

IN THE COURT OF APPEALS OF IOWA

KENNETH R. JONES,

Plaintiff-Appellee,

vs.

RUSSELL LEE JONES,

Defendant-Appellant.

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CLERK SUPREME COURT1-27
2-65001

Appeal from Allamakee District Court - L. John Degnan, Judge.

Defendant appeals from judgment for plaintiff in an action for damages arising from a no-contact automobile accident. He alleges that trial court erred 1) in failing to determine that the plaintiff was negligent or contributorily negligent in a manner in which he operated his vehicle and 2) in determining that the defendant was negligent in the operation of his vehicle and that such negligence was the proximate cause of the damage to plaintiff's vehicle. **AFFIRMED.**

John J. Bauercamper of Jacobson, Bristol, Thomson & Bauercamper, Waukon, Iowa, for defendant-appellant.

John W. Pieters of Pieters & Pieters, Waterloo, Iowa, for plaintiff-appellee.

Heard by Donielson, Acting C.J., and Snell, Carter and Johnson, JJ. Considered en banc.

PER CURIAM

Defendant, Russell Jones, appeals from judgment for plaintiff, Kenneth Jones, in an action for damages arising from a no-contact automobile accident. Defendant alleges that trial court erred 1) in failing to determine that the plaintiff was negligent or contributorily negligent in a manner in which he operated his vehicle and 2) in determining that the defendant was negligent in the operation of his vehicle and that such negligence was the proximate cause of the damage to plaintiff's vehicle.¹ We affirm.

The parties, who are first cousins, were approaching each other on a gravel road and met a sharp curve. The plaintiff swerved to the right to avoid a collision and went over an embankment, causing damage to his vehicle. Each testified that the other was over the imaginary center line of the road. On cross-examination, plaintiff gave the impression that he was placing the imaginary center line in the center of the packed-down, travelled portion of the road. He admitted that he "might have been" over the center line of the road if it were measured from the graveled edges.

In its findings of fact, trial court noted that both parties contended the other was in his lane. The court stated that defendant was looking away from the road and that "[t]his testimony was not denied by the defendant." However, this was not made as an explicit finding of fact. The court noted the conflict between the party's opinion as to how the location of the center line should be determined, but did not resolve it. The court concluded that the negligence of defendant was the proximate cause of the accident and that plaintiff was not contributorily negligent. Defendant thereafter filed a motion pursuant to Iowa R. Civ. P. 179(b) contending that the trial court's findings, conclusions, and judgment should be replaced by his proposed version on the grounds that the court's decree was not supported by the evidence and was "insufficient to sustain any findings." Trial court denied defendant's motion and this appeal followed.

I. Scope of Review. Our review of an action tried to the court at law is on assigned error only. Findings of fact in a jury-waived case have the effect of a special verdict and are equivalent to a jury verdict. Iowa R. App. P. 4; Northrup v. Foster, 204 N.W.2d 889, 890 (Iowa 1973). Such findings will not be disturbed on appeal if supported by substantial evidence and justified as a matter of law, even though we might arrive at

¹ The parties stipulated that the damage to plaintiff's vehicle was \$3,387.83.

a different conclusion from the evidence. We will not weigh the evidence or pass on the credibility of witnesses. Thomas Truck & Cast Co. v. Buffalo Cast. & Wheel Corp., 210 N.W.2d 532, 536 (Iowa 1973); Northrup v. Foster, 204 N.W.2d 889, 890-91 (Iowa 1973). The findings of trial court are to be liberally construed and, in case of ambiguity, construed to uphold rather than defeat the judgment. Hammer v. County of Ida, 231 N.W.2d 896, 900 (Iowa 1975).

II. The Parties' Negligence and Proximate Cause of the Accident. Defendant's argument, in its briefest form, is 1) that the evidence conclusively shows plaintiff drove his vehicle over the theoretical center line drawn down the center of the entire graveled portion of the road, 2) that section 321.297(1), The Code 1977, requires a driver to proceed on the right half of the roadway, defined in section 321.1(50) as the "portion of a highway improved, designed, or ordinarily used for vehicular travel," and 3) that violation of section 321.297(1) constitutes negligence per se and bars plaintiff's recovery.

Plaintiff admits that the evidence was sufficient for trial court to find plaintiff violated his duty under section 321.297(1). (emphasis added). He also agrees with defendant's definition of roadway and concedes that violation of section 321.297(1) constitutes negligence per se. He argues, however, that the only issue before this court involves appellate review of trial court's findings based on conflicting evidence.

We agree with plaintiff's assertion that determining the precise boundaries of this particular roadway, thereby its center line, is a factual determination which, based upon conflicting evidence, trial court resolved in plaintiff's favor. Thus, we find no error in trial court's judgment on this issue.

Defendant also alleges that trial court's findings are insufficient to support the conclusion that defendant was negligent and that this negligence was the proximate cause of the damage to plaintiff's vehicle. We disagree. The findings indicate that there was uncontroverted evidence that defendant was looking away from the roadway at the time the two vehicles met. This is sufficient to support a conclusion that defendant was negligent in failing to maintain a proper look-out and that this negligence was the proximate cause of the damage to plaintiff's vehicle. Because we find substantial evidence to support trial court's findings, we affirm the judgment below.

AFFIRMED.