

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1532**

Ednika Dabney,
Appellant,

vs.

Douglas Van Vreede,
Respondent.

**Filed July 15, 2024
Affirmed
Larson, Judge**

Ramsey County District Court
File No. 62-CV-21-5805

Courtney A. Lawrence, Matthew J. Barber, Schwebel, Goetz & Sieben, PA, Minneapolis,
Minnesota (for appellant)

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, PA, Minneapolis, Minnesota; and

Sheina R. Long, David M. Werwie & Associates, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Gaïtas, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

This appeal stems from appellant Ednika Dabney's lawsuit against respondent Douglas Van Vreede over an automobile collision. Following a jury verdict in favor of Van Vreede, Dabney moved for judgment as a matter of law or, alternatively, for a new

trial. The district court denied both motions, and Dabney appealed, challenging both decisions. We affirm.

FACTS

The following facts were presented at trial. Around 5:00 p.m., on December 28, 2017, respondent Douglas Van Vreede was driving on Interstate 35E behind Dabney in downtown St. Paul. Van Vreede left work around 4:30 p.m. and had been driving for 15 to 30 minutes prior to the accident. It was sleeting, and the temperature “was close to freezing.” However, Van Vreede had not encountered any “slippery conditions” or ice prior to the accident, and he had not seen any other vehicles “sliding around.”

Traffic on 35E was “slow and go,” so Van Vreede was driving around 30 or 40 miles per hour, keeping about three or four car lengths between his car and the car in front of him. As Van Vreede approached downtown, traffic slowed and compressed. Van Vreede slowed to about 25 miles per hour and was two or three car lengths behind the vehicle in front of him—later identified as Dabney’s vehicle—as the two vehicles drove through the merge with Interstate 94. At this point, Dabney applied her brakes, and Van Vreede immediately applied his brakes. Despite applying the brakes as hard as he could, and the fact that he had safely braked previously during the drive, Van Vreede could not stop his vehicle in time to avoid the crash. Van Vreede’s antilock brakes kicked in, and his vehicle slid forward and collided with the back of Dabney’s vehicle.

At trial, Van Vreede testified regarding his understanding of his duties as a driver. He testified that he understood he had “a duty to keep a proper distance to be able to stop [his] vehicle for anything that happen[ed] in front of [him] while driving,” and to keep his

vehicle under control. Van Vreede admitted that weather is not an excuse for a collision but testified that “there are unusual conditions that happen suddenly.”

Van Vreede also testified regarding his conduct during the accident. He recognized that he did not see or know about any other crashes that occurred around the same time and location, that Dabney had not rear-ended any vehicles, and that the vehicles behind him were able to stop without colliding with his vehicle. He also acknowledged that “there was not enough room between [Van Vreede] and Ms. Dabney to stop, given the conditions,” but maintained that “it was because there was ice suddenly on the roadway, and [he did not] notice that before [the collision].” Van Vreede further explained that he “was not aware of the ice underneath” and that he had previously “been able to brake.” When asked if he could have avoided the crash if there had been more room between his vehicle and Dabney’s vehicle, Van Vreede responded that he did not “know how much room that would be,” and that he thought he “was prudent under the conditions.”

When his attorney questioned him about whether he kept a safe following distance under the circumstances, Van Vreede testified that “I think I was, yeah, safe and similar to the other vehicles on the road.” Van Vreede also opined that, if not for the ice under his vehicle, he would have been able to stop before hitting Dabney’s vehicle.

At the conclusion of trial, the district court issued jury instructions. Relevant to this appeal, the district court gave the following three jury instructions:

Burden of Proof

You will be asked to answer “yes” or “no” to some questions on the verdict form. The greater weight of the evidence must support a “yes” answer. This means that all of the evidence, regardless of which party produced it, must lead you to believe

that the claim is more likely true than not true. Greater weight of the evidence does not necessarily mean the greater number of witnesses or the greater volume of evidence. Any believable evidence may be enough to prove that a claim is more likely true than not.

Negligence and Reasonable Care—Basic Definition
Definition of “reasonable care”

Reasonable care is the care a reasonable person would use in the same or similar circumstances.

Definition of “negligence”

Negligence is the failure to use reasonable care.

Ask yourself what a reasonable person would have done in these circumstances.

Negligence occurs when a Person:

1. Does something a reasonable person would not do; or
2. Fails to do something a reasonable person would do.

Fact of Accident Alone—No Inference of Negligence

The fact that a collision has happened does not by itself mean that someone was negligent.

The district court also instructed the jury that the order in which it gave the instructions was not important, and that the jury should “[c]onsider all the instructions together.”

