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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROSALIE TORTICILL and WILLIAM E. TORTICILL, Individually and as Co-Administrators of the Estate of DAWN MELLISSA TORTICILL,	)	Filed December 17, 1987
Plaintiffs-Appellants,	)	464
vs.	)	7-466
RODNEY J. BURNETTE, JAMES J. STANGEL and ROBERT STANGEL,	)	86-1368
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Monona County (19934), Dewie J. Gaul, Judge.

Plaintiffs appeal from a district court judgment rejecting plaintiffs' claim for damages arising out of an automobile accident. **AFFIRMED.**

Ronald E. Runge, Sioux City, for plaintiffs-appellants.

Michael P. Jacobs of Kindig, Beebe, Rawlings, Nieland, Probasco and Killinger, Sioux City, for defendant-appellee Rodney J. Burnette.

Gregory G. Barnsten of Smith, Peterson, Beckman and Willson, Council Bluffs, for defendants-appellees James J. Stangel and Robert Stangel.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Plaintiffs, Rosalie and William Torticill, who brought this action individually and as co-administrators of the estate of their daughter, Dawn Melissa Torticill (Missy), appeal the jury verdict rejecting their claim for damages arising out of an automobile accident. They assert the trial court made nine assigned errors, which individually and collectively require a new trial. We address these issues in the order presented.

As an initial matter, however, we note the salient facts in this case. On September 25, 1983, Missy Torticill was fatally injured when the car in which she was riding went into a ditch off a gravel road near Onawa, Iowa. The car, a 1976 Mustang, was owned by her parents, but was being driven at the time of the accident by Rodney Burnette, one of the defendants. Burnette was an inexperienced and unlicensed driver, who had just moved to Iowa from California. It is undisputed the Mustang, just prior to the accident, was proceeding behind a pickup truck being driven by James Stangel and owned by Robert Stangel, the other two defendants. It is also undisputed the truck created a cloud of dust that blocked Burnette's vision.

At trial, the Torticills contended Burnette negligently operated the car and that James Stangel purposely operated the truck so as to create the dust cloud. Following the jury verdict for the defendants, the Torticills brought this appeal.

I. **Testimony of Brian Doren.** The Torticills assert the trial court erred by not allowing Brian Doren, Burnette's brother, to answer the question, "How fast were they [Burnette and Missy] going?" Brian was a passenger in the back seat of the Mustang.

It is well established the admission of opinion evidence rests largely in the discretion of the trial court and will not be disturbed on appeal absent an

abuse of discretion. Doe v. Ray, 251 N.W.2d 496, 501 (Iowa 1977). For a lay witness to render an opinion, he must have observed the facts and have acquired sufficient knowledge to form an opinion that can reasonably be expected to be reliable and trustworthy. Meeker v. City of Clinton, 259 N.W.2d 822, 830 (Iowa 1977).

Just before the accident, the attention of Brian Doren was focused on his portable stereo. He was not paying attention to the speed or direction of the car. Furthermore, the speedometer of the car was broken and Brian, then nine years old, did not have sufficient knowledge to estimate the speed of the car.

Based on the foregoing, we conclude the trial court did not err by not allowing into evidence Brian Doren's opinion as to the speed of the Mustang.

II. Testimony of Patricia Doren. The Torticills assert the trial court erred by allowing Patricia Doren, Brian's mother, to testify as to what Brian told her regarding the accident, when the conversation occurred at the hospital, several hours after the accident. The defendants contend the admission of Brian's statements was proper as they were excited utterances and, therefore, admissible under the Iowa Rule of Evidence 803(2) exception to the hearsay rule.

The testimony of Patricia Doren at issue here was as follows:

> [Brian] had told me that him and his brother had gone to Blencoe with Missy in Missy's car. And I asked him why Rod was driving, and he said that he had asked Missy if he could drive and Missy said yes. So he said that they'd gone to Blencoe and visited with Bryant Mock and had gone back into town.
>
> And he told me that there seemed to be a problem with the car, because him and Missy—he remembered Rodney and Missy talking about the car pulling to the right.
>
> And when he got into the thing of the accident, he said that they started down the dirt road and that there was dust, because he was

> in the back seat. And he said, "I don't know if Missy rolled her window up or not, because the dust was coming in."
>
> And he said that he noticed that Stangel's truck was in front of them and that there was dust being stirred up.
>
> Rod put on his brakes and started into a spin. And he said that at that time Missy started screaming and reached over and grabbed the wheel and said, "Rod, we're going to wreck. And he said after that the car spun around and was—he said he didn't remember what happened after that.

At trial, Rodney Burnette and Brian Doren both testified regarding the car pulling to the right, particularly upon braking, and Missy having grabbed the steering wheel. As such, we conclude the admission of Patricia Doren's testimony was harmless error, if indeed it was error. See, e.g., State v. Hood, 346 N.W.2d 481, 484 (Iowa 1984).

III. Testimony of Officer Knickman. The Torticills assert the trial court erred by not allowing Officer Knickman to give his opinion as to how fast the Mustang was traveling. The Torticills did not, however, preserve this alleged error by an offer of proof, as required by Iowa Rule of Evidence 103(a)(2).

Generally, in the absence of an offer of proof, we lack an adequate record to review the trial court's ruling. State v. Hahn, 259 N.W.2d 753, 759 (Iowa 1977). However, where what is sought to be proven is apparent from the entire record, the issue is preserved for appellate review. Trushcheff v. Abell-Howe Co., 239 N.W.2d 116, 122 (Iowa 1976).

The record in this case indicates Officer Knickman testified the minimum speed at which the Mustang was traveling was fifty-one miles per hour and the speed limit at the location of the accident was fifty-five miles per hour. It is apparent it was the opinion of Officer Knickman the Mustang was traveling faster than fifty-one miles per hour. It is not apparent, however, exactly how much faster than that he thought it was traveling. As such, we lack an adequate record to review the trial court's ruling.

The Torticills also assert the trial court erred by not allowing Officer Knickman to testify regarding rumors his investigation uncovered but could not substantiate. The rumors related to alleged hostilities between Burnette and James Stangel just prior to the accident. The Torticills speculate Burnette was chasing Stangel down the gravel road when the accident occurred.

The trial court excluded Officer Knickman's testimony regarding these rumors as hearsay. We agree. It is clear the Torticills wished to introduce these rumors to prove their truth. The rumors were properly excluded under Iowa Rule of Evidence 802, as no exceptions to the hearsay rule apply.

IV. Testimony of Roy Burdick. The Torticills assert the trial court erred by allowing Roy Burdick, a self-employed mechanic, to give his opinion regarding the condition of the brakes on the Mustang. However, the Torticills did not object to this testimony at trial, as required by Iowa Rule of Evidence 103(a)(1), and cannot raise their objection at this late date.

V. Testimony of Robert Stangel. The Torticills assert the trial court erred by allowing Robert Stangel to give his opinion regarding the safety of the tires on the Mustang. The defendants contend his testimony was properly introduced to rebut the Torticills' claim the tires and brakes on the Mustang would not have caused the accident.

The trial court has considerable discretion in determining what is proper rebuttal evidence. Karr v. Samuelson, 176 N.W.2d 204, 211 (Iowa 1970). The Torticills do not indicate specifically how the trial court allegedly abused its discretion. Our review of the record convinces us the trial court did not abuse its discretion.

The Torticills do not cite any authority for the remainder of their assertions, so we deemed them waived. Iowa R. App. P. 14(a)(3).

AFFIRMED.