

IN THE COURT OF APPEALS OF IOWA

SEP 27 1983

CLERK SUPREME COURT

ALAN ALBERT CLAUSMAN,

Plaintiff-Appellant,

vs.

STATE OF IOWA,

Defendant-Appellee.

Filed September 27, 1983

3-236
2-68425

Appeal from Black Hawk District Court - C. W. Antes, Judge.

Plaintiff appeals from the judgment of the trial court finding the State not liable for an accident occurring on one of its highways. **AFFIRMED.**

K. L. Kober of Pickett & Kober, Waterloo, Iowa, for plaintiff-Appellant.

Thomas J. Miller, Attorney General of Iowa, and Stephen P. Dundis, Assistant Attorney General, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel and Hayden, JJ.
Sackett, J., takes no part.

HAYDEN, J.

Plaintiff appeals from the judgment of the trial court finding the State not liable for an accident occurring on one of its highways. We affirm.

On the morning of January 2, 1972, plaintiff was driving west on Highway 57 in Grundy County. His car left the traveled portion of the roadway and proceeded along the shoulder for 100-150 feet before striking the concrete rail of bridge 3801. Plaintiff and one passenger were injured; the other passenger was killed in the collision.

Bridge 3801 is approximately 24 feet wide, the same width as the traveled part of the highway. Thus, the rail is at the very edge of the pavement and blocks the path of anyone traveling on the shoulder of the road. In order to make the rail more visible the State had erected zebra boards topped by amber reflectors at all four corners of the bridge. Zebra boards are strips of wood painted with large diagonal black and white stripes.

The reason plaintiff's car left the road is disputed. At trial plaintiff had no memory of the accident. He presented evidence, however, that his car may have been turned toward the shoulder after it crossed an expansion-joint in the road. Once off the road plaintiff claims that a ridge of hard crusted snow led the car directly to the bridge abutment and prevented him from regaining control of the vehicle. Defendant, on the other hand, presented evidence that plaintiff was either asleep or grossly inattentive and let the car gradually go off the road and into the rail.

Plaintiff brought suit against the State under the Iowa Tort Claims Act asserting that the State should have widened the bridge, placed guardrails around it, or erected warning signs in front of it. Plaintiff also asserts as error the trial court's finding that plaintiff's negligence contributed to the accident.

Our review is on assigned error. We view the evidence in the light most favorable to the judgment and construe the court's findings liberally to support the

result. Even if contradicted by other evidence, we need only consider evidence favorable to the successful party. Koehler v. State, 263 N.W.2d 760, 761-62 (Iowa 1978); Ehlinger v. State, 237 N.W.2d 784, 787 (Iowa 1976).

I.

Before considering plaintiffs' arguments, however, we first address a jurisdictional issue raised by defendant. The State claims that its allegedly negligent conduct falls within the exceptions to liability contained in Iowa Code § 25A.14.¹ If one of the enumerated statutory exceptions applies, the trial court lacked subject matter jurisdiction to decide the case. Lloyd v. State, 251 N.W.2d 551, 555 (Iowa 1977).

The State maintains that the design of the bridge and the decision not to place guardrails or warning signs at the location were discretionary functions under § 25A.14(1). In determining what constitutes a discretionary function, the supreme court has distinguished between the "planning" and "operational" activities of the State. Stanley v. State, 197 N.W.2d 599, 603 (Iowa 1972). In Stanley, the court held that the decision to keep a highway open during construction was part of the planning stage and, therefore, discretionary, whereas the failure to adequately warn travelers of the dangers caused by the construction was part of the operational stage for which the State could be liable in tort.

In Lewis v. State, 256 N.W.2d 181, 193-95 (Iowa 1977), the court reaffirmed Stanley and held that the design and construction of highways is not properly classified as a discretionary function. The court noted that plaintiffs did not challenge the decision to build the highway, but the implementation of that decision.

¹ This case arose prior to the addition of a new exception effective July 1, 1983, and is not affected by this change in the law. See 1983 Iowa Acts, S.F. 531, § 11 (to be codified at Iowa Code § 25A.14(8)).

Finally, in the recent case of Butler v. State, 336 N.W.2d 416, 420 (Iowa 1983), the court concluded that the decisions concerning the design and placement of a guardrail and the decision not to update the guardrail were made at the operational level and were not discretionary functions.

We believe that plaintiff's allegations in the present case do not challenge discretionary functions of the State. Therefore, the trial court did not err in failing to dismiss the case for lack of subject matter jurisdiction.

II.

The State is under a duty to maintain the highways, remove road obstructions, and place adequate signs and signals to prevent accidents. See Iowa Code § 313.36; Koehler v. State, 263 N.W.2d 760, 765 (Iowa 1978). A standard of reasonableness is used to determine whether the duty has been met; the State is not an insurer against traffic accidents. Ehlinger v. State, 237 N.W.2d 784, 788 (Iowa 1976). The issue of negligence is ordinarily one for the trier of fact. It is an exceptional case where the issue can be decided as a matter of law. Iowa R. App. P. 14(f)(10).

Plaintiff asserts as error the trial court's failure to adopt the opinion of plaintiff's expert that bridge 3801 was unreasonably dangerous. The factfinder, however, need not accept an expert witness's conclusion if there is sufficient evidence to lead a reasonable trier of fact to a contrary result. DeYarman v. State, 226 N.W.2d 26, 29 (Iowa 1975).

In this case the State presented evidence that the bridge design and construction complied with the safety standards applicable at the time it was built in 1931. Furthermore, there had been only two accidents at the location in the ten years prior to plaintiff's collision. The accident reports in these cases did not indicate that the bridge was the cause of the accidents. There was testimony that this accident history was well below the state average and would not indicate any need for added safety measures. The zebra boards and reflectors flanking the

bridge rail in every direction complied with current safety regulations adopted pursuant to Iowa Code § 321.252 and made the rail highly visible to approaching travelers.

Since we find that there was sufficient evidence that the State was not negligent, we do not consider the issues raised regarding the contributory negligence of the plaintiff.

AFFIRMED.