IN THE COURT OF APPEALS OF IOWA

No. 6-445 / 95-994

FILED
AUG 30 1996
CLERK SUPREME COURT

CARY COZAD and **LISA COZAD,**
Appellants,

vs.

KENNETH OWENS Individually and
d/b/a **ABSTRACT PAINTING & DECORATING,**
Appellees.

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith III, Judge.

Plaintiffs appeal the district court judgment for defendant in this negligence action based on a motor vehicle accident. **AFFIRMED.**

Randall J. Shanks and Laura L. Pattermann of Shanks Law Firm, Council Bluffs, for appellants.

John M. French of Kennedy, Holland, DeLacy & Svoboda, Council Bluffs, for appellees.

Considered by Sackett, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by a plaintiff claiming the district court erred in failing to grant his motion for mistrial in this negligence action. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Plaintiff Cary Cozad is employed as a Pottawattamie County deputy sheriff. On April 19, 1993, Cozad was responding to an emergency call in an unmarked vehicle when he attempted to pass a vehicle driven by Kenneth Owens. Owens turned left and Cozad struck Owens' vehicle. Cozad suffered injuries due to the accident.

Cozad and his wife brought the present suit against Owens, claiming Owens was negligent. During opening arguments, defendant's attorney stated no citations or tickets were issued to either party. Cozad objected and asked for a mistrial. This request was denied. Cozad then requested a motion in limine, and this motion was also denied by the court. No questions were asked at trial, however, concerning the issuance of any citations or tickets.

At the trial, there was disagreement among the witnesses as to whether Cozad had activated his emergency lights and siren, and whether Owens had activated his left turn signal. The jury returned a verdict assigning fault 51% to Cozad and 49% to Owens. Cozad now appeals.

Cozad contends the district court erred in overruling his motion for mistrial. He states a conviction for a traffic offense would be inadmissible under Iowa Code

section 321.489, and thus, the fact that a party was not issued a ticket should also be inadmissible. Additionally, Cozad argues the court should have admonished the jury not to consider defense counsel's statement during opening arguments. He asks for a new trial due to these alleged errors.

The scope of review of a trial court's ruling on objections made during opening statements is for abuse of discretion. *Carter v. Wiese Corp.*, 360 N.W.2d 122, 131 (Iowa App. 1984). We find no abuse of discretion under the facts of this case. The statement that no tickets were issued does not prejudice plaintiffs. No evidence was offered on this issue. Although the court refused to admonish the jury not to consider the statement, the jury instructions did specify that statements, arguments, questions and comments by the lawyers were not to be considered evidence. We conclude plaintiffs are not entitled to a new trial based on this statement during opening arguments.

We affirm the decision of the district court. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.