This opinion is nonprecedential except as provided by Minn.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
A24-0327
A24-1327

Scott A Pineur,
Appellant,

vs.

Travis J Semmann, et al.,
Respondents.

Filed April 7, 2025
Affirmed
Ross, Judge

Rice County District Court
File No. 66-CV-21-124

Christopher W. Bowman, Madigan, Dahl & Harlan, P.A., Minneapolis, Minnesota; and

James Carlson, Carlson Law Office, Burnsville, Minnesota (for appellant)

Robert G. Benner, John T. Giesen, Dunlap & Seeger, P.A., Rochester, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Smith, Tracy M., Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Scott Pineur was injured after he turned his utility terrain vehicle into the path of and collided with Travis Semmann's dump truck. Pineur sued Semmann, alleging negligence, but lost at trial. Pineur challenges the district court's denial of his posttrial motions for judgment as a matter of law, for a new trial, and for relief from judgment, raising three theories: that the district court should not have sent the question of negligence to the jury because Semmann was negligent as a matter of law; that the jury instructions and damage award were erroneous; and that newly discovered evidence and fraudulent conduct by Semmann entitle him to relief from judgment. Because Pineur establishes no legal error, we affirm.

FACTS

Scott Pineur sued Travis Semmann and his trucking company for injuries Pineur suffered in a June 2020 collision between Semmann's dump truck and Pineur's utility terrain vehicle (UTV). Pineur's negligence suit went to trial, and the two offered the jury conflicting testimony.

Semmann testified that, the evening of the collision, he was driving a dump truck southbound in the southbound lane of Geneva Avenue in Shieldsville Township. It was sunny and he could see clearly. He saw a UTV with a driver and two passengers ahead of him on the shoulder of the road, also traveling southbound. Semmann testified that he saw no mirrors on the UTV. He said that the UTV slowed as he approached from the rear and that its driver, Pineur, looked over his shoulder so sharply that he could see Pineur's face and both eyes. Semmann decided then that "it was safe to move over to allow space between myself and him to go around him." Semmann said that he checked for oncoming traffic and, seeing none, crossed into the northbound lane, accelerating to roughly 50 miles per hour in a 55-mile-per-hour zone.

Semmann described the collision's cause, testifying that, at that point, Pineur "took off" from the shoulder, went straight for a short distance, and suddenly veered left across the road and into his truck's path. Semmann said he slammed on his brakes and that the right front corner of his truck struck the UTV.

Pineur's testimony about the collision's cause differed substantially from Semmann's. Pineur said that his UTV was equipped with a rearview mirror and that he had looked into it but saw no vehicle approaching from behind. He said that he extended his left arm to signal a turn and that he continued ten to twenty feet and began to move from the shoulder toward the centerline of Geneva Avenue. He testified that he then looked over his shoulder and was instantly struck. He produced evidence indicating that the collision resulted in his various injuries: cuts, bruises, and a damaged pelvis, bladder, and knee.

The jury received into evidence postcollision photographs of the UTV, which do not apparently reveal a mirror on it. At the close of evidence, each party moved for judgment as a matter of law (JMOL), and the district court denied both motions.

Before the jury began deliberating, the district court gave a "look-no-see" instruction, which stated that a driver is liable for negligence "if he looks but fails to see another vehicle that is in plain view." The jury issued a special verdict finding that Pineur was negligent, that his negligence was a direct cause of the collision, that Semmann was not negligent, that Pineur sustained a disability for sixty or more days due to the collision, and that "$0.00" "would fairly compensate" Pineur for any damages.

Pineur renewed his motion for JMOL and moved alternatively for a new trial. The district court denied his motions. Pineur appealed the district court's denial of his posttrial motions as well as the district court's entry of judgment on the jury verdict. He successfully moved this court to stay the appeal, allowing him to move the district court for relief from judgment based on alleged newly discovered evidence. He maintained that he had recently learned that the day after the collision a government inspector had issued a commercial vehicle inspection report indicating that the left brake, the left steer tire, and the headlight and bumper on Semmann's dump truck did not meet federal safety regulations. The district court denied Pineur's motion. It reasoned that Pineur had failed to exercise necessary due diligence to find the report before trial and that Pineur had not proved that Semmann's failure to disclose maintenance-related information constituted fraud that prevented Pineur from fully and fairly prosecuting his case.

