

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 3rd day of December, 2015.*

Batrina D. Martin, Appellant,

against Record No. 141886  
Circuit Court No. CL12001417-00

Steven M. Isbill, et al., Appellees.

Upon an appeal from judgments rendered by the Circuit Court of the City of Portsmouth.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that the circuit court erred in ruling that the plaintiff in this personal injury action was contributorily negligent as a matter of law.

Plaintiff Batrina D. Martin (“Martin”) brought a personal injury action against defendants Steven M. Isbill (“Isbill”) and Matthew J. King (“King”) in the Circuit Court of the City of Portsmouth.

At trial, Martin testified that she was operating an automobile in the center lane of State Route 164 on the West Norfolk Bridge at about 6:30 a.m. on June 29, 2010. She was travelling behind a white pickup truck that she could not see around. Her speed was approximately 40 to 45 miles per hour, which was keeping up with the flow of traffic. She was about one car length behind the white truck in “bumper to bumper” traffic. Traffic in the left lane was backed up for about a mile; traffic in the right lane was moving.<sup>1</sup> The white truck moved abruptly to the right lane. After the white truck moved to the right lane, Martin saw for the first time Isbill’s automobile, which was stopped “perpendicular” in the center lane. Martin was unable to move her automobile to either the left lane or the right lane because of the presence of other vehicles.

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<sup>1</sup> At the point of the accident, State Route 164 is known as the Western Freeway. It has three east-bound lanes. The left lane branches off to the Midtown Tunnel and the City of Norfolk. The center and right lanes continue on to Route 58 and the City of Portsmouth.

She was able to apply her brakes, but was unable to avoid colliding with Isbill's vehicle. The force of the impact with Isbill's vehicle was sufficient to cause the airbags in Martin's automobile to deploy. She briefly lost consciousness. Soon thereafter, Martin felt another impact, when King's automobile hit her vehicle from the rear. She was extracted from her automobile by rescue personnel and transported to a hospital by ambulance. In her answer to an interrogatory asking her to "state in detail [her] observation of how the [accident] occurred," Martin stated: "Steven Isbill caused this accident. He was negligent because he was cutting in line, leaving his car in the middle lane during rush-hour morning traffic."

Isbill testified that he was operating his automobile in the center lane of the bridge. He was attempting to merge into the left lane that went into the Midtown Tunnel. When he was unable to merge before the left lane separated from the other two lanes, he came to a complete stop for about three to five seconds in the center lane. He looked in his rear-view mirror and saw a large vehicle behind him suddenly move to the right lane. About one or two seconds later, his vehicle was struck by Martin's vehicle. Isbill heard the squealing of the brakes of Martin's automobile before the impact. The force of the impact turned Isbill's vehicle 90 degrees.

King testified that he was operating his automobile in the center lane, following Martin. His speed was about 40 to 45 miles per hour, which was "going with the flow of traffic." He was about four or five car lengths behind Martin, who was also going no faster than the flow of traffic. He saw Martin suddenly slam on her brakes. He could see that Martin was unable to move to the left lane or the right lane because of the presence of other vehicles. King was able to apply his brakes before he collided with Martin's automobile. He was unsure of the speed of his vehicle at the point of impact, but it was "not very much." It all happened in three or four seconds. After King's vehicle collided with Martin's vehicle, Martin's vehicle continued to travel another 100 or 200 yards before coming to rest.

At the conclusion of Martin's case in chief, Isbill and King each moved to strike the evidence, arguing that the evidence showed that Martin was contributorily negligent as a matter of law.

Relying on Massie v. Firmstone, 134 Va. 450, 114 S.E. 652 (1922), Isbill argued that Martin could not rise above her own testimony that she was following the white truck by one car

length while travelling 40 to 45 miles per hour. Accordingly, in Isbill's view, Martin was contributorily negligent as a matter of law in that she was following too closely.

King argued that "there [is no] set of facts in which . . . King can be found negligent but that . . . Martin cannot be found negligent." Both King and Martin were traveling 40 to 45 miles per hour. King, however, was four to five car lengths behind Martin's vehicle. King argued that if he was following too closely behind Martin, "it has to follow suit that . . . Martin was also following too closely." In short, King argued that "[h]e didn't do anything that she didn't also do." Further, Martin was bound by her interrogatory answer that Isbill caused the accident. Martin "simply can't rise above that."

In opposing the two motions to strike her evidence, Martin argued that the issues of her negligence, King's negligence, and proximate cause were all questions for the jury.

The circuit court denied Isbill's motion to strike and granted King's motion to strike. At the conclusion of all of the evidence, Isbill renewed his motion to strike Martin's evidence. Initially, the circuit court denied Isbill's renewed motion to strike. Before closing arguments, however, the circuit court sua sponte reconsidered and ruled that, as a matter of law, Martin was contributorily negligent and her contributory negligence was a proximate cause of the accident. The circuit court found that Martin was negligent as a matter of law because "she was traveling 40 to 45 miles an hour, one length behind the white truck that was immediately in front of her and unable to switch lanes because of the heavy traffic during rush hour."

