IN THE COURT OF APPEALS OF IOWA

No. 1999-478 (9-735) / 98-2195
Filed March 15, 2000

IN THE MATTER OF THE ESTATES OF BOSTON AND ALEXIS SCHUMACHER and JOSEPH SHUMACHER, As Executor and Individually, and RHONDA SCHUMACHER, Individually,
Plaintiffs-Appellees,

FILED
MAR 15 2000
CLERK SUPREME COURT

vs.

DUANE JOHN ABLAMIS and MICHAEL JEROME JOHNSON,
Defendants-Appellants.

Appeal from the Iowa District Court for Poweshiek County, James P. Rielly, Judge.

The defendants appeal a district court judgment entry, following a jury trial, awarding the plaintiffs damages on their action against the defendants resulting from an automobile accident. **REVERSED AND REMANDED FOR NEW TRIAL.**

Randall B. Willman and Leslie L. Moore of Leff, Haupert, Traw & Willman, L.L.P., Iowa City, for appellants.

Barry A. Russell and Lu Ann White of Hanson, Bjork & Russell, L.L.P., Des Moines, and Donald Schild of Schild Law Offices, Grinnell, for appellees.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

MAHAN, J.

The defendants appeal a district court judgment entry, following a jury trial, awarding the plaintiffs damages on their action against defendants resulting from an automobile accident. Defendants contend the district court erred in (1) failing to find as a matter of law their actions were not the proximate cause of plaintiffs' damages due to superseding events; (2) granting plaintiffs motion for new trial only on the issue of damages; (3) improperly instructing the jury on the statement of the case and submitting sudden emergency and emotional distress instructions; and (4) failing to rule in its adjudication of law points plaintiffs' recovery for loss of companionship was barred if plaintiff Rhonda Schumacher was found more than fifty percent at fault, and recovery must be reduced by the percentage of fault. We reverse and remand for new trial.

On October 6, 1995, at approximately 7:50 a.m., defendant Michael Johnson was driving a freightliner truck that was pulling a trailer[1] eastbound on Interstate 80. The truck and trailer were owned by the defendant Duane Ablamis. Johnson lost control of the vehicle near Grinnell, and the truck and trailer crossed the median and came to rest on the westbound passing lane of I-80 thereby partially blocking westbound traffic.[2] Weather conditions at the time were rainy.

Poweshiek County Deputy Sheriff Martin Duffus arrived on the scene at approximately 8:11 a.m. and immediately contacted the department of transportation (DOT) to close a lane of traffic and start the process of vehicle

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[1] Johnson was pulling a race car in the trailer and was driving to Ohio non-stop from California to participate in a car race.

[2] Debris covered both lanes of westbound traffic, but movement was still possible in the right lane and on the shoulder.

removal. The Iowa State Highway Patrol arrived on the scene first and directed traffic and coordinated the removal of the wreckage.

The DOT arrived thereafter and began work on traffic control. Signs were placed at four locations on I-80 for the benefit of westbound traffic approaching the accident scene. Two "Road Work Ahead" signs were placed one mile from the scene, followed four-tenths of a mile later by two "Left Lane Closed Ahead" signs. Finally, the lane closure was completed by the placement of an arrow board, barrels, and cones in the left lane beginning two-tenths of a mile from the accident scene.[3] A portion of the right lane and the shoulder was used for westbound vehicles to go around the accident.

Traffic continued to slowly pass the scene for the first two hours following the accident. However, traffic began to back up behind the accident site after 10:00 a.m. At 10:15 a.m., a Monfort semi-truck and trailer driven by Alvin Newton came to a complete stop behind the westbound line of traffic.[4] Rhonda Schumacher was driving westbound on I-80 behind Newton. She was operating a Ford pickup truck and was accompanied by her minor children, Alexis and Boston. Schumacher crashed into the back of the Monfort truck. It is disputed in the record as to whether she braked before the accident. No skid marks were detected, but the pavement was wet. Schumacher does not remember the accident.

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[3] This road equipment was used to warn drivers of the problems ahead and to funnel all traffic into the right-hand lane.

[4] Newton claimed he was operating with headlights and taillights because of the rain. His use of lights was contested at trial. The expert established the taillights were on. The contested issue is whether brake lights and four-way flashers were being used.

Schumacher was seriously injured as a result of the accident. Alexis died at the scene, and Boston died of injuries approximately three weeks later.

The case against the defendants proceeded to trial on August 24, 1998, and the jury returned its verdict on September 2, 1998. Upon accepting the verdict, the district court contacted counsel for both parties and expressed concern about the adequacy of the award. The plaintiffs subsequently filed and were granted a new trial on the issue of damages only. The district court substantially increased the damages awarded, and the defendants have appealed.