Pineur appealed the district court's denial of his motion for relief from the judgment. We consolidated Pineur's appeals and decide them now.

DECISION

Pineur makes three principal arguments on appeal. He argues first that he was entitled to JMOL because Semmann was negligent as a matter of law when he crossed the centerline on Geneva Avenue. He argues second that the district court erroneously instructed the jury and that the jury's verdict assigning no damages conflicts with its finding that Pineur suffered a temporary disability. And he argues third that he is entitled to relief from judgment because he exercised due diligence to find the commercial vehicle inspection (CVI) report and truck-maintenance information but was hindered from finding it by Semmann's allegedly fraudulent conduct. Pineur's arguments fail.

I

Pineur argues first that the district court erred when it denied his JMOL motion. We review a motion for JMOL *de novo*, applying the same standard used by the district court, viewing the evidence in the light most favorable to the nonmoving party, and considering whether there was sufficient evidence to submit an issue of fact to the jury. *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 n.5 (Minn. 2018); *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006).[1] We conclude under this standard that the district court did not err by denying Pineur's JMOL motion.

Pineur maintains specifically that Semmann violated a safety statute when he crossed the double yellow centerline into the northbound lane on Geneva Avenue to go around Pineur. It is generally unlawful to drive on the left-hand side of a two-way road marked by a "distinctive centerline" that prohibits passing, Minn. Stat. § 169.18, subd. 5(b)(3) (2024), and a double yellow line signifies that passing is prohibited, *see* Minn. Dep't of Transp., *Minnesota Manual on Uniform Traffic Control Devices 3B.1* (2011). Semmann admitted at trial that he crossed the double yellow line on Geneva Avenue when he attempted to pass Pineur, leaving no factual dispute about it.

Pineur argues that Semmann's centerline crossing constitutes negligence as a matter of law. He is correct that a violation of section 169.18 is "prima facie evidence of

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[1] Minnesota eliminated the nominal distinction between motions for a directed verdict and motions for judgment notwithstanding the verdict in 2006 and replaced them with a single standard: the JMOL motion. Minn. R. Civ. P. 50.04 2006 advisory comm. cmt. The name change did not affect the substance of the standard, *id.*, so we refer to pre-2006 case law when addressing the JMOL standard. *See Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 n.1 (Minn. App. 2007).

negligence." Minn. Stat. § 169.96(b) (2024). But a violator of section 169.18 may overcome the *prima facie* negligence assumption by presenting evidence of a "reasonable excuse or justification" for his violation or evidence showing that he reasonably could have assumed from the circumstances that his violation was not negligent and would not reasonably endanger him or others that the law protects. *Borris v. Cox*, 73 N.W.2d 372, 374–75 (Minn. 1955). When there is evidence that could support a finding that a section 169.18 violation was justified, excused, or not negligent under the circumstances, the fact-finder rather than the court should decide the negligence issue. *Id.* at 375. Based on Semmann's account that he saw Pineur look over his shoulder and reduce speed, a jury could reasonably find that Semmann reasonably assumed that crossing the centerline would not endanger himself or others. The jury, crediting Semmann's testimony, could infer that Semmann reasonably supposed that the UTV was stopping to allow Semmann to accelerate his dump truck to highway speeds while he passed safely into the clear northbound lane on the UTV's left. This view of the evidence in the light most favorable to Semmann presents a factual question for the jury as to whether Semmann's violation was reasonably excused or whether he could reasonably assume that his violation was not negligent under the circumstances. Pineur also seems to argue that Semmann would have had to submit evidence that his violation was necessary under the circumstances to rebut the presumption. But he cites no authority advancing that interpretation, and we are aware of none. The district court did not erroneously deny Pineur's motion for JMOL.

