

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-60859
Summary Calendar

MELBA FREEMAN,

Plaintiff-Appellant,

V.

MISSISSIPPI FARM BUREAU CASUALTY INSURANCE COMPANY and
JOHN WHALEN,

Defendants-Appellees,

Appeal from the United States District Court
For the Northern District of Mississippi
1:98CV233-D-D

July 11, 2000

Before SMITH, BARKSDALE and PARKER, Circuit Judges.

PER CURIAM:*

Plaintiff appeals the jury verdict in this diversity case arising out of an automobile accident occurring in Mississippi. We affirm.

The district court did not abuse its discretion in refusing plaintiff's jury instruction which instructed the jury that Defendant, John David Whalen, was negligent and proximately caused the accident. The Mississippi Supreme Court has recognized that Mississippi has never adopted a *per se* rule that

* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

a driver is negligent if he/she collides with the rear of a preceding vehicle. See *White v. Miller*, 513 So. 2d 600, 601 (Miss. 1987). Indeed, if conflicting evidence were presented at trial, then the question of negligence should go to the jury. See *id.* Defendants-Appellees put forth sufficient evidence at trial to create a jury issue with respect to negligence and proximate cause. The trial judge appropriately left these decisions with the jury. Upon this same reasoning, the district court did not err in denying plaintiff's motion for new trial.

Plaintiff also assigns as error the unanimous jury verdict as against the great and overwhelming weight of the evidence presented at trial. When viewed in the light most favorable to the verdict this contention is without merit.

AFFIRMED.