I. Causation. Defendants claim the district court erred in failing to determine the issue of causation as a matter of law. In addition, they contend they should be relieved of liability because the intervening negligence of Rhonda Schumacher was a superceding cause and because public policy strongly suggests they should not be held accountable in this instance.

A. Causation as a Matter of Law. Defendants contend the district court erred in failing to determine causation as a matter of law. Specifically, defendants argue their actions were not the proximate cause of Rhonda's injuries and the deaths of the minor children because the original accident was too remote in time to be considered a substantial factor in the instant accident. Although we are reversing the case and remanding for a new trial for different reasons, we will discuss this issue because of its importance to a retrial of this matter.

Questions of negligence and proximate cause are generally for the jury. *Scoggins v. Wal-Mart Stores, Inc.*, 560 N.W.2d 564, 566 (Iowa 1997). They may be decided as a matter of law only in "exceptional cases". *Id*; Iowa R. App. P. 14(f)(10). The parties disagree as to whether this is one of those "exceptional

cases". We conclude it is not.

Our supreme court has discussed the definition of causation as follows:

> [U]nder any definition of causation, this element has two components: (1) the defendant's conduct must have in fact caused the plaintiff's damages (generally a factual inquiry) and (2) the policy of the law must require the defendant to be legally responsible for the injury (generally a legal question).

Scoggins, 560 N.W.2d at 567; (quoting *Gerst v. Marshall,* 549 N.W.2d 810, 815 (Iowa 1996)).

The factual inquiry of causation has two elements: "(1) whether the harm would have occurred *but for* the negligence of the defendant, and (2) whether the negligence of the defendant was a substantial factor in bringing about the harm". *Id.* (emphasis in original). Defendants concede the "but for" element has been met. However, they dispute the "substantial factor" element. Regarding this element, our supreme court has stated:

> Proximate causation presents the question of whether the policy of the law will extend responsibility to those consequences which have in fact been produced by an actor's conduct. The general rule is that an actor's conduct is the proximate or legal cause of harm to another if (1) his conduct is a "substantial factor" in bringing about the harm and (2) there is no other rule of law relieving the actor of liability because of the manner in which his negligence resulted in the harm.

Id. (quoting *Kelly v. Sinclair Oil Corp.,* 476 N.W.2d 341, 349 (Iowa 1991) (citations omitted)). This element is based on the concepts of "proximity" and "forseeability of harm". *Id*; *Hollingsworth v. Schminkey*, 553 N.W.2d 591, 597 (Iowa 1996).

In the instant case, there was a time period of two hours and a distance of one-half mile between the first accident and the Schumacher accident. Thus, the defendants contend the first accident is too remote for a finding of proximate cause.

Prosser has stated:

> [I]t is not easy to discover any merit whatever in the contention that such physical remoteness should of itself bar recovery. The defendant who sets a bomb which explodes ten years later, or mails a box of poisoned chocolates from California to Delaware, has caused the result, and should obviously bear the consequences.

William S. Prosser, *Law of Torts,* § 43, at 283 (5th ed. 1984). In addition, a Pennsylvania federal court has found proximate cause in a similar case where there was a time period of six hours and a distance of ten miles involved. *Herman v. Well and Chemical Ltd.*, 580 F. Supp. 823, 827 (D.C. Pa. 1984). We have carefully reviewed the instant case and conclude the proximate cause issue was properly submitted to the jury.

B. Superceding, Intervening Cause. Defendants contend, even if the causation requirements were met, they should be relieved of liability because the intervening negligence of Rhonda Schumacher was a superceding cause. Defendants acknowledge this doctrine is usually reserved for the intervention of acts by a third-party or an outside force and does not generally apply to the actions of an injured plaintiff. *Sumpter v. City of Moulton*, 519 N.W.2d 427, 432 (Iowa App. 1994). However, defendants point out this court also stated in that case we were "not prepared to hold that the conduct of a plaintiff could *never* constitute a superseding cause". *Id.* (emphasis added). Any invitation on the part of the defendants for this court to now so hold is declined. It is unnecessary as a careful review of the facts of this case indicate the doctrine has not been established. *Hayward v. P.D.A., Inc.*, 573 N.W.2d 29, 34 (Iowa 1997); *Hollingsworth*, 553 N.W.2d at 598.

C. Public Policy. Defendants contend public policy strongly suggests any

liability they initially have should cease once governmental authorities have taken control of the accident scene. Defendants provide no authority for this proposition. Nor can we find any. This argument is without merit.

