

6/17/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 96-CA-00130 COA

MARY M. PIERCE APPELLANT

v.

JEFFREY L. ALEXANDER APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT LOUIS GOZA, JR.

COURT FROM WHICH APPEALED: RANKIN COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: BARRY W. GILMER

WILLIAM A. LANIGAN III

ATTORNEY FOR APPELLEE: LELAND S. SMITH

NATURE OF THE CASE: CIVIL: PERSONAL INJURY

TRIAL COURT DISPOSITION: JURY VERDICT IN FAVOR OF DEFENDANT/APPELLEE

MANDATE ISSUED: 7/8/97

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This action originated in the County Court of Rankin County wherein Mary Pierce sought damages from Jeffrey Alexander for injuries she suffered as a result of a car accident. The jury returned a unanimous verdict for Alexander. Feeling aggrieved, Pierce appealed to the Circuit Court of Rankin County which affirmed the judgment of the County Court of Rankin County. Aggrieved from her initial appeal, Pierce has perfected an appeal to this Court. Pierce has filed her appeal based upon two allegations. First, she alleges that it was error to refuse her peremptory instruction and then deny her amended motion for J.N.O.V. Second, Pierce alleges that the trial court erred by abusing its discretion when denying her amended motion for a trial de novo when the overwhelming weight of

the evidence is against the jury's verdict. Finding no error, we affirm.

STATEMENT OF THE FACTS

This is a case involving conflicting accounts of an automobile accident. Both parties agree that they were involved in an automobile accident when their respective vehicles collided at the intersection of Highway 80, Old Brandon Road, and Flowood Drive. From this point, the stories diverge. Pierce asserts that she had the green light. Alexander asserts that he had the green turn arrow. Both parties inferentially argue that the other had a red light.

Moments before the collision, both parties had approached this confluence of highway and road. Pierce approached driving west on Old Brandon. At the same time, Alexander was approaching the intersection via Highway 80 heading east.

The intersection where the accident took place is an odd configuration at best, in that three roadways converge into one intersection. Highway 80 is an East and West four lane highway with a left turn bay. Flowood Drive "Tees off" into Highway 80 at a ninety degree angle so that traffic exiting Flowood Drive onto Highway 80 will go either East or West on Highway 80. Traffic wishing to go North on Flowood Drive, from traveling east on Highway 80, must make a ninety degree left turn crossing Highway 80 West and Old Brandon Road going East. Old Brandon Road runs through this intersection with West bound traffic exiting from Highway 80 and then crossing Flowood Drive just before Flowood Drive reaches Highway 80 East passing through the intersection of Flowood Drive and Highway 80. East bound traffic on Old Brandon Road, once through the traffic control devices, is completely merged into Highway 80 east bound traffic. Each entrance to this intersection is controlled by a traffic light with the exception of South bound traffic which exits Flowood Drive to go West on Old Brandon and is controlled by a "Yield" sign.

Four witnesses tendered evidence at trial concerning the accident, Note that three other witnesses testified during this trial. Tonya Pierce testified as to her observations of her mother prior to and after the accident. Dr. William Warner testified as to his clinical observations of Mary Pierce. Dr. Raymond Foxworth (chiropractor) testified as to his clinical observations of Mary Pierce. Officer Young of the Flowood Police Department, Mr. Jessie Kennedy, Pierce, and Alexander. Officer Young testified that the traffic control devices which were in place and controlling traffic on the date and time of the accident were working as designed. Mr. Jessie Kennedy, a non-party eyewitness, testified that from his position in the cab of his eighteen wheeler, he was able to observe two traffic lights, his own and that light controlling Pierce's lane of traffic. Kennedy testified that Pierce entered into the intersection under a green light.

The remaining witnesses consisted of Pierce and Alexander. Pierce testified that she had the right of way, that she had the green light, and that her vehicle was struck on the left side doors. Alexander testified that because he had a green light and the right of ingress into the intersection, Pierce grazed his vehicle creating the accident.

ANALYSIS

I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT REFUSED PIERCE'S PEREMPTORY INSTRUCTION AND THEN DENIED PIERCE'S AMENDED MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT.

II. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION WHEN DENIED PIERCE'S AMENDED MOTION FOR A NEW TRIAL WHEN THE OVERWHELMING WEIGHT OF THE EVIDENCE IS AGAINST THE JURY'S VERDICT.

