

IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR INDIAN RIVER COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 19-AP-5
Lower Tribunal No. 18-TR-10345

MARIANA CONTRERAS,

Appellant,

v.

Not final until time expires for filing motion
for rehearing, and if filed, disposed of.

STATE OF FLORIDA,

Appellee.

_____/

Decision filed November 19, 2019.

Appeal from the County Court for Indian River County; Joe Wild, Judge.

Silvia Gonzalez, Miami Lakes, for appellant.

Bruce Colton, State Attorney, and Steven Wilson¹, Vero Beach, for appellee.

PER CURIAM.

The issue in this case is whether the trial court erred in finding the Appellant guilty of careless driving. We find that reversal is warranted on these facts.

On June 12, 2018 at approximately 10:30am on a bright sunny day, the Appellant and three passengers were travelling to Tampa for a church camp. The Appellant drove one of the other passenger's car because it was in the best condition for a long drive, she had driven it before, and she had a valid driver's license. She was driving in the center lane when the steering wheel went stiff, the car drifted back and forth within the lane, and it ultimately rolled over. The Appellant did not have time to push the brakes. The car's windows shattered, and one of the passengers was ejected and died at the scene.

¹ Mr. Wilson filed a "notice of no response", indicating that he did not intend to file an answer brief because this case is an appeal from a noncriminal infraction.

Two months later, a Florida Highway Patrol trooper wrote the Appellant a citation for careless driving with a fatality. The Appellant pled not guilty and appeared before the trial court. The Appellant put on testimony from a forensic engineer, who stated that the vehicle's wheel failure occurred before the rollover, which made the rollover uncontrollable. After a nonjury trial, the trial court allowed the Appellant additional time to submit a report from her expert. Four months later, the Appellant notified the trial court that she did not intend to submit an additional report. The trial court rendered an order finding the Appellant guilty. It sentenced her to pay a \$1,000.00 fine, suspended her driver's license for 6 months, attend a defensive driving school, and pay court costs. The Appellant filed a motion for rehearing, and the trial court denied it.

A judgment rendered after a nonjury trial is reviewed for competent substantial evidence. *Vierira v. PennyMac Corp.*, 241 So. 3d 193, 195 (Fla. 4th DCA 2018). The trial court's findings of fact are clothed with a presumption of correctness and will not be disturbed unless they are clearly erroneous. *Id.*

The Appellant argues that there is no evidence to show that she was carelessly driving under §316.1925(1), Fla. Stat. (2018), which states:

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

The trial court's order did not make findings of fact, so it is unclear what evidence it relied on to find the Appellant guilty. The Appellant urges this court to consider all of the evidence that shows she was not driving carelessly. However, a reviewing court cannot reweigh the evidence. *Dusseau v. Metropolitan Dade County Bd. of County Com'rs*, 794 So. 2d 1270, 1276 (Fla. 2001). "While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision." *Id.* As long as the record contains competent substantial evidence to support the decision, the trial court should be affirmed. *Id.* Therefore, the record in this case must be reviewed for competent substantial evidence, which is defined as "evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). "To this extent the 'substantial' evidence should also be 'competent.'" *Id.*

A witness described the Appellant's driving pattern prior to the accident, stating that everything took place in less than fifteen seconds. He testified about the Appellant's driving pattern immediately prior to the crash and stated:

For unknown reasons, the car slowly drifted into the center lane and then went back across the center lane, the lane that it was in, and then cut back to the right, and then had made a, and then overcorrected again to the left. And at that point, the car, she corrected back to the right to get back in the Interstate. And at the last second she turned, and the back end at this point had turned around and the car spun sideways.

As soon as it did, it appeared to me that it never, she never hit the brakes or anything, and the tires peeled back from the rims. The rims hit the pavement. And all of the momentum of the car instantly turned into a spin, a rollover crash.

When questioned later by the trooper, the witness stated that the Appellant's vehicle started in the center lane, and it slowly drifted at first (presumably out of the lane), which is at odds with his prior testimony that the car drifted into the center lane. The trooper implied in his first question to the witness that the car drifted out of the center lane, but the witness never affirmatively stated that the Appellant's car crossed any lane line. The witness did not observe any problems with the Appellant's vehicle before the accident, and he stated that he did not have to take evasive measures. During the trooper's testimony, he alluded to written and audio statements made by the witness, but neither are in this record. Neither trooper testified as to the Appellant's driving pattern, since they did not see it. The witness's conflicting testimony was the only evidence on the issue of the Appellant's driving pattern, and it does not clearly demonstrate beyond a reasonable doubt that the Appellant drove carelessly. §318.14(6), Fla. Stat. (2018). Therefore, the trial court is reversed because its decision is not supported by competent substantial evidence.

Reversed.

SWEET, and BUCHANAN, JJ., concur.

ALONZO, Acting Circuit Judge, dissents without opinion.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.