FILED
AUG 26 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DOLORES M. HOHL,)

Plaintiff-Appellant,) Filed August 26, 1987

vs)

HARRY McANINCH,)

Defendant-Appellee.)

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7-253
86-1776

Appeal from the Iowa District Court for Polk County (No. CL 59-35006), George W. Bergeson, Judge.

The plaintiff appeals from a final judgment and an order denying her motion for a new trial in her negligence action against the defendant, claiming that the trial court erred in failing to grant her motion for a new trial. **AFFIRMED.**

Virgil Moore, Des Moines, for plaintiff-appellant.

Henry A. Harmon of Grefe & Sidney, Des Moines, for defendant-appellee.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

PER CURIAM

Appellant, Dolores Hohl, contends the district court erred in denying her motion for new trial. The motion challenged a jury verdict in favor of defendant-appellee, Harry McAninch, in a negligence action arising from an automobile accident. Our review is limited to the correction of errors at law. Iowa R. App. P. 4.

Hohl maintains the jury verdict is not supported by substantial evidence and that the evidence educed at trial establishes McAninch's negligence as a matter of law. We note that our district courts are accorded considerable discretion in ruling on motions for new trial. Kaiser v. Stathas, 263 N.W.2d 522, 524 (Iowa 1978). We will interfere with a district court's disposition of a new trial motion only when it is clearly shown that the district court abused its discretion. Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa App. 1983). Questions of negligence and proximate cause are questions of fact, and only in the exceptional case may these questions be taken from the jury and decided as a matter of law. Johnson v. Juukmann, 395 N.W.2d 862, 864 (Iowa 1986); Iowa R. App. P. 14(f)(10).

This is not such an exceptional case. The jury could have found the following set of facts from the present record: Hohl and McAninch had been sitting side-by-side in their respective vehicles at a stop light immediately south of a bridge in Des Moines, Iowa; both parties were headed north, Hohl in the center lane, McAninch in the curb lane; the bridge is slightly arched in the middle so that the immediately-north side cannot be seen from the immediately-south side; on the morning of the accident, the bridge was lightly covered with frost; when the light turned green and the parties proceeded north, Hohl accelerated more quickly than did McAninch and changed lanes so that he was in front of McAninch in the curb lane; upon reaching the north end

of the bridge, Hohl came to an immediate stop in response to a broken-down vehicle in front of her; the pavement just off the north side of the bridge was dry, and Hohl's stop was accordingly not hindered by frost; McAninch, approximately thirty-five feet behind Hohl and moving with the flow of traffic at approximately thirty miles per hour, applied his brakes in response to Hohl's stop, his brakes locked up, and he slid into Hohl's car; Hohl testified she had no problems braking and was surprised that McAninch did.

We think the record engenders a jury question on the issue of whether McAninch exercised due care in operating his truck. See Harris v. Clark, 251 Iowa 807, 812, 103 N.W.2d 215, 218 (1960) (jury question held engendered in analogous fact pattern). Although such care as McAninch did exercise did not prevent the accident in this case, that fact alone is not determinative. See Fanelli v. Illinois Cent. R.R. Co., 246 Iowa 661, 664, 69 N.W.2d 13, 15 (1955) (negligence cannot be presumed from mere fact that accident occurred). The exercise of due care is all our common law of negligence requires. See Stimmel v Johnson, 199 N.W.2d 356, 360 (Iowa 1972). Whether that standard required more of McAninch in the circumstances giving rise to this case was a question for the jury. See, e.g., Christensen v. Kelley, 257 Iowa 1320, 1324, 135 N.W.2d 510, 512 (1965).

Hohl does not support with any authority her contention as concerns juror misconduct. Accordingly, we consider it waived. Iowa R. App. P.14(a)(3).

AFFIRMED.