

IN THE COURT OF APPEALS OF IOWA

No. 0-624 / 89-1962

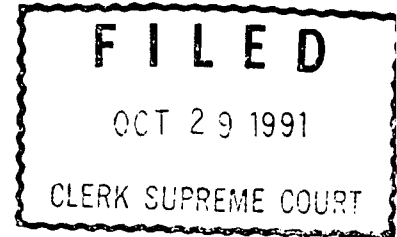
PATRICIA TERRELL and ROSIE TERRELL,

Appellants,

vs.

DAVID A. REINECKER and KEEN TRANSPORT,

Appellees.



Appeal from the Iowa District Court for Scott County,
James Kelley, Judge.

In this negligence suit the plaintiffs appeal an
adverse jury verdict finding no negligence on the part of
the defendant. **AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED.**

Anthony Jamison, Rock Island, Illinois, for appellants.

John D. Telleen of Lane & Waterman, Davenport, for
appellees.

Considered by Oxberger, C.J., and Sackett and Habhab,
JJ.

OXBERGER L.

Rosie Terrell and Patricia Terrell, mother and daughter, were injured when their car was hit by a truck proceeding in the same direction on an interstate highway bridge over the Mississippi River. The accident occurred shortly after the Terrell vehicle had entered the interstate highway and had merged into the right-hand lane of the two eastbound lanes crossing the bridge. The remaining facts of the accident are disputed.

The Terrells maintain the truck was behind them when they entered the interstate highway. They claim the truck then passed them in the left-hand lane. They allege the truck side-swiped them while passing or while trying to return prematurely to the right-hand lane. The truck driver maintains he was deliberately straddling both of the eastbound lanes because of his wide load. Additionally, he contends he did not pass the Terrell car at any time. Rather, he asserts the Terrell car failed to yield when entering the interstate. He contends the Terrell car hit the truck while entering one of the two lanes already occupied by the truck.

The Terrells sued the driver and owner of the truck. A jury returned a verdict finding the truck driver was not at fault. The jury did not expressly reach the question whether the Terrells were at fault. The Terrells have appealed from this verdict and resulting adverse judgment.

The Terrells challenge the sufficiency of the evidence to support the jury's verdict. The Terrells also contend the district court erred by permitting an investigating police officer to testify he believed the Terrell vehicle had failed to yield. The Terrells argue there was insufficient foundational evidence the officer had experience or expertise in accident reconstruction.

Finally, the Terrells contend the district court should have given instructions permitting the jury to find two statutory violations by the truck driver: driving in two lanes in violation of Iowa Code section 321.306, and passing within 100 feet of a narrow bridge in violation of Iowa Code section 321.304. The defendants deny there was evidence to show a violation of either statute.

Expert Testimony. The Terrells assert the officer's testimony exceeded the proper scope of expert testimony because it involved a legal conclusion about a violation of a state statute. We agree. The officer in this case testified:

Q. Is it your opinion that she failed to yield the right of way to the Reinecker vehicle?

A. Yes, sir, I do.

There can be no dispute that the officer concluded there had been a violation of the rules of the road. In Bornn v. Madagan, 414 N.W.2d 646, 649-50 (Iowa App. 1987), this court considered whether a court had abused its discretion in refusing to allow an officers to give his

opinion as to the cause of the collision. Offers of proof indicated the officers would have testified that in their opinion the collision was caused by the parties failure to yield the right-of-way when he entered the highway from a farm driveway. We distinguished in that case testimony which addresses "how" an accident occurred and "why" an accident occurred. The objectionable testimony in Bornn, as in the present case was directed to why the accident occurred. Whereas the former opinion looks for the storyline, the latter opinion looks for the moral. Id. at 649.

We find in the case before us, the testimony of the police officer which concluded that one party had failed to yield the right-of-way, constitutes a legal conclusion on domestic law. It was therefore error to allow its admission. We conclude such error was prejudicial and reverse the trial court on this issue.

Jury Instructions. The plaintiffs contend the trial court erred in not giving an instruction based upon Iowa Code section 321.306. The trial court found this section has no applicability to a divided highway. Rather, the trial court found the statute referred to a three-lane roadway where at least two of the lanes run in opposite directions. We need not consider whether the trial court was correct in its finding, as we determine the instructions, taken as a whole, were adequate.

