IN THE COURT OF APPEALS

SHIRLENE WEAVER and husband, FLOYD E. WEAVER,	)	ANDERSON CIRCUIT
	)	C.A. NO. 03A01-9509-CV-00326
Plaintiffs-Appellee	)	
vs.	)	HON. JAMES B. SCOTT
	)	JUDGE
CITY OF OAK RIDGE,	)	AFFIRMED AND REMANDED
Defendant-Appellant	)	

JOHN C. DUFFY, Watson, Hollow & Reeves, Knoxville, for Appellant.

W. CLARK MEREDITH, Joyce, Meredith, Flitcroft & Normand, Oak Ridge, for Appellees.

OPINION

McMurray, J.

This appeal arises from a judgment of the trial court awarding damages to the plaintiff, Shirelene Weaver, for injuries which

allegedly resulted from a collision between an Oak Ridge Police car and an automobile being driven by Ms. Weaver. The trial court found the police officer to be one hundred percent at fault and awarded Mrs. Weaver $28,608.00 in damages. The City of Oak Ridge has appealed claiming that the trial court erred in its apportionment of fault and the amount of the damages awarded. We affirm the trial court.

On the day in question, Mrs. Weaver was proceeding in a westerly direction on the Oak Ridge Turnpike. It is undisputed that the traffic light for motorists traveling in her direction was green at the intersection of the Turnpike and Tulane Avenue. She proceeded through the intersection. At the same time, Chris Winningham, a patrolman with the Oak Ridge City Police Force, was responding to a "burglary in progress" call and was approaching the intersection on Tulane and the Oak Ridge Turnpike.

According to Officer Winningham, he received a call concerning a burglary in process in his zone. He immediately started toward the scene of the burglary, going down Tulane Avenue toward the Turnpike with his audible and visual emergency signals activated. It appears that Officer Winningham successfully crossed the east-bound lanes of traffic against the light. However, as he attempted to cross the west-bound lanes of traffic, a collision resulted between the police car and Ms. Weaver's car.

Mrs. Weaver filed suit against Officer Winningham and the City of Oak Ridge alleging, essentially, that Officer Winningham was negligent in the operation of the vehicle and that the City of Oak Ridge, being the registered owner of the vehicle and the employer of Officer Winningham, was also at fault. She claimed common law negligence as well as breach of the statutory duty regarding the duty of drivers of emergency vehicles.

The City of Oak Ridge answered and asserted that Mrs. Weaver was guilty of negligence and under the doctrine of comparative negligence the actions of Mrs. Weaver were the proximate cause of this accident and, therefore, her own actions barred her claim. Additionally, the City filed a counter-claim against Mrs. Weaver for the damage to the police vehicle.

Although not a part of the record before us, it would appear that Officer Winningham filed a motion to dismiss pursuant to T.C.A. §29-20-310 of the Governmental Tort Liability Act. In any event Officer Winningham is not a party to this appeal.

We note that prior to the trial, the counter-claim filed by the City of Oak Ridge against Mrs. Weaver was dismissed with prejudice.

After the conclusion of a bench trial, the court took the case under advisement for further consideration. Subsequently, the trial court filed a written opinion setting forth its findings of facts and conclusions of law together with an award of damages.

On this appeal the City of Oak Ridge presents the following issues for our consideration:

1. Whether the trial court erred in its construction of T.C.A. § 55-8-108 (Authorized Emergency Vehicles) and in its resultant conclusions regarding the duty of care required of a police officer driving a police vehicle into an intersection with emergency lights and siren activated while responding to a serious felony in progress. [Burglary in progress]?

2. Whether the trial court erred in its construction of T.C.A. § 55-8-132 (operation of vehicles on approach of authorized emergency vehicle) and in its resultant conclusion regarding the duty of care required of Mrs. Weaver in approaching an intersection with a green light but where an emergency vehicle with lights and siren activated in approaching and/or entering the intersection?

3. Whether the evidence preponderates against the trial court's apportionment of 100% fault to officer Winningham and 0% to Ms. Weaver?

4. Whether the award of $28,608.00 in damages by the trial court is excessive in relation to the proof that Mrs. Weaver suffered only a neck sprain or strain with no permanent impairment, incurred $2,532.00 in medical costs primarily for tests, all of which were negative, and incurred $7,289.00 in chiropractor bills for nine months of "maintenance" treatment which did not commence until more than three months post-accident?

We enter upon our review cognizant of our duty pursuant to Rule 13(d), Tennessee Rules of Appellate Procedure. "Unless otherwise required by statute, review of findings of facts by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." No such presumption applies to conclusions of law. Adams v. Dean Roofing Co., 715 S.W.2d 341 (Tenn. Ct. App. 1986).

We shall address the appellant's first two issues together. The City argues that the trial court erred in its construction of two statues regarding the duty of drivers of authorized emergency vehicles and other drivers on the road at the same time.

T.C.A. §§ 55-8-108 and 55-8-132 provide as follows:

> 55-8-108. Authorized emergency vehicles.—(a) The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.
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> (b) The driver of an authorized emergency vehicle may:
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> (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation; (Emphasis added).
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> * * * *

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of the applicable laws of this state, except that an authorized emergency vehicle operated as a police vehicle may be equipped with or display a red light only in combination with a blue light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of the driver's own reckless disregard for the safety of others. (Emphasis added).

55-8-132. Operation of vehicles and streetcars on approach of authorized emergency vehicles. —(a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of the applicable laws of this state, or of a police vehicle properly and lawfully making use of an audible signal only:

(1) The driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer; and

* * * *

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. (Emphasis added).

