MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrea Moore and
William Moore,

Appellants-Plaintiffs,

v.

Jocelyn Negrelli,

Appellee-Defendant.

June 20, 2023

Court of Appeals Case No.
22A-CT-3056

Appeal from the
LaPorte Superior Court

The Honorable
Richard R. Stalbrink, Judge

Trial Court Cause No.
46D02-1908-CT-1966

Memorandum Decision by Judge Vaidik
Judges Mathias and Foley concur.[1]

[1] Judge Foley is not related to Edmond Foley, lead counsel for the appellants.

Vaidik, Judge.

Case Summary

[1] Andrea Moore sued Jocelyn Negrelli after a car accident. A jury found Negrelli was not at fault. Moore now appeals, arguing the trial court erred by denying her motion for directed verdict and in its instructions to the jury. We disagree and affirm.[2]

Facts and Procedural History

[2] During afternoon rush hour on September 21, 2018, Moore and Negrelli were both driving eastbound on I-94 east of Burns Harbor. There were three eastbound lanes, but ahead the far-left lane was gradually closing due to construction, forcing all traffic into two lanes (the middle lane and the far-right lane). Traffic was slowing because of the construction. Moore was in the far-left lane as she approached the construction zone and then merged into the middle lane. Meanwhile, Negrelli entered the construction zone in the far-right lane. She saw a semi parked on the right side of the road, so she decided to move into the middle lane. As she pulled behind a man named Espinoza in the middle lane, Espinoza hit his brakes, and Negrelli rear-ended him. Moore was in front

[2] Moore's husband William has made a claim for loss of consortium and is also appealing, but he raises no independent issues. To simplify things, we will refer to Andrea Moore as "Moore" and limit our discussion to her claims and appellate arguments.

of Espinoza in the middle lane, and Espinoza's car was pushed into the back of Moore's car on the passenger side.

[3] A year after the accident, Moore sued Negrelli, claiming she was negligent. (Moore did not sue Espinoza, and Negrelli did not bring him into the case.) A jury trial was held in October 2022. Moore testified that as she entered the construction zone, "everybody's braking because everybody is merging," so she hit her brakes. Tr. p. 25. As she started braking, she looked in her rearview mirror, saw Espinoza behind her, and saw Negrelli "coming very fast" behind Espinoza. *Id.* Moore said she tried to avoid a collision by moving back into the far-left lane, where construction barrels were located, but before she could get all the way into that lane, Negrelli hit Espinoza, and Espinoza hit her. According to Moore, Negrelli "kept apologizing" after the accident and said she didn't know what happened. *Id.* at 32.

[4] Negrelli testified that the accident happened "as soon as [she] moved -- merged from the right lane into the center lane" and that she rear-ended Espinoza "because [he] hit the brakes." *Id.* at 109. She "tried to brake" and "slowed down" before she hit Espinoza. *Id.* at 107-08. She wasn't aware of anything that Moore or Espinoza did wrong and didn't know why she failed to see Espinoza's car sooner. She also testified that she thought the accident was her fault.

[5] After the presentation of evidence, Moore moved for a directed verdict that Negrelli was at fault for the accident. Moore emphasized Negrelli's testimony

that she wasn't aware of Moore or Espinoza doing anything wrong, she didn't know why she failed to see them stopping sooner, and she thought the accident was her fault. Negrelli's attorney responded:

> [M]y client may have thought the accident was her fault, but she doesn't know the law, and she's entitled to have the jury determine whether or not she did something wrong, she -- she did or did not do something that a reasonable person would do in the circumstances she was faced with.

Id. at 139. The court denied Moore's motion, explaining:

> [M]ost every case involving negligence when you're having a question of fact or an issue of fact, it's for the trier of fact to decide, and that would be the jury. So I'm going to deny your request for directed verdict and let the jury make that decision. You can obviously argue whatever you're going to argue in closing arguments to them on those issues, but I'm going to deny the request for the directed verdict on the issue of liability and negligence and let the jury make that determination.

Id. at 141.

[6] After denying the directed verdict, the trial court gave two jury instructions over objections by Moore. First, the trial court instructed the jury that "[a] rear-end collision, standing alone, does not raise a presumption or authorize an inference of negligence." Appellants' App. Vol. II p. 26. Second, the court instructed the jury on comparative fault, giving the jury the option of finding that Moore was partially at fault for the accident. *Id.* at 39.

[7] The jury returned a verdict for Negrelli. It found that Negrelli "was not at fault" for the accident, *id.* at 17, and therefore didn't reach the issue of comparative fault.

[8] Moore now appeals.