II

Pineur contends next that the district court improperly denied his motion for a new trial. We review a district court's denial of a new-trial motion for an abuse of discretion, *Christie*, 911 N.W.2d at 838, and we ordinarily will not reverse unless there is a "clear abuse" of that discretion, *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). The record here reveals no abuse of discretion on Pineur's contention about the jury instructions or about its special verdict.

We are not persuaded to reverse by Pineur's argument that the district court erroneously provided the jury the so-called look-no-see instruction:

> A driver is guilty of negligence if he looks but fails to see another vehicle that is in plain view, unless there are specific obstructions or other circumstances like road or weather conditions that would interfere with the driver's opportunity to have an adequate view.

Although general, as opposed to specific, jury instructions are typically preferred to avoid favoring a party or confusing the jury, *Fallin v. Maplewood-N. St. Paul Dist. No. 622*, 362 N.W.2d 318, 322 (Minn. 1985), "a party is entitled to a specific instruction on their theory of the case if there is evidence to support the instruction and it is in accordance with applicable law," *Kalsbeck v. Westview Clinic, P.A.*, 375 N.W.2d 861, 867 (Minn. App. 1985), *rev. denied* (Minn. Dec. 30, 1985). A district court has "broad latitude" in determining whether a specific instruction is proper. *Id.* The record satisfies us that the district court acted within that breadth in providing the instruction here.

Pineur unconvincingly builds his argument on the notion that Semmann's dump truck was not visible from the UTV's rearview mirror and was therefore not in plain sight.

Whether circumstances excuse a person's failure to see and avoid an approaching truck is a question for the fact-finder. *See Lapides v. Wagenhals*, 173 N.W.2d 334, 336–37 (Minn. 1969). Pineur's argument would require us to disregard the evidence of the circumstances, including evidence that the visibility was clear and that the view between the UTV and the dump truck (which the evidence revealed was 32 feet long and more than 11 feet tall) was unobstructed. It would also require us to disregard Semmann's testimony that Pineur looked back at his truck and slowed. This evidence was enough to create a question of fact as to whether Semmann's truck was in Pineur's plain view. The district court's look-no-see instruction demonstrates no abuse of discretion.

Similarly unpersuasive is Pineur's contention that the district court abused its discretion by denying his request for a new trial because the jury's verdict awarding him no damages was inconsistent with its finding that he had been disabled for at least 60 days because of the collision. It is true that a district court may grant a new trial when a jury awards insufficient or excessive damages that appear to have been given "under the influence of passion or prejudice." Minn. R. Civ. P. 59.01(e); *O'Neil v. Wells Concrete Prod. Co.*, 477 N.W.2d 534, 538 (Minn. App. 1991), *rev. denied* (Minn. Jan. 17, 1992). But when a verdict on liability is supported by credible evidence, a jury's denial of damages does not entitle a plaintiff to a new trial. *Otterness v. Horsley*, 263 N.W.2d 403, 405 (Minn. 1978); *see also Russell v. Johnson*, 608 N.W.2d 895, 900 (Minn. App. 2000) (concluding that a jury's finding of no negligence by the defendant mooted the issue of damages), *rev. denied* (Minn. June 27, 2000). Because the evidence could support the jury's no-liability finding for reasons we have already indicated, whether it properly determined that Pineur suffered no damages is moot and therefore does not require a new trial.

We add that, even if the issue were not moot, the result would likely be the same. Our review of the record suggests that the jury's finding on damages comports with the precise question the special verdict form directed the jury to answer. The form did not ask merely what money would compensate Pineur for damages he suffered; it asked a more nuanced question, which was, "What amount of money would *fairly* compensate" him for damages he suffered. (Emphasis added.) The jury's finding of "$0.00" in money damages presumably reflects its reasoned judgment that awarding any damages to the driver whose sole negligence caused the collision would be unfair. In any event, the district court did not abuse its discretion by denying Pineur's motion.

Pineur mentions unspecified, supposedly flawed evidentiary rulings but includes no clear supporting argument. The challenge warrants no discussion.

