FILED
MAY 25 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

376

FERN PRICE and THOMAS PRICE, Husband and Wife, Plaintiffs-Appellants, vs. **DAVID H. NINNEMANN, HENRY R. NINNEMANN, and HENRY R. NINNEMANN, INC.,** A Wisconsin Corporation, Defendants-Appellees.	Filed May 25, 1982 2-66 2-66872

Appeal from Buchanan District Court - Peter Van Metre, Judge.

Plaintiffs appeal from judgment upon a verdict for defendants in this personal-injury lawsuit arising from a car-truck collision. Plaintiffs assert the trial court erred by giving instructions on contributory negligence and sudden emergency, and by failing to give plaintiffs' requested instruction stating the doctrine of "last clear chance." Plaintiffs also assert the trial court erred by permitting the defendants to present cross-examination and medical records concerning vaginal bleeding which the injured plaintiff suffered after the accident, but which doctors could not link to the accident. REVERSED AND REMANDED.

Thomas L. Staack and James E. Gritzner of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for plaintiffs-appellants.

Gene Yagla of Lindeman & Yagla, Waterloo, for defendants-appellees.

Heard en banc.

DONIELSON, J.

Plaintiffs appeal from judgment upon a verdict for defendants in this personal-injury lawsuit arising from a car-truck collision. Plaintiffs assert the trial court erred by giving instructions on contributory negligence and sudden emergency, and by failing to give plaintiffs' requested instruction stating the doctrine of "last clear chance." Plaintiffs also assert the trial court erred by permitting the defendants to present cross-examination and medical records concerning vaginal bleeding which the injured plaintiff suffered after the accident, but which doctors could not link to the accident. We reverse and remand.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4.

I.

Defendants' truck attempted to pass plaintiffs' car while both were traveling in the same direction on a two-lane highway. Due to oncoming traffic defendants' truck swerved back into its original lane of travel, whereupon it struck the rear of the plaintiffs' car. Plaintiffs allege that the defendants' truck was traveling too fast, while defendants allege that plaintiffs' car was traveling too slow.

Plaintiff Fern Price alleges that she suffered neck and back injuries as a result of the accident. In her initial answers to defendants' interrogatories she also alleged the accident had caused vaginal bleeding which eventually required a hysterectomy. However, in subsequent amended answers she deleted any reference to vaginal bleeding because doctors could find no evidence that the accident had caused this bleeding.

The case was tried to a jury, which returned a verdict for the defendants. The plaintiffs have appealed from the resulting judgment.

II.

Plaintiffs assert the trial court erred by submitting the issue of contributory negligence on the part of plaintiff Fern Price to the jury and compounded that error by attracting undue attention to the issue. We disagree.

"Generally questions of negligence, contributory negligence and proximate cause are for the jury; it is only in exceptional cases that they may be decided as matters of law." Iowa R. App. P. 14(f)(10). This is not an exceptional case. The trial court has a duty to instruct with reasonable fullness on pleaded issues which have supportive evidence. Wiedenfeld v. Chicago and North Western Transportation Co., 252 N.W.2d 691, 695 (Iowa 1977). We find there was sufficient evidence to support an instruction on contributory negligence and affirm the trial court on this issue.

III.

Plaintiffs assert the trial court erred by submitting the question of sudden emergency to the jury. We agree.

The trial court gave the following instruction on sudden emergency:

> Instruction 16. When one is confronted with a sudden emergency, not brought about by his own fault, and because thereof is required to act upon the impulse of the moment without sufficient time to determine with certainty the best course to pursue, he is not held to the same accuracy of judgment as would be required of him if he had time for deliberation. Under such circumstances, he is required to act only as an ordinarily careful and prudent person would act when suddenly placed in a similar position, and if he so acts he is not liable for damage resulting from his conduct.

In this case the defendant observed plaintiffs' car go over the crest of the hill before him, but could not judge plaintiffs' speed. When defendant crested the hill, he immediately saw plaintiffs' car, which defendant alleges was traveling at a slow speed, only 200 feet in front of him. Defendant immediately attempted to

pass rather than slowing and checking for oncoming traffic. Defendant subsequently saw another truck was approaching from the other direction and swerved back into his original lane of traffic, however, he was unable to stop before hitting plaintiffs' car. Based upon these facts, we are unconvinced that defendant was "confronted with a sudden emergency not brought about by his own fault." In Harris v. Clark, 251 Iowa 807, 815, 103 N.W.2d 215, 220 (1960), the supreme court said: "In the cases denying the benefit of the emergency rule the party claiming the benefit has either had actual knowledge of a dangerous situation or in the exercise of reasonable care could have had such knowledge in time to act in relation thereto." We find that the above statement is applicable to this case and that the trial court committed reversible error by giving an instruction on sudden emergency. We, therefore, reverse and remand for a new trial.

IV.

Plaintiffs next assert that the trial court erred by failing to supplement the standard proximate cause instruction with a "last clear chance" instruction. We disagree. Stewart v. Madison, 278 N.W.2d 284, 293 (Iowa 1979), abolished last clear chance as a separate doctrine and emphasized the fact that last clear chance "adds nothing to the basic concept of proximate cause" and "is almost certain to confuse a jury." Id. Applying the rationale of Stewart v. Madison to this case, we find the trial court did not err by refusing to supplement the proximate cause instruction with an instruction on last clear chance.

V.

Plaintiffs' final allegation is that the trial court erred by allowing defendants during cross-examination to inquire into the circumstances of a claim for vaginal bleeding which had been withdrawn prior to trial because no medical evidence had been found to causally connect that injury with the collision. Defendants assert that plaintiffs failed to preserve error on this issue when they

did not object to the cross-examination during trial. Our examination of the transcript indicates that defendants' assertion is correct; however, even if error had been preserved, we would find defendants' cross-examination was proper due to plaintiff's direct testimony which indicated her belief that the bleeding was related to the accident.

In conclusion, we have found plaintiffs' allegations of error with respect to contributory negligence, last clear chance, and cross-examination to be without merit. However, we reverse and remand due to the trial court's improper submission to the jury of an instruction on sudden emergency.

REVERSED AND REMANDED.