Without question, the above statutes impose upon the driver of an emergency vehicle the duty to use due care under the circumstances to avoid an accident, a bona fide emergency, notwithstand-

ing.[1] Implicit in the statutes is the requirements that the driver of the emergency vehicle use reasonable care to provide an opportunity and a reasonable time within which the driver of a non-emergency vehicle may react to either the audible or visual signals of the emergency vehicle. We do not find this interpretation to be in conflict with Wright v. City of Knoxville, 898 S.W.2d 177 (Tenn. 1995. The trial court found, in essence, that the driver of the emergency vehicle failed to provide sufficient time and notice for the non-emergency vehicle to react and avoid the accident.

Officer Winningham's testimony was not in harmony with the other eye-witnesses to the accident regarding his actions immediately before the collision. He testified that he stopped before entering the intersection and again before attempting to cross the west-bound lanes of traffic. Other witnesses testified that officer Winningham did not make the second stop but accelerated through the intersection. The trial court apparently rejected the testimony of Officer Winningham and found that the accident did not occur in the way and manner to which he testified. In its memorandum opinion, the trial court stated: "The policeman's testimony is somewhat contrary to the other witnesses as it relates to the critical movements of his vehicle in the intersection and as to what actions were observed by him at, or near, the point of impact. The plaintiff was unaware of the emergency vehicle right

[1]It is undisputed that the police officer was responding to a bona fide emergency.

up to the point of the collision. She heard the siren about the same time the vehicles met."

The trial court found the testimony of Mrs. Chris Light to be the critical testimony. Mrs. Light was an occupant of an automobile immediately behind the plaintiff. She testified that she knew there was going to be a collision when she first heard the siren because the plaintiff did not have time to apply her brakes. The court further made the following observation:

> The proximate cause of this accident was the failure of the officer to observe those precautionary measures that he relates he did observe in almost stopping his vehicle twice in the intersection. The witnesses to the accident did not observe the officer stop or slow his vehicle as he relates he did. The unfortunate events leading to the cause of the collision of these two vehicles was the failure to slow or stop before entering plaintiff's lane of traffic. This accident could have been avoided had the officer slowed sufficiently as he relates he did. The plaintiff, Mrs. Weaver, cannot be found guilty of negligence for she did not have the benefit of the siren sufficiently in advance to react to it.

In Thomas v. State, 742 S.W.2d 649 (Tenn. App. 1987), this Court, quoting from C.J.S. said:

> A green or go signal is not a command to go, but a qualified permission to proceed lawfully and carefully in the direction indicated. The driver with a favorable traffic signal does not enjoy an absolute right of way and may not arbitrarily exercise his right of way, and despite his superior position he must exercise appropriate care with respect to such matters as speed, lookout, and control. In other words, notwithstanding a favorable

> light, the fundamental obligation of using due and reasonable care applies, and failure of the favored driver to exercise such care may render him guilty of negligence or contributory negligence.
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> 60A C.J.S., Motor Vehicles § 360(2), pp. 543, 544, 545, 547.

The trial court was satisfied that Mrs. Weaver exercised appropriate care under the circumstances. Findings of the trial court which are dependent on determining the credibility of witnesses are entitled to great weight on appeal because the trial judge had the opportunity to observe the manner and demeanor of the witnesses while testifying. Galbreath v. Harris, 811 S.W.2d 88 (Tenn. App. 1990) citing Town of Alamo v. Forcum-James Co., 327 S.W.2d 47 (Tenn. 1959). ... [O]n an issue which hinges on witness credibility, the trial court will not be reversed unless there is found in the record clear, concrete, and convincing evidence other than the oral testimony of witnesses which contradict the trial court's findings. See Tennessee Valley Kaolin Corp. v. Perry, 526 S.W.2d 488 (Tenn. App. 1974). The evidence does not preponderate against the findings of the trial court. We concur in the findings of fact as made by the trial court. We find no merit in defendant's first two issues.

The City next takes issue with the apportionment of 100% of the fault to Officer Winningham. As noted the trial court afforded great deference to the testimony of Mrs. Chris Light, the individ-

ual in the car immediately behind Mrs. Weaver. Mrs. Light testified that there was no way Mrs. Weaver could have done anything to avoid this accident. We also note that the testimony of Officer Winningham was at odds with the testimony of other witnesses as to whether or not he stopped before crossing the west-bound lanes of travel, one of which Mrs. Weaver was occupying. He further testified that his vision was blocked by other cars and he could not see the Weaver car. Assuming this to be true, it is reasonable to conclude that Mr. Weaver's vision was also blocked by other cars. This issue is also an issue which addresses itself to the credibility of the witnesses who testified in the case. The evidence does not preponderate against the trial court's apportioning of the fault. This issue is without merit.

Lastly, the City argues that the trial court erred in the amount it awarded Mr. and Mrs. Weaver for Mrs. Weaver's injuries and other damage. The City presented no medical proof, therefore, plaintiff's proof was uncontroverted. We note that Mrs. Weaver's actual damages were over $16,000.00. Additionally, there was unrefuted testimony that she continues to suffer both physically and socially as a result of the accident. Accordingly, we find the amount of damages to be reasonable under the circumstances of the case. This issue is without merit.

We affirm the judgment of the trial court in all respects. Costs are taxed to the appellant and this case is remanded to the trial court for the collection thereof.

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Don T. McMurray, J.

CONCUR:

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Herschel P. Franks, J.

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Clifford E. Sanders, Senior Judge

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CITY OF OAK RIDGE,	)	AFFIRMED AND REMANDED
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ORDER

This appeal came on to be heard upon the record from the Circuit Court of Anderson County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was no reversible error in the trial court.

We affirm the judgment of the trial court in all respects. Costs are taxed to the appellant and this case is remanded to the trial court for the collection thereof.

PER CURIAM