as: Did the trial court err in granting summary judgment in favor of the City on the issue of contributory negligence?

[2] We affirm.

Facts & Procedural History

[3] The facts are not in dispute. Around 11:00 p.m. on April 14, 2019, Daniels-Porter was walking to her dorm room from the library when she approached the intersection of West State Street and Martin Jischke Drive in West Lafayette. As she “was getting ready to cross the [Martin Jischke Drive] at the cross walk,” Daniels-Porter “looked both ways before proceeding onto the crosswalk.” *Appellant’s Appendix Vol. II* at 55. When she was about halfway across the street, she was struck and knocked to the ground by a car driven by Officer Sandford Swanson of the West Lafayette Police Department, who was in his official police vehicle. Daniels-Porter described the car as coming from behind her and to her right. Officer Swanson was west bound on State Street and stated that he “had the green,” and he “was turning and never even saw [Daniels-Porter].” *Id.* at 88, Exhibit 4 (video) at 3:01.

[4] After being struck, Daniels-Porter complained of pain in her legs and knees but was able to slowly walk to the side of the road until she was taken by

ambulance to a nearby hospital. Sergeant David Smith interviewed Daniels-Porter at the hospital. Daniels-Porter indicated that she was crossing the street against the pedestrian signal for the crosswalk:

Well, I was like crossing the street and I didn't have the crosswalk sign, but I checked and there was like no cars coming, and um, I had like headphones in and I was like halfway across the street and like as soon as I got to the part where there was like the incoming traffic, um, the police car was like turning left and kind of like grazed me because he wasn't going super fast because he was doing a turn, and I think he hit me like on my right side and then I fell forward onto my knees and then kind of went back on my backpack.

Id. at 59, Exhibit C (video) at 1:13-1:46. The crosswalk signal does not automatically change to permit pedestrian traffic with the green light signal controlling the traffic flow parallel to the crosswalk. Pedestrians must push a button to activate the crosswalk signal, and there is a sign with instructions at the intersection.

[5] During the interview with Sergeant Smith, Daniels-Porter stated that she was “wearing black” and that it was “too dark” for Officer Swanson to see her as she was crossing the street. *Id.* at 3:33-3:36. She also stated that she did not look for traffic again after she was in the crosswalk, explaining:

But um, I think it was just kind of like bad luck because I wasn't really paying attention and didn't see anything and then I didn't really turn again, like a second look after I checked like once and stuff.

Id. at 3:36-3:49.

[6] On January 29, 2020, Daniels-Porter filed her complaint against various parties. On March 10, 2020, she filed an amended complaint naming only the City as a defendant. The City filed its answer and asserted the affirmative defense of contributory negligence, among others. On September 24, 2020, the City filed a motion for summary judgment based on its contributory negligence defense. After Daniels-Porter filed her response to the motion and the City filed its reply, the trial court held a summary judgment hearing on November 19, 2020. On December 17, 2020, the trial court entered its order granting summary judgment in favor of the City. Daniels-Porter now appeals. Additional facts will be provided, as necessary.

Discussion & Decision

[7] We review summary judgment de novo and apply the same standard as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). Summary judgment is appropriate where the designated evidence establishes that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.* Once the moving party has sustained its initial burden of proving the absence of a genuine issue of material fact and the appropriateness of judgment as a matter of law, the party opposing summary judgment must respond by designating specific facts establishing a genuine issue for trial. *Id.*

[8] On appeal, Daniels-Porter argues that the City failed to establish that she was contributorily negligent as a matter of law or that her actions were the

proximate cause of her injuries. Generally, in Indiana actions for negligence, a plaintiff's contributory fault does not bar recovery unless it exceeds fifty percent of the total fault. *See* Ind. Code §§ 34-51-2-5, -6. Because the Indiana Comparative Fault Act expressly excludes application to governmental entities, however, the common-law defense of contributory negligence remains available as a bar for liability for a defendant such as the City. *See* Ind. Code § 34-51-2-2 (“This chapter does not apply in any manner to tort claims against governmental entities or public employees[.]”). “Under this law, a plaintiff is barred from recovery when he or she is negligent and this negligence is even slightly the cause of the alleged damages.” *Murray v. Indianapolis Public Schools*, 128 N.E.3d 450, 453 (Ind. 2019) (citing *McSwane v. Bloomington Hosp. & Healthcare Sys.*, 916 N.E.2d 906, 911 (Ind. 2009)).