Following deliberation, the jury found that Van Vreede had not been negligent in the operation of his vehicle at the time of the accident. Dabney moved for judgment as a matter of law or, alternatively, for a new trial. The district court denied both motions. This appeal follows.

DECISION

On appeal, Dabney argues she was entitled to judgment as a matter of law because Van Vreede violated Minnesota traffic laws when he followed too closely behind her

vehicle for road conditions, which established a prima facie case of negligence that Van Vreede failed to rebut. Dabney argues in the alternative that she was entitled to a new trial because the fact-of-accident-alone jury instruction was misleading, both in its substance and based on the order in which the jury instructions were delivered. We address each argument in turn below.

I.

Dabney challenges the district court's decision to deny her motion for judgment as a matter of law. Dabney asserts that, during his testimony, Van Vreede admitted that he violated Minn. Stat. § 169.18, subd. 8(a) (2022), because he testified that he was following too closely behind Dabney's vehicle for the road conditions. According to Dabney, Van Vreede's admission established a prima facie case of negligence under Minn. Stat. § 169.96(b) (2022). Dabney argues that Van Vreede failed to rebut that prima facie case and, therefore, she was entitled to judgment as a matter of law.

“We review de novo a district court's decision to deny a motion for judgment as a matter of law, applying the same standard used by the district court” *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018) (quotation omitted). “Judgment as a matter of law may be granted only when the evidence is so overwhelming on one side that reasonable minds cannot differ as to the proper outcome.” *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 55 (Minn. 2019) (quotation omitted). “In applying this standard, (1) all the evidence, including that favoring the verdict, must be taken into account, (2) the evidence is to be viewed in the light most favorable to the verdict, and (3) the court may not weigh the evidence or judge the credibility of the witnesses.” *Id.* (quotation omitted).

Pursuant to Minn. Stat. § 169.96(b), violating any provision in chapter 169—the chapter governing traffic laws—is “prima facie evidence of negligence” in any civil action. “[I]f there is no credible evidence to excuse a failure to comply with a [traffic law], the prima facie case established by evidence of that failure has not been overcome.” *Riley v. Lake*, 203 N.W.2d 331, 338 (Minn. 1972). In such cases, “the court should hold the violator negligent as a matter of law.” *Id.*

Here, Dabney argues Van Vreede’s testimony amounted to an admission that he violated Minn. Stat. § 169.18, subd. 8(a). Under that provision, “[t]he driver of a motor vehicle shall not follow another vehicle more closely *than is reasonable and prudent*, having due regard for the speed of such vehicles and the traffic upon and the conditions of the highway.” Minn. Stat. § 169.18, subd. 8(a) (emphasis added).

We conclude Dabney is not entitled to judgment as a matter of law. First, as we explained in a previous nonprecedential decision, subdivision 8(a) cannot give rise to a prima facie case of negligence, because the standard described in subdivision 8(a) *is* the “reasonable-and-prudent person standard of negligence.” *See Plowman v. Digatono*, No. C6-95-895, 1995 WL 606537, at *1 (Minn. App. Oct. 17, 1995).¹ Statutory provisions like subdivision 8(a), which simply incorporate a negligence standard, rather than articulating a bright-line rule, “do not in themselves establish a prima facie case of negligence; they merely describe what could constitute negligence.” *Id.* This is because, “except where

¹ While *Plowman* is nonprecedential and, therefore, not binding, we find its reasoning persuasive. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c). We note that subdivision 8(a) remains unchanged since the *Plowman* decision. *Compare* Minn. Stat. § 169.18, subd. 8(a) (1994), *with* Minn. Stat. § 169.18, subd. 8(a) (2022).

reasonable minds may not differ, what due care requires and whether it has been exercised is [a fact question] for the jury.” *Ryan v. Griffin*, 62 N.W.2d 504, 507 (Minn. 1954); *see also Brager v. Coca-Cola Bottling Co. of Fargo, Inc.*, 375 N.W.2d 884, 887 (Minn. App. 1985) (“Where the roadway has been icy or wet and slippery, the question of negligence has been held to be for the jury.”). Because the statutory provision Dabney relies on incorporates the reasonable-and-prudent-person standard of negligence, rather than a bright-line rule, *see, e.g., Riley*, 203 N.W.2d at 338 (“[F]ailure to yield the right-of-way is prima facie evidence of negligence.”), we are not persuaded that Dabney can rely on subdivision 8(a) to establish a prima-facie-negligence case.