II. New Trial. Defendants allege the district court erred in granting plaintiffs' motion for new trial on damages only and contend a new trial should have been granted on all issues. Our review of a district court's action on a motion for new trial is for abuse of discretion. *Foggia v. Des Moines Bowl-O-Mat, Inc.*, 543 N.W.2d 889, 892 (Iowa 1996). In rulings upon motions for new trial, we give the district court broad but not unlimited discretion in determining whether the verdict effectuated substantial justice between the parties. Iowa R. App. P. 14(f)(3). "We will not find abuse of discretion unless it is shown that the trial court's discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable." *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990). We are more reluctant to interfere with the grant of a new trial than its refusal. Iowa R. App. P. 14(f)(4)

The jury, in its verdict, assessed fault of thirty-three and one-third percent each against Schumacher, the defendants and the released party, Monfort. Following the return of the verdict, the district court expressed concern about the adequacy of the damage award. Plaintiffs filed a motion for new trial claiming damages were wholly inadequate, influenced by passion and prejudice and contrary to the evidence and the law. In the alternative, plaintiffs moved for a new trial on all issues.

In ruling upon the plaintiffs' motion, the district court found the following problems in the damage verdict:

> The Court concludes that the jury award for Rhonda for past

medical expenses of $112,000 is inadequate and not supported by the evidence in that the stipulated medical expenses amounted to the sum of $139,088.75.

The Court further concludes that the award for past medical expenses for Boston Schumacher in the sum of $40,000 was inadequate and not supported by the evidence in that the stipulated medical expenses were the sum of $89,500.86.

The Court further concludes that the jury award of $1,000 to Rhonda for past pain and suffering is clearly inadequate in light of the $139,088.75 in medicals, an hour and a half trapped in the pickup with a collapsed lung, six weeks in the hospital, three major surgeries, lip surgery, an elbow surgery requiring anesthetic, and root canals on damaged teeth.

The Court further finds that the jury's award for past loss of full mind and body of $1.00 to Rhonda is inadequate in light of the undisputed evidence of scarring, loss of function of the elbow, damaged facial nerve leading to the root canals, hospitalization for six weeks followed by physical therapy, and additional hospitalization for elbow surgery and physical therapy again following elbow surgery.

The Court further concludes that the jury award of $1.00 for loss of full mind and body in the future is clearly inadequate in light of the undisputed evidence that Rhonda has permanent scarring, spleen removal, and an elbow injury that is permanent in nature which has limited her function.

The Court further concludes that the jury award to Rhonda of $1.00 for past loss of earnings is inadequate because the evidence shows that Rhonda lost approximately $5,000 in the year following the accident when she was unable to work in her cake decorating business.

The Court further concludes that the award of $1.00 to Rhonda for future loss of earning capacity in inadequate in light of the testimony with regard to the limited use of her left elbow.

The Court further concludes that the damage award which awarded only $1.00 for the present value of each of the children's estates is inadequate and not supported by the evidence.

The district court concluded the verdict did not bear any "reasonable relation to the loss suffered." The district court further concluded the verdict was inadequate in that it failed to effectuate "substantial justice between the parties." *Foggia*, 543 N.W.2d at 891. The district court determined a new trial on all issues was not required because the jury's verdict with regard to fault was not compromised. *Thompson v. Allen*, 503 N.W.2d 400, 401 (Iowa 1993). We disagree.

As a general rule, a new trial only on the issue of damages is improper when a strong suspicion exists that an inadequate damage award is the result of compromise involving the liability issue. 66 C.J.S. *New Trial* §11(5), at 98; *Householder v. Town of Clayton*, 221 N.W.2d 488, 493-94 (Iowa 1974); *Allbee v. Berry*, 254 Iowa 712, 714, 119 N.W.2d 230, 234 (1963). The instant case, unlike the situation in *Thompson*, has strong indications of compromise. Portions of the damage award were less than the amounts stipulated by the parties. We agree with the district court conclusion much of the damage award was clearly inadequate. The damages, as a whole, bore no rational relationship to the evidence presented at trial. In addition, the issue of liability was fiercely contested. We conclude a strong suspicion of compromise exists in this case. This fact, when considered in light of our discussion on sudden emergency, mandates a new trial be held on all issues.

III. Legal Excuse/Sudden Emergency. We review the trial court's jury instructions for correction of errors at law. Iowa R. App. P. 4; *Sheets v. Ritt, Ritt, & Ritt, Inc.*, 581 N.W.2d 602, 604 (Iowa 1998). Parties are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial

evidence in the record. *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994). "Evidence is substantial enough to support a requested instruction when a reasonable mind would accept it as adequate to reach a conclusion." *Bride v. Heckart*, 556 N.W.2d 449, 452 (Iowa 1996).

We will not grant a reversal on the basis of error in giving or refusing to give a particular jury instruction unless the action results in prejudice to the defendant. *Foggia*, 543 N.W.2d at 892. A party's objections to the court's instructions must specify the matter objected to and on what grounds. Iowa R. Civ. P. 96; *Bonham v. City of Sioux City*, 567 N.W.2d 431, 437 (Iowa 1997).

