IN THE COURT OF APPEALS OF IOWA

No. 2-281 / 91-814

FILED
SEP 29 1992
CLERK SUPREME COURT

MARK CUNNINGHAM,

Appellant,

vs.

TRISHA GOLAY,

Appellee.

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Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge.

Cunningham appeals a jury verdict in favor of Golay. **AFFIRMED.**

Scott A. Sobel, Des Moines, for appellant.

Jeff H. Jeffries of Hopkins & Huebner, P.C., Des Moines, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

FACTS

In 1988, Mark Cunningham and Trisha Golay resided in the same apartment complex in West Des Moines, Iowa. Cunningham sued Golay for personal injuries he allegedly suffered when her pickup truck struck him on May 27, 1988.

Both parties testified it was raining hard on the day in question. However, the parties presented extremely different versions of the incident to the jury. Golay testified she backed out of her parking stall, stopped, proceeded forward, and then Cunningham appeared. She testified Cunningham was running southbound in front of her pickup which was heading west. She claimed he then stepped off the curb of a grassy area, slipped, and fell under her truck. Golay maintained that while traveling approximately one mile an hour she applied her brakes and stopped before making contact with Cunningham. She testified Cunningham got up, brushed himself off, waved to her, and then ran off. There was no damage to the front of Golay's vehicle and no accident report was ever filed.

Cunningham testified Golay's truck was traveling at a steady speed of twenty miles per hour. He testified that after the truck struck him, he was thrown fifteen to twenty feet in the air, and the truck stopped with its radiator over his knees. He claimed Golay was oblivious to what had happened and drove away.

On April 18, 1991 the jury returned a verdict in favor of Golay. The trial court entered judgment in favor of Golay on April 22, 1991. On May 10, 1991, Cunningham filed a motion for judgment notwithstanding the verdict and a motion for new trial. The trial court determined it had no jurisdiction or power to rule on Cunningham's posttrial motions because they were untimely. Cunningham appeals. We affirm.

ANALYSIS

I. Motions for Judgment Notwithstanding the Verdict and New Trial.

Cunningham argues the trial court erred in dismissing his posttrial motions for judgment notwithstanding the verdict and new trial as untimely. We disagree.

The trial court entered judgment in favor of Golay on April 22, 1991. Cunningham did not file his motions for judgment notwithstanding the verdict and a new trial until May 10, 1991. Motions for judgment notwithstanding the verdict and new trial must be filed within ten days after the verdict, report or decision is filed. Iowa R. Civ. P. 247. The trial court determined it had no jurisdiction or power to rule on Cunningham's posttrial motions because they were untimely. We affirm the trial court's dismissal of Cunningham's posttrial motions as untimely in accordance with Iowa Rule of Civil Procedure 247.

II. **Motion in Limine.**

Cunningham argues the trial court erred in failing to rule on his motion in limine. We disagree.

Cunningham's counsel and Golay's counsel argued the motion in limine to the trial court prior to the jury selection process. During in camera discussions, the trial court advised counsel he was overruling the motion in limine because the evidence could go toward credibility and Cunningham's claims of personal injury. Although Cunningham's trial counsel was aware the court orally overruled his motion, he failed to request a formal ruling on the record.

Cunningham contends the court erred in not making its ruling on the record. We find no prejudicial error occurred and that any complaint as to the lack of a formal record was waived by Cunningham's counsel. In addition, we note that the testimony which formed the substance of defendant's motion in limine came into evidence during the course of the trial without objections by defendant's counsel. We find no error on this issue.

III. **Sufficiency of the Evidence.**

Cunningham argues there was not substantial evidence in the record to support the jury's verdict. We disagree.

We find there was substantial evidence in the record to support the jury's verdict in favor of Golay. The jury found Golay's version of what happened on May 27, 1988, to

be more credible than Cunningham's version. Credibility of the witnesses is for the jury to determine. We find substantial evidence in the record to support the jury's verdict. We affirm the trial court on this issue.

CONCLUSION

We determine any other issues the parties may have raised are either without merit or error was not properly preserved for appeal. After considering all issues presented, we affirm the trial court.

Costs of this appeal are taxed to the appellant.

AFFIRMED.