On appeal, Martin argues that the circuit court erred in granting King's motion to strike and Isbill's renewed motion to strike because the evidence adduced at trial created jury issues as to whether Martin was negligent, whether King was negligent, and, if either Martin or King was negligent, whether that negligence was a proximate cause of the accident.<sup>2</sup>

We agree with Martin. In reviewing a trial court's decision to strike the evidence, "we will view the evidence in the light most favorable to the plaintiff, giving her the benefit of all inferences which a jury might fairly draw from the evidence, and if several inferences may be drawn, though differing in degree and probability, we will adopt those most favorable to the plaintiff unless they are strained and forced or contrary to reason." West v. Critzer, 238 Va. 356,

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<sup>2</sup> No one contended at trial that Isbill was free from negligence.

357, 383 S.E.2d 726, 727 (1989). Negligence, contributory negligence, and proximate cause are ordinarily questions for the jury. Richmond Greyhound Lines, Inc. v. Brown, 203 Va. 950, 952, 128 S.E.2d 267, 269 (1962). It is only where the evidence is such that reasonable minds cannot differ, the issue becomes one of law for resolution by the trial court. Love v. Schmitt, 239 Va. 357, 360, 389 S.E.2d 707, 709 (1990).

When the evidence is viewed in the light most favorable to Martin, reasonable people could differ as to whether she was negligent. Whether Martin was traveling at an excessive speed or following too closely were issues for the jury to decide. Virginia law imposes a duty on a driver to operate his or her vehicle at a reasonable speed under the existing conditions. Faison v. Hudson, 243 Va. 397, 407, 417 S.E.2d 305, 311 (1992). Similarly, Virginia law imposes no set formula as to how many car lengths must be maintained between vehicles at any given speed. Instead, one must not follow another motor vehicle more closely than is reasonable and prudent, having due regard to the speed of both vehicles and the traffic upon, and the conditions of, the highway at the time. Code § 46.2-816. See also Hot Shot Express, Inc. v. Brooks, 264 Va. 126, 135, 563 S.E.2d 764, 769 (2002). Thus, it was for the jury to decide whether Martin was negligent in driving too fast for conditions, or in following the white truck too closely, after considering the evidence of all the conditions existing on the West Norfolk Bridge at the time of the accident.

The evidence was also sufficient to create a jury issue as to whether King was negligent. Indeed, King's counsel at oral argument before us conceded that "I can't stand here and argue that there was no negligence on the part of . . . King." Similarly, at trial King did not argue that he was not negligent. Rather, King contended that his negligence was no greater than Martin's negligence. The evidence created issues for the jury to decide as to whether King was travelling too fast for conditions, whether he was following too closely, and whether he failed to maintain a proper lookout.

Even if Martin was negligent, the evidence, when viewed in the light most favorable to Martin, created a jury issue as to whether her negligence was a proximate cause of the collision with Isbill's automobile. The jury could have reasonably concluded that, even if she were following the white truck too closely, Martin's negligence was not a proximate cause of the accident. She did not collide with the white truck. She collided with Isbill's automobile. The

jury could have reasonably concluded that Isbill's stopping in the middle of the east-bound lanes of a heavily-traveled freeway in rush hour was the proximate cause of the accident.

In addition, the evidence was sufficient to create a jury issue as to whether Martin's negligence, if any, was a proximate cause of the second collision with King's automobile, and whether King's negligence, if any, was a proximate cause of the second collision.

Finally, our holding in Massie v. Firmstone, 134 Va. 450, 114 S.E. 652 (1922), does not preclude Martin from prevailing in her action against King. The interrogatory asked her to state in detail her observation of how the accident occurred. Martin testified that she did not observe King before impact. Thus, her interrogatory answer that, in her observation, the accident was caused by Isbill, in no way prevented her from seeking recovery from King.

For the foregoing reasons, we reverse the decision of the circuit court and remand this case for a new trial.

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JUSTICE McCLANAHAN, concurring in part and dissenting in part.

I disagree that reasonable jurors could differ as to whether Martin was contributorily negligent. By Martin's own testimony, she was operating her vehicle at 40 to 45 miles per hour only one car length behind the white pickup truck, in heavy traffic, fully aware that other vehicles often slowed or stopped to merge into backed-up traffic going into the tunnel. Martin admitted that she could not see around the truck and that she would have been unable to avoid hitting the truck had the driver of the truck hit his brakes. In my view, a reasonable person exercising care for her own safety would not follow a vehicle so closely, at such a speed, and under traffic conditions in which she could not avoid a collision if the vehicle stopped. See Maroulis v. Elliott, 207 Va. 503, 509-10, 151 S.E.2d 339, 344 (1966) (the likelihood of sudden stopping is one reason for requiring a driver to follow another vehicle at a reasonable distance; a "prudent" driver "must recognize the possibility of a sudden stop"). Therefore, I believe Martin was contributorily negligent as a matter of law. Richmond Greyhound Lines, Inc. v. Brown, 203 Va. 950, 952-53, 128 S.E.2d 267, 269 (1962) (contributory negligence becomes a question of law where reasonable persons may draw but one conclusion from the facts).

I am also of the opinion, however, that reasonable jurors could differ as to whether Martin's negligence was a proximate cause of the collisions with the Isbill and King vehicles in light of the evidence that King, who was travelling four to five car lengths behind the Martin vehicle at the same speed as Martin, was unable to avoid the collision with the Martin vehicle. Accordingly, I agree the case should be remanded for a new trial.

A Copy,

Teste:

*Pat L Hamilton*

Clerk