Whether a party is faced with a sudden emergency is ordinarily a question for the jury. *Beyer v. Todd*, 601 N.W.2d 35, 39 (Iowa 1999). The party asserting a sudden emergency existed has the burden of proving legal excuse, *Jones v. Blair*, 387 N.W.2d 349, 352 (Iowa 1986), and we view the evidence in the light most favorable to that party. *Beyer*, 601 N.W.2d at 39.

Defendants contend the district court erred in submitting a sudden emergency instruction to the jury. We agree.

The doctrine of legal excuse permits the jury to excuse a party's failure to obey statutory law when confronted with an emergency not of his or her own making. *Weiss v. Bal*, 501 N.W.2d 478, 480 (Iowa 1993). Sudden emergency may be an element of legal excuse with respect to statutory violations and is defined as: "(1) an unforeseen combination of circumstances which calls for immediate action; (2) a perplexing contingency or complication of circumstances; (3) a sudden or unexpected occasion for action, exigency, pressing necessity." *Id.*, at 480-81 (quoting *Bangs v. Keifer*, 174 N.W.2d 372, 374 (Iowa 1970).

> The elements of sudden emergency are: (1) the driver is confronted with a sudden emergency, (2) the emergency was not created by the driver's own negligence, (3) the driver conducted himself or herself as a reasonable person in a similar emergency.

Miller v. Eichhorn, 426 N.W.2d 641, 644 (Iowa App. 1988) (citing *Jones*, 387 N.W.2d at 352).

The appellate courts of our state have noted concerns about using the sudden emergency doctrine in a routine traffic context. *See Beyer,* 601 N.W.2d at 40; *Weiss*, 501 N.W.2d 480-82; *Mosell v. Estate of Marks*, 526 N.W.2d 179, 182, n.4 (Iowa App. 1994). As our supreme court stated:

> Were we to extend the sudden emergency doctrine to cases like the one before us, it could be relied upon in nearly any traffic context to excuse "emergencies" that a reasonably prudent driver must be prepared to meet. We do not believe that excusing the failure to anticipate such ordinary hazards is in keeping with the spirit or purpose of the doctrine.

Weiss, 501 N.W.2d at 482 (citation omitted).

Defendants allege Schumacher was negligent in failing to have her vehicle under control; exercise proper lookout; heed the DOT signs warning of a lane closure; and stop her vehicle within an assured safe distance behind the Monfort truck. Plaintiffs contend the statutory violations committed by Schumacher, if any, are legally excused. They argue the evidence of heavy rain, the Monfort truck stopped on I-80 without brake lights or flashers on,[5] westbound I-80 being completely blocked by the accident and the line of stopped traffic, and Schumacher

[5] This allegation was contested at trial.

braking prior to the collision[6] is sufficient to support the submission of the sudden emergency instruction. We disagree.

Our supreme court recently discussed case law applying the sudden emergency doctrine to traffic accidents. *Beyer*, 601 N.W.2d at 39-40. Sudden emergency instructions are appropriately given when a party's statutory violations are caused by an unforeseen, unanticipated or unexpected event, but not when a party's statutory violations cause the emergency. *See id. See also Weiss*, 501 N.W.2d at 482 ("[T]he conduct created the emergency; the emergency did not create conduct to be excused.") (citing *Freese v. Lemmon*, 267 N.W.2d 680, 684-85 (Iowa 1978)). In deciding *Beyer*, our supreme court found sudden stops in traffic are not uncommon or unforeseen events. *Beyer*, 601 N.W.2d at 39. Furthermore, our supreme court stated:

> [W]e believe our statutes concerning a driver's duty to keep his or her vehicle under control, *see* Iowa Code section 321.288(3) (1995), and the duty to operate a vehicle such that it can be stopped within the assured clear distance ahead, *see* Iowa Code section 321.285, imply that a driver should be prepared for a sudden stop in traffic.

Id. at 40.

Even when looked at in the light most favorable to the plaintiffs, Schumacher was faced with a combination of ordinary hazards of interstate driving for which she should have been prepared.

This is a tragic case involving the deaths of two children and serious injuries to their mother. We do not take that lightly. However, Rhonda Schumacher did not recall the accident and did not establish legal excuse as set forth in Instruction No. 28. We conclude the instruction should not have been given. We agree with

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[6] This allegation was contested at trial.

defendants that submission of the instruction could have easily confused the jury. We find the defendants were prejudiced because the sudden emergency instruction may have led the jury to reduce the fault allocated to Schumacher. Therefore, we conclude the district court committed reversible error by submitting the sudden emergency instruction to the jury.

III. Other Issues. We have considered the other issues raised by the defendants. We find they are without merit or need not be addressed because we are remanding for new trial.

For these reasons, we reverse and remand for new trial.

REVERSED AND REMANDED FOR NEW TRIAL.