IN THE COURT OF APPEALS OF IOWA

No. 3-220 / 91-1761

FILED
AUG 06 1993
CLERK SUPREME COURT

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HELEN HARGER,

Appellant,

vs.

BRIAN M. GOODEN and **KIM KIERNAN,**

Appellees.

Appeal from the Iowa District Court for Polk County, Gene Needles, Judge.

Plaintiff appeals from the district court's judgment on a jury verdict in favor of defendants, in an action for damages resulting from an automobile accident. **AFFIRMED.**

Dan L. Dudley, Des Moines, for appellant.

Michael Huppert and Harry Perkins III of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

HABHAB, J. 000284

The plaintiff, Helen Harger, appeals from the district court's judgment on a jury verdict in favor of defendants, Brian Gooden and Kim Kiernan. Harger claims the trial court erred in: 1) excluding evidence of Gooden's driving record; 2) admitting the testimony of the investigating officers and allowing them to express opinions as to the contributing factors involved in the accident; and 3) failing to grant her motion for a new trial based on the grounds set forth above.

On November 21, 1988, the plaintiff, Helen Harger, collided with an automobile driven by the defendant, Brian Gooden. At the time of the accident, both vehicles were attempting to cross an unmarked intersection from different directions. Harger and Gooden were the only eyewitnesses.

Harger brought suit against Gooden and the owner of the car he was driving, Kim Kiernan. Harger alleged Gooden was negligent in failing to keep a proper lookout, in failing to operate his vehicle at a reasonable and prudent speed for the given conditions, in failing to yield the right-of-way, and in failing to use ordinary care in the operation of the vehicle.

The jury returned a verdict assigning fifty-one percent of the fault to Harger and forty-nine percent to Gooden. Harger then filed a motion for new trial that the court denied. Harger appeals. We affirm.

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I. **Exclusion of Evidence of Gooden's Driving Record.**

Harger contends the district court should not have granted the defendants' motion in limine. Prior to trial, the defendants filed a motion in limine seeking to exclude, among other things, evidence concerning Gooden's driving record. Harger resisted the motion on the ground Gooden's driving record was admissible as habitual conduct or habits pursuant to Iowa Rule of Evidence 406. The district court sustained the motion.

Generally, a ruling sustaining a motion in limine is not a ruling on the evidence; the ruling merely adds a procedural step to the offer of evidence. Johnson v. Interstate Power Co., 481 N.W.2d 310, 317 (Iowa 1992). If the evidence is not offered, there is nothing preserved to review on appeal. Id.

Here, Harger did not offer the evidence excluded by the motion in limine. No offer of proof of the driving record in question was ever made. We find Harger did not preserve this issue for review on appeal.

II. **Opinion Testimony of Officers Ervin and Rickman.**

Harger next contends the district court erred in allowing opinion testimony of Officers Ervin and Rickman. Harger claims the testimony constituted expert testimony, which should have been excluded either for the defendants' untimely designation, or because of the lack of qualifications of the officers as accident

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reconstructionists. Harger also contends the district court erred by allowing the officers to answer questions which called for legal conclusions.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting Weeks v. Burnor, 326 A.2d 138, 140 (Vt. 1974)).

During Officer Rickman's testimony, Harger made an objection to the admission of exhibit F, a drawing which represented Officer Rickman's findings at the scene of the accident.

> MR. HUPPERT: We'd offer Defendant's Exhibit F.
>
> MR. DUDLEY: Your Honor, I would object to the offering of the exhibit. It goes beyond this witness's expertise. It purports only to show the findings, yet it draws conclusions from those findings which those conclusions go to the expertise field of an accident reconstructionist.
>
> THE COURT: Overruled. We will receive F. Proceed.

Officer Rickman had previously testified that exhibit F was based on his findings from his investigation of the accident scene. Officer Rickman also stated that he had investigated about 3000 accidents during his sixteen years as a patrol officer and that it is his job as a patrol officer to make a permanent record of the accident scene.

We find the district court did not abuse its discretion in admitting exhibit F.

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During the examination of Officer Ervin, Harger's attorney made the following objection:

> Q. Based upon your investigation of the accident, did you attribute any contributing circumstances to this accident on the part of the driver of vehicle No. 1, that is, Brian Gooden?
> MR. DUDLEY: Your honor, I would again pose the same objection, in that this witness is not a qualified expert witness in reconstruction of accidents, and that goes to reconstruction.
> THE COURT: Mrs. Curry, would you read back the question, please?
> (The question was read by the reporter.)
> THE COURT: Overruled. You may answer.
> A. Okay. As far as speed on it?
> Q. Any driver-related circumstances to Brian Gooden? A. No. Just -- just initially -- no, not really on that.

The previous objection Mr. Dudley refers to is also an objection that the officer had not been qualified as an expert in reconstruction.

We find the district court did not abuse its discretion by allowing Officer Ervin to testify to his opinion on a motor vehicle accident he investigated. The officer possessed the skill and training which would assist a jury to understand the accident scene and the cause of the accident.

Harger also argues her objections encompassed an objection that Officer Ervin's testimony and Officer Rickman's drawing were improper "legal conclusions." We disagree.

When a party seeks to exclude evidence, the specific ground of objection needs to be indicated to the trial court so as to alert the judge to the question raised and

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further to enable opposing counsel to take remedial steps to cure the alleged defect. Iowa R. Evid. 103(a)(1); Carter v. Wiese Corp., 360 N.W.2d 122, 132 (Iowa App. 1984). We find Harger's objections did not clearly alert the trial court to this issue. Therefore we find error was not preserved on this issue.

III. New Trial.

Harger's final assignment of error is that the district court erred in denying her motion for a new trial. Harger claims she is entitled to a new trial based on her assignment of errors discussed above.

We determine the district court did not abuse its discretion in refusing to grant a new trial.

We affirm the district court on all issues presented.

AFFIRMED.