III

Pineur finally maintains that the district court improperly denied his motion for relief from judgment based on newly discovered evidence and fraud. We review a district court's refusal to grant relief from judgment for an abuse of discretion. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). Pineur's argument is unconvincing.

Some additional background frames our discussion of Pineur's newly-discovered-evidence argument, which he bases on the CVI report that Semmann allegedly fraudulently withheld. About two weeks after the district court denied Pineur's first posttrial motions, his attorney learned about a CVI performed on Semmann's dump truck the day after the collision. The attorney learned about the CVI by a letter from another attorney who was representing one of the passengers of Pineur's UTV in a separate civil action. A commercial-vehicle inspector, Patrick Forster of the Minnesota State Patrol, had performed the CVI. Inspector Forster identified three violations of federal safety regulations on Semmann's truck: the left steer brake was out of adjustment; the left steer tire was contacting the steering output shaft; and the right headlight and the front bumper were damaged by the collision. *See* 49 C.F.R. §§ 393.47(e), 393.209(d), 396.3(a)(1) (2023). The steering violation put the vehicle out of service, meaning that, according to Forster, the vehicle was not supposed to move from a safe location without being repaired or towed. The other two violations did not put the vehicle out of service. Forster placed a copy of the CVI report in Semmann's truck and called Semmann, who then met with Forster and was handed the report. Semmann told him that he thought the steering violation was due to his steer tires being too big.

The evidence concerning the practical impact of the violations is conflicting. As to the brake violation, a mechanic who submitted an affidavit for Pineur stated that the brake being out of adjustment would "pull[] the vehicle sharply to the right when the brakes are applied" and would be noticeable to the driver. But Semmann testified by affidavit that there was "no pull from the brakes before the accident." Regarding the steering violation, Pineur's mechanic-affiant stated that every time the dump truck made a right turn the driver would have felt the steering problem. Semmann stated, however, that the issue affected his steering only during sharp turns off road and was not restricted on improved roads like Geneva Avenue. As for when the violations first arose, Inspector Forster testified by deposition that he had "no idea" whether the collision caused the brake misalignment, while his CVI report had previously suggested that the collision did *not* cause the brake misalignment. Semmann asserted that the force of braking during the collision caused the brake misalignment, but he conceded that the collision did not cause the steering violation.

Pineur's attorney did not learn of the regulatory violations on Semmann's dump truck from the CVI until after the district court denied his first posttrial motions. But a police incident report written on the day of the collision, which Pineur received before or during discovery, revealed that a CVI would occur:

> Trooper Swanhorst advised that a CVI would not be responding today, but would inspect the dump truck tomorrow (06/24/20). I then requested Glenn's Towing to respond to the scene to tow and hold the dump truck for evidence and safekeeping. . . .
>
> . . . .
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> Glenn's Towing arrived on scene and drove the dump truck a short distance so it was parallel with the roadway and could be hooked up to the tow truck. Glenn's towed the dump truck to Faribault to be held for evidence and CVI inspection.

Pineur's attorney stated that he made repeated requests to police to ensure that he had "the full police file" but that he never received a copy of the CVI report until he learned of it in January 2024.

Pineur sent Semmann interrogatories during pretrial discovery. He first asked Semmann to identify "all persons who have any knowledge relating to the occurrence referred to" in the complaint. Semmann's answer included the trooper who had written the incident report. It did not mention Forster or directly reference the CVI report. Pineur also asked Semmann for "any photographs, slides, motion pictures, videotapes, plats, drawings, models, charts or other physical, demonstrative or illustrative evidence of any type or nature whatsoever, relating to this case." Semmann responded that he possessed photographs that police took on the day of the collision. Pineur asked Semmann for other physical evidence relating "in any manner" to the case, and Semmann stated that he had none at that time. Pineur also asked Semmann to relate "all conversations that took place at the time of, prior to, or following the occurrence referred to" in the complaint. Semmann's answer did not mention any conversation with Inspector Forster. Semmann later stated by affidavit that, by the time Pineur sued him and discovery began, he no longer possessed a copy of the CVI report. An employee of the law firm representing Semmann likewise stated that the firm did not possess a physical copy of the CVI report until January 2024.

