FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-438 / 90-1893

DONALD J. WATJE, As Father, Next Friend and Conservator of **JASON PHILLIP WATJE**,

677

Appellant,

vs.

DUANE HOLLANDER and **DAVID HOLLANDER**,

Appellees.

Appeal from the Iowa District Court for Crawford County, Richard J. Vipond, Judge.

Plaintiffs appeal a district court finding defendant's negligence was not a proximate cause of paintiff's injuries. **AFFIRMED.**

Thomas R. Eller of Eller, Brink & Sextro, Denison, for appellant.

Richard C. Schenck and J. C. Salvo of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellees.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

This case arose out of a collision between plaintiff's minor son, Jason, and a motorcycle owned by Duane Hollander and driven by his son, David Hollander. The accident occurred on June 15, 1988. The road surface was dry and conditions were sunny. The motorcycle was in good operating condition.

David saw plaintiff's two sons standing on opposite sides of the street. He slowed his speed from thirty-five miles per hour to fifteen miles per hour. He observed plaintiff's son, Jason, cautiously moving toward the center of the street.

David, driving on the roadway, passed between the two boys at about fifteen miles per hour. He was approximately two feet away from Jason. As Jason attempted to cross the street, he slipped on the loose gravel and fell forward. His forehead hit the foot peg of the motorcycle, resulting in head injuries.

The plaintiff brought this action seeking damages for injuries sustained by Jason and medical expenses incurred. The plaintiff contends David was negligent in failing to keep a proper lookout, failing to have his motorcycle under control, failing to stop within an assured clear distance, and in traveling at an excessive rate of speed. The plaintiff also made claims against Duane Hollander. The case was bifurcated for trial purposes with the trial on the liability issues occurring first.

After trial on the liability issues, the district court found the defendants not liable. To the court's credit, it made separate findings as to each allegation. In separate findings it determined the allegations David failed to keep a proper lookout and failed to keep his motorcycle under control were not supported by the evidence. It concluded David carefully watched Jason and operated his motorcycle accordingly. The court also separately found David was able to control the motorcycle and stop it reasonably promptly.

The court did determine the speed of the motorcycle was excessive. However, in doing so, it concluded the speed was not the cause of the accident. The court determined the accident resulted when Jason fell as the vehicle was passing. On this basis, the trial judge concluded plaintiff failed to prove David's negligence was a proximate cause of plaintiff's damages.

The plaintiff filed a motion to amend and enlarge the district court's findings and conclusions, requesting the district court to make determinations regarding David keeping a proper lookout, his control of his vehicle, the excessive speed of the vehicle, and the distance David kept the vehicle ahead of Jason. The plaintiff essentially sought a determination that David was negligent. The court subsequently overruled the motion to amend.

As this case was tried at law, our review is on assigned errors of law. Iowa R. App. P. 4.

Counsel for appellant strenuously argue the trial court incorrectly applied the law in reaching its conclusions. We disagree.

The critical issue here is whether the trial court's findings of fact on proximate cause is supported by substantial evidence. The trial court found any negligence on David's part was not the proximate cause of Jason's injuries.

> Generally questions of negligence, contributory negligence and proximate cause are for the the jury; it is only in exceptional cases that they may be decided as matters of law.

Iowa R. App. P. 14(f)(10).

Findings of facts in a law action have the effect of a special jury verdict and are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. Grinnell Mut. Reinsurance C. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the trial court's judgment. Id. We are prohibited from weighing the evidence or the credibility of the witnesses. Id.

> A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978).

Evidence is substantial or sufficient when a reasonable mind would accept it as adequate to reach the same findings. Waukon Auto v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 846 (Iowa 1989). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reinsurance Co., 431 N.W.2d at 785.

A finding of negligence does not necessarily establish proximate cause. Blackhawk Bldg. Systems, Ltd. v. Law Firm of Asperlmeier, 428 N.W.2d 288, 290 (Iowa 1988). Proximate cause must be proven separately from the negligence issue. Id.

We find no error in the trial court's application of the appropriate law. The trial court's findings are supported by substantial evidence. We affirm the trial court on all issues.

AFFIRMED.