Jury instructions are designed to explain the applicable law to the jurors so the law may be applied to the facts proven at trial. State v. Freeman, 267 N.W.2d 69, 71 (Iowa 1978). The trial court has a duty to ensure the jury understands the law it must apply. Sanders v. Ghrist, 421 N.W.2d 520, 522 (Iowa 1988). In evaluating this, we must read all of the instructions together, not piecemeal or in artificial isolation. Id.; Clinton Land Co., 340 N.W.2d at 234. We must reverse and order a new trial if the instructions as a whole are insufficient to convey the applicable law. Sanders, 421 N.W.2d at 522 (citing Adam v. T.I.P. Rural Elec. Co-op, 271 N.W.2d 896, 900-01 (Iowa 1978)).

The instructions adequately instructed the jury on the law regarding lane changes, keeping a proper lookout, and passing. Taken as a whole, the jury was adequately instructed as to the applicable law. We do not find any error on the part of the trial court in refusing to submit the proposed instruction to the jury. We affirm on this issue.

The plaintiff also contends the court should have submitted an instruction based on Iowa Code section 321.304. This section provided no vehicle shall overtake or pass another vehicle within 100 feet of any narrow bridge when so sign posted. The evidence shows the bridge in question was not sign posted as a narrow bridge. There is no question the trial court did not err in failing to submit this instruction to the jury.

Each party will pay his or her own attorney fees.
Costs are taxed to the appellee.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Sackett, J., concurs; Habhab, J., concurs in part and
dissents in part.

HABHAB, J. (concurring in part and dissenting in part)

I concur in all respects with the majority opinion except that part which reverses on the ground the trial court erred in permitting the officer to testify that he believed the Terrell vehicle failed to yield the right-of-way. To that part of the majority opinion, I respectfully dissent.

I note at the inception the following:

This state adheres to a liberal policy concerning the admissibility of opinion testimony. Such evidence will be admitted if it is of a nature that will aid the jury and is based upon special training, experience, or knowledge with respect to an issue in controversy. The admissibility of opinion testimony, lay or expert, has not been distilled into distinct rules. Rather, it rests in the sound discretion of the trial court, and the trial court's determination will not be disturbed on appeal unless manifest abuse of that discretion causing prejudice to the complaining party is shown.

Bandstra v. International Harvester Co., 367 N.W.2d 282, 288 (Iowa App. 1985) (citations omitted).

In recent years the Iowa Supreme Court has broadened the scope of permissible expert testimony. I believe the Terrells' objection is without merit under prevailing case law.

Although it is frequently stated that witnesses should not be permitted to give their opinion on questions of domestic law, [citations omitted] there are exceptions to this rule. As presented in the committee comment accompanying Iowa Rule of Evidence 704, this limitation extends only to opinions of law which go [to] the ultimate issue in this case. . . .

The rule prohibiting legal opinions as to domestic law does not always apply, however, in situations where the legal issue is raised in such a manner that it becomes an operative fact to be

proven within the case rather than a rule of decision for deciding the case. In Martinson Manufacturing Co. v. Seery, 351 N.W.2d 772, 778 (Iowa 1984), we recognized that within the "case within a case" context of a legal malpractice action it may be an issue of fact as to whether a lawyer's assessment of a legal proposition is correct. Arguably, the issue of the bank's misrepresentation of legal rights in the present case is presented within such a "case within a case" context.

. . . We have frequently stated that a trial court is entitled to exercise a broad discretion in the admissibility of expert testimony. [Citations omitted.] The legal issues which bore upon the accuracy of the alleged representations in the present case were simple, straightforward and scarcely subject to dispute.

United Central Bank of Des Moines v. Kruse, 439 N.W.2d 849, 852 (Iowa 1989).

Officer Benes qualified as an expert on accident reconstruction. He had investigated many accidents and had schooling with regard to accident reconstruction. At no time did Officer Benes give a legal conclusion as to the negligence of the parties. He provided his opinion as to how the accident occurred. A qualified witness may opine on the ultimate question of fact. Grismore v. Consolidated Products Co., 232 Iowa 328, 343-45, 5 N.W.2d 646, 655-56 (1942). His testimony and opinion about the cause of the accident is an operative fact to be proven in the case, rather than a rule of decision for deciding the case. Id.; see also Hariri v. Morse Rubber Co., 465 N.W.2d 546 (Iowa App. 1990). I would affirm the trial court on this issue.