[9] A plaintiff is contributorily negligent when the plaintiff's conduct “falls below the standard to which [s]he should conform for [her] own protection and safety. Lack of reasonable care that an ordinary person would exercise in like or similar circumstances is the factor upon which the presence or absence of negligence depends.” *Jones v. Gleim*, 468 N.E.2d 205, 207 (Ind. 1984); *see also Hundt v. La Crosse Grain Co.*, 446 N.E.2d 327, 329 (Ind. 1983). Put another way, “[c]ontributory negligence is the failure of a person to exercise for h[er] own safety that degree of care and caution which an ordinary, reasonable, and prudent person in a similar situation would exercise.” *Brown v. N. Ind. Publ. Serv. Co.*, 496 N.E.2d 794, 798 (Ind. Ct. App. 1986). Contributory negligence is generally a question of fact and is not an appropriate matter for summary

judgment “if there are conflicting factual inferences.” *Butler v. City of Peru*, 733 N.E.2d 912, 917 (Ind. 2000). “However, where the facts are undisputed and only a single inference can reasonably be drawn therefrom, the question of contributory negligence becomes one of law.” *Jones*, 468 N.E.2d at 207.

[10] Indiana law requires pedestrians to comply with traffic and pedestrian control signals. Ind. Code § 9-21-17-1 (“Pedestrians are subject to traffic and pedestrian control signals.”). Specifically, a “pedestrian shall obey the instructions of an official traffic control device specifically applicable to the pedestrian, unless otherwise directed by a police officer.” I.C. § 9-21-17-3. Daniels-Porter admitted that she entered the crosswalk against the pedestrian crosswalk signal and there is no indication that she was directed to do so by a police officer.

[11] The City argued below and argues on appeal that given her admission that she failed to comply with a safety statute, i.e., did not obey the pedestrian crosswalk signal, Daniels-Porter is presumed to be contributorily negligent. *See, e.g., Davison v. Williams*, 251 Ind. 448, 242 N.E.2d 101, 105 (1968) (“We believe that the wisest course for the courts of Indiana to take in the adjudication of a suit involving negligence by violation of a safety regulation is to treat plaintiff’s proof of defendant’s violation of the safety regulation as creating a rebuttable presumption of negligence.”). To rebut the presumption of negligence, a person may excuse or justify the violation “by sustaining the burden of showing that he did what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law.” *Id.* If the

presumption is not rebutted by showing that the act was justifiable or excusable under the circumstances, the presumption is conclusive of negligence. *Id.*

[12] Relying on *Gonzalez v. Ritz*, 102 N.E.3d 910 (Ind. Ct. App. 2018), Daniels-Porter argues that the rebuttable presumption does not apply in this case. In *Gonzalez*, the safety statutes at issue required a bicyclist to stop at an intersection where a stop sign was located and then “proceed cautiously” and where stopped, the bicyclist should not move until the movement could be done with “reasonable safety.” 102 N.E.3d at 914 (quoting Ind. Code §§ 9-21-8-32, -23). The court held that because the safety statutes at issue required that one must essentially be found negligent to trigger the application of the statute, the presumption of negligence was “inapplicable and superfluous.” *Id.* Daniels-Porter maintains that although not expressly stated, the safety statute at issue herein likewise requires a finding of negligence given that to operate the instant pedestrian signal, a pedestrian is required to push a button to activate it. Thus, Daniels-Porter argues that, as in *Gonzalez*, the rebuttable presumption of negligence is inapplicable. We disagree.

[13] As set out above, and acknowledged by Daniels-Porter, there is no express language in the pedestrian safety statute that adds a negligence component. Rather, I.C. § 9-21-17-3 explicitly and unambiguously requires pedestrians to follow an official traffic control device specifically applicable to the pedestrian. We fail to see how requiring a pedestrian to push a button to activate the crosswalk signal imposes a negligence component by which to judge a pedestrian’s actions in determining whether there has been a violation of the

statute. Despite the need to interact with the traffic control device, the safety statute still requires a pedestrian to heed the pedestrian crosswalk signal. We thus conclude that violation of the pedestrian safety statute triggers the rebuttable presumption of negligence.

[14] We now turn to whether Daniels-Porter carried her burden of producing evidence to excuse or justify her violation of the pedestrian safety statute by walking against the crosswalk signal. The facts are undisputed. It was late at night, Daniels-Porter was wearing dark clothing. She even believed it was probably too dark for Officer Swanson to see her. Although she looked for traffic before entering the crosswalk, she admitted that she “wasn’t really paying attention,” was wearing headphones, and did not look a second time as she walked across the street. *Appellant’s Appendix* at 59, Exhibit C (video) at 3:36-3:49. Finally, she also admitted that she entered the crosswalk against the crosswalk signal. Daniels-Porter was presumptively negligent when she entered the crosswalk without the appropriate signal in violation of Indiana law. Daniels-Porter’s own admissions after the incident demonstrate that she was not exercising reasonable caution and care for her own safety. She also did not offer any explanation or justification for why she entered the crosswalk against the crosswalk signal.¹

¹ Daniels-Porter’s arguments concerning Officer Swanson’s conduct have no bearing on whether Daniels-Porter was contributorily negligent.

[15] While Daniels-Porter may not be solely responsible for what happened, her negligence was at least a slight cause of the harm she suffered. Under contributory negligence law, Daniels-Porter's claim against the City is barred as a matter of law. Accordingly, we affirm the trial court's grant of summary judgment in favor of the City.

[16] Judgment affirmed.

Kirsch, J. and Weissmann, J., concur.