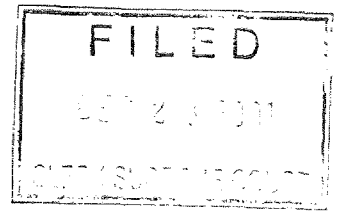
IN THE COURT OF APPEALS OF IOWA

No. 1-708 / 01-0310
Filed December 28, 2001



KARLA JORDAN,
Appellant,

vs.

DUANE NEFF,
Appellee.

Appeal from the Iowa District Court for Johnson County, Douglas R. Russell, Judge.

Plaintiff appeals following trial on her personal injury action in which the jury found the defendant was not negligent in the automobile accident that caused the plaintiff's alleged injuries. **AFFIRMED.**

Martin Diaz, Iowa City, for appellant.

Matthew G. Novak of Pickens, Barnes & Abernathy, Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

000252

VOGEL, P.J.

The plaintiff, Karla Jordan, appeals following a trial on her personal injury action in which the jury found the defendant, Duane Neff, was not at fault in an accident in which she claimed she suffered injuries. Because we find the district court correctly denied Jordan's motion for summary judgment and her motion for directed verdict, we affirm.

I. Background Facts and Proceedings.

On January 24, 1998, defendant Duane Neff was driving north on Gilbert Street in Iowa City. The road, although not marked for four lanes of travel, did accommodate two lanes in each direction. Neff was in the left hand "lane", when he decided to return to the grocery store from which he just been shopping. He moved into the right lane, but did not observe that a car driven by Steve Warner was in that lane, attempting to pass his vehicle. Warner noticed the Neff vehicle attempting to enter his lane and reacted by swerving his vehicle to the right and over the curb. The Neff and Warner vehicles never came in contact with each other, and Neff's vehicle took Warner's place in the right lane. The plaintiff, Karla Jordan, had been following the Warner vehicle in the right lane. Shortly after Neff's lane change, Jordan's vehicle struck Neff's vehicle in the rear. Jordan claimed to have suffered $24,000 in medical expenses as a result of injuries suffered in the collision.

Jordan subsequently brought this action against Neff. Prior to trial, Jordan filed a motion for partial summary judgment on the issue of Neff's fault. The court denied the motion, finding that Neff's fault could not be determined as a matter of law because Jordan's actions may have contributed to the accident. After the close of evidence, the court also denied Jordan's motion for directed verdict regarding Neff's fault. Following the trial, the jury returned a verdict

finding that Neff was not at fault in the accident. Jordan appeals. She contends the court erred in (1) refusing to grant partial summary judgment regarding whether Neff was at fault in the accident, and (2) refusing to grant a directed verdict on Neff's fault. Jordan seeks a new trial.

II. Summary Judgment.

We review a summary judgment ruling for correction of errors of law. *Shriver v. City of Okoboji,* 567 N.W.2d 397, 400 (Iowa 1997). Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* We will review the record before the district court to determine whether an issue of material fact exists, and if not, whether the district court properly applied the law. *Id.* The facts are reviewed in the light most favorable to the nonmoving party. *Id.* Even if the facts are undisputed, summary judgment is not appropriate if reasonable minds can draw different inferences from the evidence. *State Farm Mut. Auto. Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 205 (Iowa 1984). Generally, questions of negligence are for the jury; only in exceptional cases should they be decided as a matter of law. Iowa R. App. P. 14(f)(10).

Jordan asserts the district court erred in refusing to grant her partial summary judgment motion regarding the fault of Neff. In particular, her motion sought to establish that there was no genuine issue of material fact regarding Neff's conduct and that Neff's negligence in some degree could be determined by the court as a matter of law. Her motion did not involve the proximate cause issue.

The district court apparently understood that Jordan's motion for summary judgment sought a declaration that Neff was totally at fault in the accident. In its order, it noted that "[u]nlike the few cases where the uncontroverted facts can be determined as a matter of law, there is testimony here that [Jordan's] actions

may have contributed to the accident under the doctrine of comparative fault." It also found that a "reasonable jury could find plaintiff was at fault for some portion of the accident." Consequently, it denied summary judgment.