Dabney disagrees, arguing that the Minnesota Supreme Court has already determined that violating Minn. Stat. § 169.18, subd. 8 (2022), establishes a prima-facie-negligence case. To support her argument, Dabney relies on *Wilson v. Sorge*, 97 N.W.2d 477 (Minn. 1959). But *Wilson* applied subdivision 8(b),² not subdivision 8(a). *See* 97 N.W.2d at 479. And, critically, subdivision 8(b) provides a bright-line rule. It requires a driver of “any motor vehicle drawing another vehicle, or the driver of any motor truck or bus” to “not follow within 500 feet of another vehicle.” Minn. Stat. § 169.18, subd. 8(b); *see also Wilson*, 97 N.W.2d at 479 (describing the requirements of subdivision 8(b)). Unlike subdivision 8(a), subdivision 8(b) articulates a bright-line rule because it involves

² The current version of subdivision 8(b) is almost entirely unchanged since the *Wilson* decision. *Compare* Minn. Stat. § 169.18, subd. 8(b) (1957), *with* Minn. Stat. § 169.18, subd. 8(b) (2022).

an exact measurement (500 feet). *Wilson* is therefore distinguishable from the present case, and Dabney's argument is unavailing.

But even if subdivision 8(a) could give rise to a prima-facie-negligence case, we disagree with Dabney that Van Vreede admitted to violating the statute. Van Vreede acknowledged that he was, in fact, unable to stop his vehicle before colliding with Dabney. He did not, however, admit that this was a violation of subdivision 8(a). On the contrary, Van Vreede testified that he acted prudently for the conditions despite being unable to avoid a collision.

Further, the district court's deference to the jury's verdict in this case is consistent with prior negligence caselaw. For example, in *Whelan v. Gould*, during the first snowstorm of the year, one of the plaintiffs made a left turn at an intersection and was rear ended by the defendant after completing the turn. 106 N.W.2d 893, 893-94 (Minn. 1960). The defendant testified that he applied his brakes but could not stop because of the slippery road conditions. *Id.* at 894. The jury determined "that neither driver was at fault" for the accident. *Id.* at 893. On appeal, the plaintiffs argued "that the accident could not have occurred" unless "one or both" drivers were negligent. *Id.* The supreme court rejected this argument, explaining that while "men of a higher standard of prudence and foresight might have avoided it, the jury could well have come to the conclusion that the parties exercised that degree of prudence, foresight, and caution which the law required under the existing circumstances." *Id.* at 895; *see also Tibbetts v. Nyberg*, 150 N.W.2d 687, 689 (Minn. 1967) ("[R]ear-end accidents do not necessarily give rise to liability as a matter of law.").

Brager provides additional support for the district court’s decision to deny Dabney’s motion for judgment as a matter of law. *See* 375 N.W.2d at 887. There, the defendant was driving on U.S. Highway 10, when he encountered an icy section of road. *Id.* at 885-86. The defendant was driving around 30 miles per hour, below the 50-mile-per-hour speed limit, when he saw the vehicle in front of him fishtail. *Id.* at 886. The defendant applied his brakes, and his truck went into a skid, which caused it to collide with the rear of the plaintiff’s vehicle. *Id.* The jury found that the defendant was not negligent. *Id.* The plaintiff moved for judgment notwithstanding the verdict,³ and the district court granted the motion. *Id.* We reversed, explaining that rear-end cases where negligence has occurred as a matter of law have generally been limited to “collisions not attributable to road or weather conditions, mechanical defect or sudden distraction.” *Id.* at 887. We also observed that Minnesota courts have repeatedly affirmed jury findings that a following vehicle was not negligent, despite the fact that an accident occurred. *Id.* (collecting cases).

Here, given the testimony presented at trial, the jury could have reached (and, in fact, did reach) a similar conclusion. Van Vreede testified that he had not observed ice or other slippery conditions on the roadway, and he had not observed other vehicles struggle for traction. He reduced his speed to 25 miles per hour and kept a following distance of

³ Minnesota Rules of Civil Procedure 50 was amended in 2006 to reflect changes to the Federal Rules of Civil Procedure made in 1991. Minn. R. Civ. P. 50 2006 advisory comm. cmt. As the advisory committee explained, the amended rule replaced “the archaic language and procedures” of motions for judgment notwithstanding the verdict with the uniform standard of motions for judgment as a matter of law. *Id.* While the amendment adopts a new name for the motion, “[t]his change [was] not intended to change substantive practice relating to these motions.” *Id.* As such, pre-2006 caselaw addressing motions notwithstanding the verdict are applicable to motions for judgment as a matter of law.

two to three car lengths behind Dabney's vehicle when traffic slowed and compressed, similar to other vehicles on the road. And in his estimation, Van Vreede would have been able to stop his vehicle without hitting Dabney's vehicle if there had not been unobserved ice on the roadway when he applied the brakes. Under these circumstances, the jury could have found Van Vreede "exercised that degree of prudence, foresight, and caution which the law required under the existing circumstances." *See Whelan*, 106 N.W.2d at 895.