For purposes of this appeal the issues will be consolidated. In this instant case the jury had two choices: Note that there was one other possibility of why both parties merged at the intersection at the same time creating the accident, that reason being that the lights were mechanically defective. However, it appears from Officer Young's testimony that the lights at this time were working as designed. He made no mention that the lights were defective. either Pierce ran the red light, or alternatively, Alexander ran the red light. The jury determined that Alexander was not negligent. The jury weighed the evidence and determined the credibility of the witnesses. Courts normally do not interfere with jury determinations. *Wells Fargo Armored Service Corp. v. Turner*, 543 So. 2d 154, 156 (Miss. 1989)(quoting *Travelers Indem. Co. v. Rawson*, 222 So. 2d 131, 134 (Miss. 1969)). This Court will not be a thirteenth juror. *Walker v. Graham*, 582 So. 2d 431, 433 (Miss. 1991) (citing *Bell v. Bay St. Louis*, 467 So. 2d 657, 660 (Miss. 1985)). There are however, exceptions to the general rule. *McKinzie v. Coon*, 656 So. 2d 134, 142 (Miss. 1995) (stating a jury verdict should not be set aside "unless the jury is improperly instructed on the law, misled, confused or ignores the weight of the evidence.") Pierce contends that the weight of the evidence is against the jury's verdict. However, the jury heard testimony from several witnesses concerning what occurred at the intersection: the truck driver/eyewitness, Mr. Kennedy, stated that Pierce had the green light as she passed through the intersection. Pierce maintained that she had the green light as did Alexander. The jury heard, analyzed, and reviewed the testimony as proffered by each witness, albeit examined the appearance and demeanor of each witness, consolidating all of the testimony for a final determination against Pierce. As the court in *Wells* stated, "The jury not only has the right to evaluate and determine the truth and falsity of the witnesses, but also has the right to evaluate and determine what portions of the testimony of any witness it will accept or reject" and unless it is clear that the verdict is contrary to the overwhelming weight of the credible testimony the jury verdict will not be set aside. *Wells Fargo*, 543 So. 2d at 156 (citations omitted). The question of who ran the red light ultimately was a question of fact to be determined by the jury.

The court has stated that the test applied to jury verdicts in civil cases is:

Once the jury has returned a verdict in a civil case, we are not at liberty to direct that judgment be entered contrary to that verdict short of a conclusion on our part that given the evidence as a whole, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could have found as the jury found.

Henson v. Roberts, 679 So. 2d 1041, 1045 (Miss. 1996) (citing *Wells Fargo*, 543 So. 2d at 157; *Bell v. City of Bay St. Louis*, 467 So. 2d at 660; *Stubblefield v. Jesco, Inc.*, 464 So. 2d 47, 54 (Miss. 1984); *Weems v. American Sec. Ins. Co.*, 450 So. 2d 431, 435 (Miss. 1984)). Thus, when liability is difficult to determine as in this case due to conflicting testimony produced by each side, "the jury is given the power to resolve factual disputes," *Henson* 679 So. 2d at 1045, and did so in this case

against the plaintiff, Pierce. In her brief, Pierce admits: "Even if there had been paid expert witnesses, 'hired guns,' this case would have been a toss up. Strictly for the jury!" We agree and decline to disturb the jury's verdict.

In the alternative, Pierce asks this court to invalidate the jury's determination by granting it a J.N.O.V. or a new trial. To grant either of these request would essentially replace the jury with the judge. A judge may not substitute his judgment for that of the jury merely because he would have decided the matter differently. *Shelton v. Coleman*, 323 So. 2d 90, 91 (Miss. 1975).

The Mississippi Supreme Court has previously opined that the standard for a peremptory instruction is the same criteria applied for a directed verdict. Thus, when a party requests a peremptory instruction, the trial court must consider the evidence in the light most favorable to the non-moving party, giving the non-movant the benefit of all reasonable inferences that may be drawn therefrom. *Wilner v. Mississippi Export R. Co.*, 546 So. 2d 678, 681 (Miss. 1989). Considering the evidence propounded by each side, a peremptory instruction was not appropriate, and therefore the judgment of the lower court, in properly refusing such an instruction was proper.

Pierce vainly attempts to persuade this Court that the jury verdict was the result of bias, prejudice and passion. However, Pierce fails to cite any instances of prejudice, bias or passion. Pierce makes a one sentence reference in her conclusion to juror misconduct. Specifically, Pierce states that she "be allowed to proceed to investigate the incident involving Juror Watts." Pierce fails to make any meaningful argument and does not direct this Court to that portion of the record which supports her contention. We decline to address this contention and need not do so in light of her failure to meet her burden on appeal. *See Johnson v. State*, 626 So. 2d 631, 634 (Miss. 1993) (stating that part of the Appellant's burden on appeal is to support her assigned errors on appeal with reasons and authorities); *see also Conner v. State*, 684 So. 2d 608, 614 (Miss. 1996) ("Absent any meaningful argument, this Court is not obligated to entertain an assignment of error."); *Baine v. State*, 604 So. 2d 249, 255 (Miss. 1992) ("In the absence of meaningful argument and citation of authority, this Court generally will not consider an assignment of error.").

It is unfortunate that Pierce has suffered such injury, but it was her burden to present evidence that would convince the jury that Alexander was guilty of negligence that proximately caused those injuries. Having failed to meet her burden she cannot form a basis of relief at the appellate level.

**THE JUDGMENT OF THE CIRCUIT COURT OF RANKIN COUNTY IS AFFIRMED.
ALL COSTS OF THIS APPEAL ARE TAXED TO APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING,
HINKEBEIN, KING, AND SOUTHWICK, JJ., CONCUR.**