Pineur also sent Semmann a request for production of documents. He asked him to disclose impeaching evidence, and Semmann responded that any such evidence was "[u]nknown at this time." Pineur asked for dump-truck maintenance records for the period of one year before the collision. The record suggests that Semmann provided records indicating that his truck had passed a state safety inspection on May 18, 2020, about a month before the collision. Pineur last asked for maintenance records from after the collision, and Semmann objected to the request "as being not reasonably calculated to lead to the discovery of admissible evidence." Pineur does not contest that he failed to challenge this objection.

Pineur elicited Semmann's testimony during discovery and at trial. In a deposition, Pineur asked whether he "had the opportunity to review any of the police reports, accident reports, anything at all, since the date of the accident?" Semmann replied, "I have received a police report." Semmann testified that his brakes were in "[o]ne hundred percent working order" and that his tires were in "[o]ne hundred percent working condition." Pineur's attorney briefly discussed with Semmann the incident report that contained a reference to the CVI, but he did not ask whether the CVI occurred or whether a CVI report existed. At trial, Pineur asked Semmann whether there was anything that prevented him from operating his truck differently on the day of the collision, to which Semmann answered, "No." Semmann testified that the truck was operational and that its brakes worked fine.

Pineur now challenges the district court's denial of his motion for relief, arguing that he could not have discovered the regulatory violations with due diligence and that Semmann's conduct during trial and discovery constitutes fraud. We address both arguments.

Pineur contends that the district court erroneously concluded that he did not exercise the due diligence required for it to grant his motion. A district court may grant relief from a final judgment when there is "[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial." Minn. R. Civ. P. 60.02(b). Due diligence requires a party to use "available discovery tools" and "reasonable investigation efforts to find and produce the evidence at trial." *Regents of Univ. of Minn. v. Med. Inc.*, 405 N.W.2d 474, 479 (Minn. App. 1987), *rev. denied* (Minn. July 15, 1987); *Turner v. Suggs*, 653 N.W.2d 458, 467 (Minn. App. 2002) (quotation omitted). The record supports the district court's determination that Pineur failed to exercise due diligence to discover the CVI report. Pineur knew or should have known before trial that a CVI would follow after the initial investigation, based on the trooper's plain, postcollision report that a towing service had "towed the dump truck to Faribault to be held for evidence and CVI inspection" and that an investigator would inspect it the following day. Pineur discussed that report with Semmann but did not ask him about the CVI that the trooper's report predicted, and Pineur did not obtain the CVI on the government website that makes the report accessible on request. The record supports the district court's conclusion that Pineur failed to exercise due diligence in seeking the CVI report.

We are not persuaded otherwise by Pineur's reference to federal caselaw about the exercise of due diligence after requests during discovery. In *Edgar v. Finley*, the Eighth Circuit Court of Appeals considered whether the defendant in a car-collision case had acted with sufficient diligence in discovering eyewitnesses. 312 F.2d 533, 534, 537 (8th Cir. 1963). *Edgar* is both nonbinding on this court and readily distinguished on its facts. That case involved a vehicle-collision trial in which the critical fact issue was whether the plaintiff's car was, at the time of the collision, traveling on the oncoming side across the highway's centerline. *Id.* at 534. In that case, the district court erroneously sustained the plaintiff's objections to an interrogatory asking for "the identity and location of persons known to plaintiff or to anyone acting for her, 'having knowledge of relevant facts with respect to the accident.'" *Id.* at 534, 536. The plaintiff knew of the names and addresses of three eyewitnesses who saw her driving out of control on the wrong side of the highway, but she misleadingly responded to interrogatories by representing that she knew only of a witness who arrived at the scene after the collision. *Id.* at 536–37. The Eighth Circuit decided that the "unusual circumstances" required it to determine that the defendant had acted with due diligence by his specific discovery requests combined with the fact that his "efforts to obtain the desired information were not only thwarted by plaintiff's violation of the spirit as well as the letter of the applicable discovery rules, but also [the fact] that the [trial] court's action contributed to the violation." *Id.* at 537–38. *Edgar* does not resemble this case, where, among other distinguishing circumstances, Pineur's discovery requests did not specifically ask for the CVI report revealed later, the existence of the evidence was previously apparent from the trooper's report, and the party objecting to its nondisclosure could have easily obtained it even without formal discovery. *Edgar* does not help Pineur.

