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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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| **VIVIAN TRUNNEL,** | ) | |
| Plaintiff-Appellee/ Cross-Appellant, | ) | 266 |
| vs. | ) | |
| **JEFFREY WICHHART,** | ) | 8-516 / 88-349 |
| Defendant-Appellant/ Cross-Appellee. | ) | |

Appeal from the Iowa District Court for Jasper County (No. 99-96), Jerrold W. Jordan, Judge.

Defendant appeals the district court order granting a new trial. **REVERSED AND REMANDED.**

Harry Perkins III and Douglas A. Haag of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for defendant-appellant/cross-appellee.

Dennis F. Chalupa of Brierly, McCall, Girdner, Chalupa, McCall & Otto, Newton, for plaintiff-appellee/cross-appellant.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

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**DONIELSON, J.**

The defendant in this auto collision case appeals from the district court's order granting a new trial after a jury found the defendant not to be at fault. Defendant contends that by ruling that one of the jury instructions must have been confusing, the district court was improperly substituting its own view of the evidence for that of the jury.

The plaintiff, driving west on a flat and open stretch of Highway 163, wanted to reverse direction to go back for a forgotten textbook. Whether she attempted a U-turn is disputed; she may have intended to use a dirt driveway for maneuvering. Plaintiff did swing left into the path of the defendant, who was in the process of passing her from behind. The two cars collided broadside. A jury found the defendant not to be at fault. However, the district court granted a new trial on the ground that one of the jury instructions was confusing. The court's handwritten ruling reads as follows:

> Ptf's motion for new trial is granted for the reason that the Court finds inst. no. 7 was confusing by telling the Jury the "Ptf must prove all the following propositions": as opposed to telling the Jury the "Ptf must prove all of the following numbered propositions." The Court feels that based upon the Jury's finding of no fault by the Def and considering the record in this matter the Jury was confused by inst #7 believing it necessary for Ptf to prove Def negligent of all of the specifications in proposition no. 1, i.e., a., b., and c. The Def. may avoid a new trial by confessing liability and offering to confess judgment in the amount of $20,000 in favor of this Ptf and interest at 10% per annum from March 18,

1986 but not as to the costs of the action all to be done within 60 days from this pursuant to Rule 250.

/s/ J. W. Jordan, Judge

Motions for new trials may be granted pursuant to Iowa Rule of Civil Procedure 244(f) if a jury verdict is not sustained by sufficient evidence or if the verdict fails to effectuate substantial justice. Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa App. 1983). The trial court has broad discretion in passing on motions for new trials, and we will interfere with a ruling only when there is a clear abuse of that discretion. Thompson v. Rozeboom, 272 N.W.2d 444, 446 (Iowa 1978). Sound judicial discretion must be exercised by the trial court, and a new trial should only be granted for reasons fairly apparent in the record. Mazur v. Grantham, 255 Iowa 1292, 1302, 125 N.W.2d 807, 813 (1964). A court has no right to set aside a verdict just because it might have reached a different conclusion. Lubin v. Iowa City, 257 Iowa 383, 385, 131 N.W.2d 765, 767 (Iowa 1964).

We find the trial court abused its discretion by granting a new trial. It indicated in its ruling that the jury must have misunderstood instruction number seven. There is no evidence in the record to support this conclusion. Nothing in the record indicates the instruction was ambiguous or that it confused the jury. No objections were raised when the court submitted this

instruction, which is identical to Iowa Uniform Civil Jury Instruction 700.1. We disapprove uniform instructions reluctantly. State v. Jeffries, 313 N.W.2d 508, 509 (Iowa 1981). Therefore, we find the trial court's stated reason is not fairly apparent from the record and is insufficient to justify a new trial.

Plaintiff contends the trial court did not abuse its discretion in granting a new trial because the verdict was not sustained by sufficient evidence and was contrary to law. We disagree.

If reasonable minds could differ on an issue, the issue is such that it must be submitted to the jury for determination. Kooyman v. Farm Bureau Mut. Ins. Co., 315 N.W.2d 30, 34 (Iowa 1982). When facts are susceptible to more than one inference or are such that reasonable minds may reach different conclusions therefrom, the question is one of fact which only the jury can decide. Otto v. Stork, 159 N.W.2d 528, 531 (Iowa 1968). Generally, questions of negligence are for the jury, and it is only in an exceptional case that the issue of negligence may be decided as a matter of law. Iowa R. App. P. 14(f)(10).

The main focus of the trial was the issue of negligence. Plaintiff alleged that defendant was negligent for three reasons: 1) improperly overtaking a vehicle; 2) failing to control his vehicle; and 3) failing to maintain a proper lookout. Viewing the evidence in the light most

favorable to the defendant, the jury was justified in deciding that defendant was not at fault for any of these reasons.

With regard to safely overtaking a vehicle, defendant testified that the plaintiff's car went off the road onto the right shoulder. This testimony was corroborated by the independent eyewitness, although disputed by the plaintiff. The collision occurred when the plaintiff then made an abrupt turn to the left, directly into the path of defendant's car. Whether the accident would have occurred if defendant was not passing the plaintiff was a question for the jury to determine. Turner v. Detrick, 257 Iowa 1197, 1200, 136 N.W.2d 253, 255 (1965).

It was undisputed that defendant had his vehicle under control at all times. The eyewitness testified that defendant's vehicle did not appear to be traveling at an unusual rate of speed or in an unusual manner, but was operating in a "normal procedure of passing." Questions of speed and control are ordinarily left to the jury. Id.

Finally, there was testimony that defendant maintained a proper lookout. He testified he watched plaintiff's actions, saw her pull off to the right and use her left turn signal. Defendant had the right to assume plaintiff would exercise due care and obey the rules of the road. Iowa R. App. P. 14(f)(9). The question of proper lookout was correctly submitted to the jury.

We find the jury verdict is sustained by sufficient evidence and that the trial court abused its discretion by granting a new trial. Accordingly, we reverse the trial court order granting a new trial and remand the case for entry of judgment for the defendant based on the jury verdict. We also order the cross-appeal dismissed because plaintiff has stated the issue is now moot.

**REVERSED AND REMANDED.**