

IN THE COURT OF APPEALS OF IOWA

No. 5-261 / 94-468

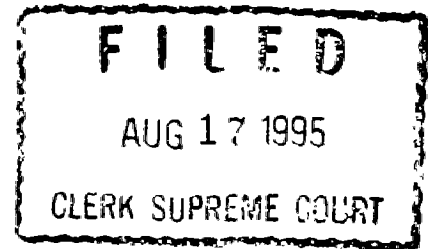
ROSE CONWAY and DAVID CONWAY,

Plaintiffs-Appellants,

vs.

RUEBEN H. STENERSON,

Defendant-Appellee.



Appeal from the Iowa District Court for Linn County, David M. Remley,
Judge.

Plaintiffs appeal the district court's denial of their motion for new trial in their
action against defendant for negligent operation of a motor vehicle. **AFFIRMED.**

Gary L. Robinson and Jeffrey P. Taylor of Klinger, Robinson, McCuskey &
Ford, Cedar Rapids, for appellants.

James P. Craig and Marsha M. Beckelman of Moyer & Bergman, Cedar
Rapids, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

The issue in this appeal is whether the trial court abused its discretion in refusing to award a new trial in a motor vehicle pedestrian accident. We find the trial court did not abuse its discretion and we affirm.

Plaintiff-appellant Rose Conway was crossing the street when she was hit by an automobile owned and operated by defendant-appellee Rueben H. Stenerson. Rose and her husband, plaintiff-appellant David Conway, sued defendant for injuries she claimed to have sustained in the accident. The case was tried to a jury who found Rose to be seventy percent at fault and defendant to be thirty percent at fault in the accident.

Plaintiffs filed a motion for new trial contending the jury verdict was not supported by substantial evidence. The trial court denied the motion and this appeal follows.

We review for an abuse of discretion. In order to show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976).

There was evidence defendant's license was restricted to prescription lenses and he was not wearing them at the time of the accident. Defendant admitted the glasses also affected his ability to maintain a lookout. Defendant was not able to stop or sound his horn when he saw Rose.

There was evidence Rose was crossing a five-lane highway against the light. There was also evidence it was night and she wore dark clothing. There was evidence she saw defendant's car before it reached the intersection and did not get out of its way but rather stepped at the last minute in defendant's lane of travel.

There was substantial evidence in the record from which the jury could find both defendant and Rose were negligent and the negligence of both was a proximate cause of the accident. Questions of negligence and proximate cause are generally for the jury. *Kamerick v. Wal-Mart Stores, Inc.*, 503 N.W.2d 24, 26 (Iowa App. 1993). The trial court did not abuse its discretion in not granting plaintiffs a new trial.

AFFIRMED.