Discussion and Decision

I. Directed Verdict

[9] Moore contends the trial court erred by denying her motion for directed verdict and allowing the issue of Negrelli's fault to go to the jury. We review a motion for directed verdict de novo, considering only the evidence most favorable to the nonmovant along with all reasonable inferences that may be drawn therefrom. *Deaton v. Robison*, 878 N.E.2d 499, 501 (Ind. Ct. App. 2007), *trans. denied*. A directed verdict should be granted only when the evidence is not conflicting and susceptible to only one inference, supporting judgment for the movant. *Id.*

[10] Moore argues that a directed verdict was appropriate because Negrelli "admitted she was at fault and that Plaintiff Andrea Moore did nothing wrong." Appellants' Br. p. 13. That testimony certainly would have supported a verdict against Negrelli, but it was just part of the evidence presented. Negrelli also testified that she rear-ended Espinoza "because [he] hit the brakes." That testimony alone supports an inference that Espinoza used his brakes in an unexpected manner—too hard, too late, or both. But even if Espinoza did

everything right, there's another reasonable inference. Moore testified that she was in the far-left lane as she approached the construction zone and then merged into the middle lane, and that she hit her brakes as she entered the construction zone. From this, the jury could infer that Moore abruptly pulled in front of Espinoza and abruptly hit her brakes, causing Espinoza to abruptly hit his brakes as Negrelli was pulling behind him, leading to the collision. In short, the accident might have been Negrelli's fault, it might have been Espinoza's or Moore's fault, or it might have been no one's fault, just the unfortunate result of road construction and rush-hour traffic. Whatever it was, the evidence was not so clear and undisputed that it was "susceptible to only one inference." *See Deaton*, 878 N.E.2d at 501. Therefore, the call was the jury's to make, and the trial court did not err by denying Moore's motion for a directed verdict.[3]

II. Jury Instruction

[11] Moore also argues the trial court erred in its instructions to the jury. Instructing the jury generally lies within the sole discretion of the trial court, and reversal is appropriate only for abuse of that discretion. *Raess v. Doescher*, 883 N.E.2d 790, 799 (Ind. 2008), *reh'g denied*.

[12] Moore first contends the trial court should not have instructed the jury that "[a] rear-end collision, standing alone, does not raise a presumption or authorize an

[3] Moore also argues the trial court erred by giving the jury a verdict form that "allowed the jury to conclude that [Negrelli] was not at fault." Appellants' Br. p. 7. This argument is merely an extension of Moore's directed-verdict argument and fails for the same reasons.

inference of negligence." She does not dispute that this is an accurate statement of Indiana law. *See Estate of Carter v. Szymczak*, 951 N.E.2d 1, 3 (Ind. Ct. App. 2011) ("As the Estate points out, even a rear-end collision, standing alone, does not raise a presumption or authorize an inference of negligence."), *trans. denied*. Instead, she argues that "[i]t was improper to instruct the jury in this case that it could not infer negligence under the circumstances presented at trial." Appellants' Br. p. 13. But the instruction didn't say the jury "could not infer negligence." It said the jury could not infer negligence **based solely on the occurrence of a rear-end collision**.

[13] Moore relies heavily on our decision in *Foddrill v. Crane*, 894 N.E.2d 1070 (Ind. Ct. App. 2008). There, the trial court declined to give a rear-end-collision instruction like the one that was given here, and we affirmed. However, we didn't hold that such an instruction should never be given. We merely held that the trial court didn't abuse its discretion by rejecting the instruction under the circumstances of that case. *Id.* at 1079. And the circumstances of that case were quite different than this case. Specifically, the plaintiff was stopped at a red light when a truck driven by the defendant struck her car from behind. There weren't multiple moving cars and lane changes as in this case. Just as we deferred to the trial court's discretion in *Foddrill*, we defer to the trial court's discretion here.

[14] Next, Moore asserts the trial court erred by instructing the jury on the issue of comparative fault, that is, by instructing the jury it could apportion fault to her. She contends, "There was absolutely no evidence presented at trial of any fault on the part of Andrea Moore and in fact [Negrelli] admitted that she had no

evidence to suggest that Ms. Moore had done anything wrong." Appellants' Br. p. 12. For all the reasons discussed above in relation to the motion for directed verdict, we cannot say the trial court erred by instructing the jury on comparative fault. But even if the instruction should not have been given, Moore was not prejudiced because the jury never reached the issue of comparative fault. Instructional error does not require reversal if the complaining party was not prejudiced by the error. *Penn Harris Madison Sch. Corp. v. Howard*, 861 N.E.2d 1190, 1197 (Ind. 2007).

[15] Affirmed.

Mathias, J., and Foley, J., concur.