Even if the district court misunderstood the narrow thrust of Jordan's motion for partial summary judgment, we still find it correctly denied the motion. *See Langner v. Mull*, 453 N.W.2d 644, 647 (Iowa Ct. App. 1990) (stating we may affirm the trial court if any proper ground appears in the record). As stated above, it is the extraordinary case where a question of negligence can be decided as a matter of law. We do not believe this is one of those cases where the question may be taken from the jury.

Jordan asserts in her motion for partial summary judgment that Neff's admission through his plea of guilty to improper lane change established that he was negligent. However, we believe the district court could only have specifically determined Neff's improper lane change was negligent in relation to Warner, not necessarily to Jordan who was driving behind those vehicles and was therefore in a very different position with regards to a determination of negligence. *See Bohan v. Hogan*, 567 N.W.2d 234, 237 (Iowa 1997) (discussing whether the actor is negligent with respect to another person).

In Neff's statement of disputed material facts, he noted that Jordan admitted in a deposition that "[i]mmediately prior to the collision, [she] was not watching where she was driving and was only one car length behind the vehicle in front of her." Also in Jordan's deposition, she admitted she was "not very far" behind the Warner vehicle. Further, Neff's statement of material facts stated that Jordan indicated to the investigating police officer that she could not avoid the collision because of wet road conditions. We believe these facts illustrated the existence of a genuine issue of material fact of negligence as between Jordan and Neff, but not Warner and Neff, that precluded the summary judgment. When

viewed in a light most favorable to Neff, a reasonable jury could have concluded Jordan's negligence alone caused her vehicle to strike Neff's. A jury could have found she was following too closely behind the vehicle in front of her, particularly based on the wet and slippery conditions that prevailed the day of the accident. The district court did not err in refusing Jordan's invitation to declare Neff negligent in regard to the accident.

III. Directed Verdict.

We review the denial of a motion for directed verdict for correction of errors at law. Iowa R. App. P. 4. In considering the propriety of a motion for directed verdict the court views the evidence in the light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). Questions of negligence or proximate cause are for the jury; only in exceptional cases should they be decided as a matter of law. Iowa R. App. P. 14(f)(10). It is seldom proper in the absence of an admission, for the court to instruct the jury that a party with the burden of proof has established his claim as a matter of law. *Ruan Transport Corp. v. Jacobs*, 216 N.W.2d 182, 185 (Iowa 1974).

Following the close of evidence, Jordan moved for a directed verdict on the issue of Neff's fault. On appeal, Jordan now contends the court erred in refusing to determine as a matter of law that Neff's conduct was negligent. She argues the jury should not have been given the option to decide whether he was at fault at all. Rather, she believes the finding that Neff was not at fault simply is not supported by any evidence and requests a new trial. We disagree.

Again, based on the evidence produced at trial and viewed in a light most favorable to Neff, a reasonable jury could have determined Neff was not negligent in regard to Jordan's collision with his vehicle. Neff testified that he looked in his mirror and saw nothing. He also disputed Jordan's claim that he

came to a stop in the portion of the road in which she was traveling. It is undisputed that Jordan's vehicle struck Neff's vehicle in the rear.

The facts also support a conclusion Jordan's negligence alone may have caused the accident. The jury may have concluded Jordan was negligent in following too closely to the vehicle in front of her, initially Warner's, and then Neff's following his lane change, particularly considering the weather conditions. Investigating officer Mark Hewlett testified that after the accident Jordan admitted she could not stop in time due to the wet conditions of the road. Also, Jordan admitted she never saw the Neff vehicle until after the Warner vehicle went off the road. The jury could have determined her failure to keep a lookout caused the accident. The court did not err in failing to grant the motion for directed verdict.

IV. Conclusion.

We conclude the district court did not err in refusing to grant Jordan's motion for summary judgment and her motion for directed verdict. The judgment of the district court is affirmed.

AFFIRMED.