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**IN THE
COURT OF APPEALS OF INDIANA**

AUTO OWNERS INSURANCE, as Subrogee of)
APPROVAL AUTO CREDIT, INC.,)

Appellant-Plaintiff,)

vs.)

ROBERT H. DRAKE, JR.,)

Appellee-Defendant.)

No. 49A05-0807-CV-442

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John F. Hanley, Judge
Cause No. 49D11-0707-CT-29821

April 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Auto Owners Insurance, as Subrogee of Approval Auto Credit, Inc., (“Auto Owners”) appeals the trial court’s judgment in favor of Robert Drake. We affirm.

Issue

Auto Owners raises one issue, which we restate as whether the trial court’s judgment in favor of Drake is supported by the evidence.

Facts

Robert Drake was driving south on State Road 446 in Monroe County on September 2, 2006. It was early in the morning and still dark. He was in an extended cab pickup truck and pulling an eighteen foot bass boat. Drake’s vehicle was insured with Hastings Mutual Insurance Company. Drake made a left turn from 446 into the driveway of the Cabin Restaurant. Just south of the restaurant State Road 446 curves, creating a “blind curve” for traffic in both directions, with a hill. Tr. p. 20. Drake did not see oncoming traffic in the northbound lane when he started his left turn. As his truck entered the restaurant parking lot, he noticed headlights out of the corner of his eye. Then Drake felt an impact to his boat trailer.

Tracy Brock had been approaching in a northbound lane of 446. He was driving an Oldsmobile, loaned to him by a car dealer while his vehicle was being repaired. Auto Owners insured the loaned Oldsmobile. Brock saw Drake’s truck’s turn signal as he crested the hill, but did not see the boat trailer until he was about fifty feet away. He braked as hard as he could and attempted to avoid the trailer, but clipped it. He did not

swerve into the southbound lanes to avoid the collision, because he saw oncoming headlights.

On July 19, 2007, Auto Owners filed a complaint alleging Drake was negligent and the sole cause of the accident. Auto Owners had paid its subroger, Approval Auto Credit, \$6,342.45, for damages and sought recovery under a theory of subrogation. Drake answered alleging that Brock was negligent. Hastings Mutual then filed a third party complaint against Brock. Hastings Mutual paid \$8,958.88 for repairs to Drake's trailer and boat.

Following a bench trial on March 13, 2008, the trial court found Drake 45% at fault and Brock 55% at fault. It awarded Hastings Mutual \$5,064.88. Auto Owners filed a motion to correct error, which was denied on July 10, 2008. This appeal followed.

Analysis

Auto Owners contends the trial court's judgment is contrary to the evidence. The trial court issued its judgment on June 4, 2008, without specific findings of fact or conclusions of law. Rather, the trial court summarily entered its conclusion that Drake was 45% at fault and Brock was 55% at fault.

A general judgment will be affirmed if it can be sustained on any legal theory supported by the evidence. Baxendale v. Raich, 878 N.E.2d 1252, 1257 (Ind. 2008). We review the judgment without reweighing evidence or considering witness credibility. Id. Auto Owners had the burden at trial and is appealing a negative judgment. A party appealing a negative judgment must demonstrate that the evidence points unerringly to a conclusion different from that reached by the trial court. Bennett v. Broderick, 858

N.E.2d 1044, 1048 (Ind. Ct. App. 2006), trans. denied. We will reverse a negative judgment only if it is contrary to law. Id.

To prevail on a claim of negligence, a plaintiff must prove: (1) a duty owed to the plaintiff by the defendant; (2) breach of that duty; and (3) an injury proximately caused by that breach. Williams v. Cingular Wireless, 809 N.E.2d 473, 476 (Ind. Ct. App. 2004), trans. denied. All motorists have a general duty to use due care to avoid a collision. McDonald v. Lattire, 844 N.E.2d 206, 213 (Ind. Ct. App. 2006). This includes a duty to keep a proper lookout and to maintain his or her vehicle under reasonable control. Id. Specifically regarding left turns, Indiana statutes provide that a driver may not turn a vehicle from a direct course upon a highway before proper signaling and ensuring the movement can be made with reasonable safety. Ind. Code §§ 9-21-8-24 & 25.

Both drivers had a duty to maintain a proper lookout, and Auto Owners contends that Drake breached this duty and made an unsafe left turn. Auto Owners suggests that Drake could have made his turn earlier into a restaurant driveway that was slightly north. Auto Owners also suggests that Drake could have “waited longer to see if any light beams pierced the darkness ahead of him.” Appellant’s Br. p. 11. Drake’s testimony, however, indicated that the northbound lane was clear when he initiated his turn. The trial court determined that Drake had some fault for this accident, but not the majority of it.

Brock testified that he saw the turning truck, but by the time he noticed the trailer it was too late to make a complete stop. Brock testified that he did not see the trailer until

he was about fifty feet from it. He testified that he was not speeding and going the thirty-five mile per hour speed limit through the curve and probably fifteen to twenty miles per hour just before impact. The deputy who investigated the accident testified that a northbound vehicle traveling thirty-five miles per hour should have been able to stop in the 175 to 200 feet between the curve and the restaurant entrance. In any event, Brock saw the truck, but failed to notice the trailer, which had lights and reflectors, and then failed to stop in time. After hearing the testimony of Drake, the investigating officer, and Brock, and reviewing the evidence and diagrams, the trial court assessed Brock to have 55% of fault for this accident.

Considering our standard of review, we cannot conclude that the trial court's judgment is unsupported by the evidence or contrary to law. Drake made a left turn after looking for oncoming traffic and signaling. Brock came out of a curve and upon Drake's truck without seeing the trailer and without enough time to stop. The trial court decided that the majority of the fault, 55%, was with Brock.

Conclusion

The trial court's judgment is supported by the evidence. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.