

IN THE COURT OF APPEALS OF IOWA

HAROLD LEE ADAMS and
H. WAYNE ADAMS,

Appellants,

v.

PAMELA HENRY and
JOHN HENRY,

Appellees.

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Filed January 28, 1977

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2-57707

Appeal from Ringgold District Court - Thomas Bown, Judge

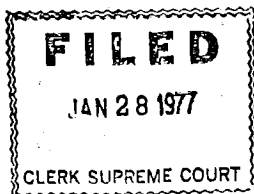
Appeal from a directed verdict in favor of defendants in an action for personal injuries, medical expenses and property damage resulting from an auto accident. Reversed and remanded.

Hansen, Wheatcraft, and McClintock, of Des Moines, for appellants.

Mullin, Mullin, McLaughlin, and Harvey, of Creston, for appellees.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

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CARTER, J.

This is an action for personal injuries, medical expenses and property damage alleged to have been caused by the negligent operation of a motor vehicle. Upon trial of the issues to a jury, the trial court directed a verdict for defendants at the conclusion of plaintiffs' evidence. At this juncture defendants voluntarily dismissed their counterclaim for property damage without prejudice. Judgment for defendants was thereafter entered upon plaintiffs' claims from which plaintiffs appeal. The issues on appeal all relate to the propriety of the trial court's ruling on the motion for directed verdict. We hold said ruling was error and reverse and remand for a new trial.

Plaintiffs are father and son. The son was operating his father's automobile at the time of the collision involved. He makes claim for bodily injury and his father for auto damage and the medical expenses of his son. Defendants are father and daughter. The daughter was operating her father's automobile at the time of the collision with the latter's consent. For convenience, the vehicle operators will be referred to as plaintiff driver and defendant driver.

Viewing the record most favorably to the plaintiffs we believe the jury might have found the following facts. Immediately prior to the collision giving rise to this action plaintiff driver was operating a motor vehicle in a northerly direction on Hayes Street in the City of Mount Ayr. Upon traversing the crest of a hill he encountered the defendant driver operating a motor vehicle in a southerly direction on Hayes Street and approaching him. When plaintiff driver first observed this automobile, defendant driver was already beginning to drive around a parked pickup truck situated in the travelled portion of the south-bound lane of Hayes Street. The relative dimensions of this parked

pickup truck and the southbound lane of traffic required defendant to cross to the left hand side of the center of the street in order to drive around the pickup. In the process of making this maneuver and while the automobile she was operating was still on the left hand side of the center of the street it collided with the automobile operated by the plaintiff driver.

There was evidence offered from which the jury might have found that as a result of the collision plaintiffs suffered damages from personal injuries, resulting medical expense, automobile damage and resulting towing expense.

I. At the outset plaintiffs urge that the trial court erred by not ruling separately on each ground of defendants' motion for directed verdict as required by rule 118, Rules of Civil Procedure. Defendants' motion for directed verdict asserted first, that the evidence was insufficient as a matter of law to generate a jury issue as to any of the several allegations of negligence made against the defendants, and, second, that the evidence conclusively established that the plaintiff driver was guilty of negligence which was a proximate cause of plaintiffs' damages.

As we view the trial court's ruling on the motion it is based entirely upon a determination of the insufficiency of the evidence relating to defendants' negligence. We therefore conclude that the ruling is sufficiently specific to minimally comply with rule 118. See *Dudley v. William Penn College*, 219 N.W.2d 484, 487 (Iowa 1974).

II. Accepting as we do the foregoing limited basis for the trial court's ruling we must determine if it is supported by the record. The principal argument for reversal concerns the alleged violation by the defendant driver of section 321.297, The Code.

At the time of the occurrence with which we are involved this statute provided:

"The operator of a motor vehicle, in cities and towns, shall travel on the right-hand side of the center of the street, unless otherwise provided by law."

Plaintiffs urge in this appeal that a violation of section 321.297 is negligence per se unless a legal excuse for such violation is established. Recent decisions support this contention. See *Golden v. Springer*, 238 N.W.2d 314, 321 (Iowa 1976); *City of Cedar Rapids v. Moses*, 223 N.W.2d 263 (Iowa 1974).

We must conclude that the evidence of the presence of defendant driver's automobile on the left hand side of the center line at the time of the collision was sufficient to require submission to the jury of the issue of her negligence under section 321.297, The Code. We do not hold that plaintiffs have established negligence of the defendant driver as a matter of law but only that a jury, properly instructed as to this alleged statutory violation, could find negligence under the record. Defendants may be entitled upon retrial to an appropriate instruction on legal excuse, a matter which we do not decide but leave for trial court to determine upon the evidence produced at the new trial.

Since our conclusion as to the evidence of this statutory violation requires the granting of a new trial, we need not consider the sufficiency of the evidence as to other acts of negligence alleged by plaintiffs.

III. Defendants argue that the trial court's ruling should be upheld on the basis that the plaintiff driver was guilty of negligence as a matter of law. This contention involves a ground urged in the trial court on the motion for directed verdict

which was not sustained. In such a situation we may consider the legal sufficiency of said ground in determining if the judgment is correct. See *Lattimer v. Frese*, 246 N.W.2d 255, 258 (Iowa 1976); *Adams v. R.S. Bacon Veneer Co.*, 162 N.W.2d 470 (Iowa 1968). We hold, however, that the question of the negligence, if any, on the part of the plaintiff driver also presents an issue of fact for the jury. Accordingly the judgment cannot be sustained on this ground.

For the error discussed in division II of this opinion, the judgment of the trial court is reversed and the case is remanded for a new trial.

REVERSED AND REMANDED.