By contrast, Minnesota caselaw supports the district court's decision. The supreme court has held that a plaintiff failed to exercise due diligence when, despite the defendant's plainly misleading conduct at trial, it would have been "simple and convenient" for the plaintiff to obtain the newly discovered evidence before trial. *Brown v. Bertrand*, 94 N.W.2d 543, 548–51 (Minn. 1959). Comparing the circumstances in *Brown*, Semmann's responses were not comparatively misleading. And like the party who failed to discover the missing evidence in *Brown*, Pineur failed to avail himself of the simple and convenient opportunity to identify and obtain the new evidence alleged in this case. The district court did not abuse its discretion when it denied Pineur's new-evidence motion on due-diligence grounds.

Pineur argues alternatively that he is entitled to relief from judgment because Semmann's failure to disclose the CVI report and underlying truck-maintenance issues and his allegedly misleading statements constitute fraud. A court may grant relief from judgment if an adverse party engages in "[f]raud . . . , misrepresentation, or other misconduct." Minn. R. Civ. P. 60.02(c). The party alleging fraud must establish "by clear and convincing evidence that the adverse party engaged in fraud or other misconduct which prevented it from fully and fairly presenting its case." *Turner*, 653 N.W.2d at 466 (quotation omitted). We see no evidence of fraud requiring a new trial.

Pineur focuses his argument on the district court's analysis related to Semmann's failure to reveal the steering violation. Pineur specifically challenges the district court determination that Semmann's nondisclosure of the safety violations did not go to the "ultimate issue" of the matter. But this was not the only basis for the district court's determination. The district court also concluded that Pineur overall had not provided clear and convincing evidence of fraud. The record supports this determination. Semmann testified by deposition that his tires were in "[o]ne hundred percent working condition." The CVI report did not contradict this characterization, indicating that the steering violation was due to contact between the tire and the steering output shaft. Semmann's trial testimony that the truck was "operational" on the day of the collision was also apparently accurate. Only a month earlier the truck had passed an inspection that assessed its steering components. It was the postcollision CVI that designated the truck out of service. The district court properly concluded that no clear and convincing evidence showed that Semmann's nondisclosure of the violations was fraudulent.

The district court likewise properly concluded that Semmann's failure to disclose his knowledge of the CVI report did not constitute fraud sufficient for rule-60 relief.

Semmann provided the police incident report to Pineur, and that report clearly referenced the CVI. Although Semmann narrowly answered Pineur's deposition question as to whether he had the chance to review any reports (saying, "I have received a police report") the answer does not actually misrepresent the truth. And the record does not indicate that Pineur ever asked the district court to overrule Semmann's objection to his request for postcollision maintenance records.

The district court also properly concluded that Semmann's failure to disclose his conversation with Inspector Forster regarding the CVI did not constitute fraud that prevented Pineur from presenting his case for vacating a judgment. Simply failing to disclose a matter that would defeat a party's claim or defense does not constitute extrinsic fraud. *Halloran v. Blue & White Liberty Cab Co.*, 92 N.W.2d 794, 798 (Minn. 1958). The district court properly applied this principle here in part to find that Semmann's not disclosing his conversation with Forster was not fraud sufficient to justify relief. And the record supports the district court's assessment that Pineur could have overcome Semmann's alleged evasiveness by diligently seeking the CVI report that was plainly predicted in the police report.

We hold that the district court did not abuse its discretion by denying Pineur's motion for relief from judgment.

Affirmed.