

IN THE COURT OF APPEALS OF IOWA

No. 8-160 / 97-886

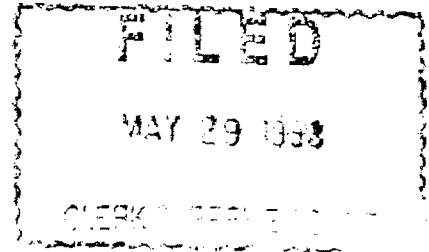
MICHELLE McMains,

Appellant,

vs.

HARRISON COUNTY,

Appellee.



Appeal from the Iowa District Court for Harrison County, Gordon C. Abel,
Judge.

Michelle McMains filed a petition against Harrison County alleging the county was negligent in the proper maintenance of a road upon which she was traveling, causing her car to crash into a ditch after hitting a large pothole. **AFFIRMED.**

Robert Kohorst of Kohorst Law Firm, Harlan, for appellant.

Jacob J. Peters of Peters Law Firm, P.C., Council Bluffs, for appellee.

Heard by Huitink, P.J., Mahan, J., and Peterson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

MAHAN, J.

Michelle McMains appeals the jury's verdict finding her fifty-one percent at fault in her negligence suit against Harrison County ("the County"). She alleges the trial court improperly instructed the jury and tipped the scales in favor of the County. She alleges the trial court should not have instructed the jury on proper lookout, speed, and control. She also contends the trial court should have instructed the jury on the sudden emergency doctrine. We affirm.

McMains turned off of Highway 127 onto a county road. The road was dry except for water at the bottom of potholes. The road was very rough with potholes, chuck holes, and washboarding. McMains successfully drove around several holes, but eventually came upon a series of very deep holes. McMains attempted to steer around these holes, but lost control of her vehicle and went into the ditch, flipping the car over onto its top. It is unclear whether or not she hit the potholes.

McMains filed a petition alleging the county negligently maintained its roads. The jury found McMains was fifty-one percent at fault and denied her any recovery of damages.

I. STANDARD OF REVIEW. We review jury instructions for an abuse of discretion. *State v. Holtz*, 548 N.W.2d 162, 164 (Iowa App. 1996). The trial court has a duty to instruct fully and fairly on the law regarding all issues raised by the evidence. *State v. Liggins*, 557 N.W.2d 263, 267 (Iowa 1996). The court will not find an abuse of discretion unless such discretion was exercised on grounds or for

reasons clearly untenable or to an extent clearly unreasonable. *State v. Selestian*, 515 N.W.2d 356, 358 (Iowa App. 1994). The burden of proving abuse of discretion lies with McMains. *Id.* Any error in jury instructions must be prejudicial to warrant reversal. *Holtz*, 548 N.W.2d at 164.

As long as a requested instruction correctly states the law, has application to the case, and is not stated elsewhere in the instructions, the court must give the requested instruction. We will not grant a reversal on the basis of error in giving or refusing to give a particular instruction unless the action results in prejudice to the defendant.

Foggia v. Des Moines Bowl-O-Matic, Inc., 543 N.W.2d 889, 892 (Iowa 1996).

II. PROPER SPEED, LOOKOUT, AND CONTROL. McMains' brief admits the road was very rough with potholes and chuckholes. Her testimony also admits the same.

When I turned off Highway 127 onto Kelly Lane, there were washboards. The [road was rough]. There were what they call depressions or low areas, potholes, chuckholes, and I was successful in the beginning of avoiding the holes and rough areas, and so I proceeded.

Evidence was also presented McMains was traveling forty to forty-five miles per hour. We find this and other evidence presented at trial warranted the instructions given on proper speed, lookout, and control. The trial court did not abuse its discretion when it instructed the jury on these doctrines.

III. SUDDEN EMERGENCY. A sudden emergency situation is defined as:

- (1) An unforeseen combination of circumstances which calls for immediate action;
- (2) A perplexing contingency or complication of circumstances;

- (3) A sudden or unexpected occasion for action, exigency, pressing necessity.

Mosell v. Estate of Marks, 526 N.W.2d 179, 181 (Iowa App. 1994). This is not a case in which a driver was suddenly confronted with an oncoming car on the wrong side of the road, an unexpected patch of ice, a nonnegligent failure of brakes, or a sudden heart attack. *See id.* at 181, n.2.

Were we to extend the sudden emergency doctrine to cases like the one before us, it could be relied upon in nearly any traffic context to excuse “emergencies” that a reasonably prudent driver must be prepared to meet. We do not believe that excusing the failure to anticipate such ordinary hazards is in keeping with the spirit or purpose of the doctrine.

Weiss v. Bal, 501 N.W.2d 478, 482 (Iowa 1993).

This is not a case for the sudden emergency doctrine. We find the trial court did not abuse its discretion when it refused to instruct the jury on the sudden emergency doctrine.

For these reasons we affirm the decisions of the trial court and affirm the jury’s verdict.

AFFIRMED.