For the foregoing reasons, we affirm the district court's decision to deny Dabney's motion for judgment as a matter of law.

II.

Dabney argues, in the alternative, that she is entitled to a new trial because the fact-of-accident-alone instruction likely misled the jury and prejudicially overemphasized Van Vreede's theory of the case. Because Dabney failed to object to this jury instruction until her motion for a new trial, we apply a plain-error standard of review.⁴ *See Poppler v. Wright Hennepin Coop. Elec. Ass'n*, 834 N.W.2d 527, 550 (Minn. App. 2013) (citing Minn. R. Civ. P. 51.04(b)), *aff'd on other grounds*, 845 N.W.2d 168 (Minn. 2014). Under this standard, we evaluate whether (1) "there is an error," (2) "the error is plain," and (3) "the error affects a party's substantial rights." *Id.* at 551. "If the first three

⁴ Relying on *Lewis v. Equitable Life Assurance Society of the United States*, 389 N.W.2d 876, 885 (Minn. 1986), Dabney argues that fundamental errors of law in jury instructions are reviewable on appeal, provided that the appellant raised the errors in a motion for a new trial. We note that the fundamental-errors standard described in *Lewis* predates Minn. R. Civ. P. 51.04(b), which specifically authorizes plain-error review for unobjected-to jury instructions. *See* Minn. R. Civ. P. 51 2006 advisory comm. cmt. We therefore apply the plain-error standard to this issue.

requirements of the plain-error test are satisfied, [we] must consider a fourth requirement, whether correction of the error is necessary ‘to ensure fairness and the integrity of the judicial proceedings.’” *Id.* (quoting *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 626-27 (Minn. 2012)).

Dabney first argues the district court plainly erred because the fact-of-accident-alone instruction is, itself, misleading. The instruction is misleading, Dabney argues, because it does not clarify that the instruction relates to the burden of proof, rather than substantive negligence law. We are not persuaded.

The fact-of-accident-alone instruction was taken, verbatim, from the civil jury instruction guide, and has long been used in Minnesota. *See 4 Minnesota Practice*, CIVJIG 25.55 (2014); *Kuether v. Locke*, 110 N.W.2d 539, 546 (Minn. 1961). In fact, the instruction is considered so helpful that it “is almost routinely given in negligence cases.” *See Kuether*, 110 N.W.2d at 546.⁵ And Dabney offers no compelling reason to conclude that the

⁵ Dabney claims that *Kuether* requires the fact-of-accident-alone instruction be accompanied by “critical clarifying language” that the instruction addresses the burden of proof. Dabney further claims that “*Kuether* makes clear that where the theory is unavoidable accident, the fact-of-accident-alone instruction is not proper.” But *Kuether* stands for the exact opposite proposition. *Kuether* expressly endorsed the fact-of-accident-alone instruction in a case involving the theory that the accident was unavoidable. *See* 110 N.W.2d at 546-57. There, defendant’s theory of the case was that the rear-end collision was not the result of either driver’s negligence, but rather “it was just an accident that happened.” *Id.* at 541, 546. Plaintiff, who appealed, argued that the district court erred when it gave the fact-of-accident-alone instruction because it “charged the jury with respect to an unavoidable accident.” *Id.* at 546. The supreme court disagreed, explaining that the fact-of-accident-alone instruction “is a proper cautionary instruction which has to do with the burden of proof rather than unavoidable accident.” *Id.* at 546-47.

instruction must clarify that it relates to the burden of proof. Thus, we do not discern the district court erred, and certainly it did not plainly err, when it included the instruction.

Dabney argues second that the order of the jury instructions made the fact-of-accident-alone instruction more likely to mislead the jury, because it followed immediately after the substantive-negligence instruction. Dabney characterizes the jury instructions as: “Essentially, the jury heard that negligence is failure to use reasonable care, and then heard that the fact [that] an accident occurred is not negligence.”

We disagree with Dabney’s characterization of the jury instructions. The jury heard that negligence is the failure to use reasonable care and then heard that the fact that an accident occurred is not necessarily the result of negligence. This is a fair representation of the law. Moreover, the district court instructed the jury that the order of the instructions was not important and that the jury should “[c]onsider all the instructions together.” “We presume that juries follow the instructions they are given.” *Frazier*, 811 N.W.2d at 630. Thus, we do not discern any error in the order in which the district court instructed the jury.

For the foregoing reasons, we affirm the district court’s decision to deny Dabney’s motion for a new trial.

Affirmed.