



IN THE COURT OF APPEALS OF IOWA

MARILYN YVONNE BROWN,	)	
Appellant,	)	Filed February 14, 1977
vs.	)	
LAWRENCE OLIVER PICKRELL,	)	23
SCHILDBERG CONSTRUCTION, INC.,	)	<u>2-57616</u>
Appellee.	)	

Appeal from Adair District Court - James E. Hughes, Judge.

Appellant appeals jury verdict for defendant-appellee in personal injury suit brought to recover damages in auto and truck collision - Reversed and remanded for new trial.

Richard O. McConville, of Creston, for appellant.

L. P. Van Werden, of Osceola, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

OXBERGER, J.

Marilyn Yvonne Brown brought a law action to recover for personal injuries sustained in a collision of her car with defendant Lawrence Pickrell's truck. Trial to a jury resulted in a verdict for Pickrell. We reverse.

This appeal presents one issue for resolution: Was the trial court correct in submitting to the jury as a charge of negligence against the plaintiff Brown the alleged violation of the assured-clear-distance rule set out in § 321.285, The Code? We hold it was error to submit this charge of negligence under the situation presented by the evidence.

On February 12, 1972 Brown was driving her car north on a gravel county road with the directional right-of-way. After cresting a hill 500 feet south of an intersection, her car collided with Pickrell's truck which was stopped within the intersection. Pickrell's truck traveling west was subject to a stop sign at the intersection. He received a traffic citation and pled guilty to failure to yield the right of way.

The court in *Coppola v. Jameson*, 200 N.W.2d 877, 880 (Iowa 1972) adopted the following test for the application of the assured-clear-distance rule:

"We agree with the Ohio court that a jury question on the issue exists where there is substantial evidence:

'(1) That the object with which the operator collided was located ahead of him in his lane of travel;

(2) That such object was reasonably discernible; and

(3) That the object was (a) static or stationary, (b) moving ahead of him in the same direction as such operator, or (c) came into his lane of travel within the assured clear distance ahead at a point sufficiently distant ahead of him to have made it possible to bring his vehicle to a stop and avoid a collision.' *Cerny v. Domer*, 13 Ohio St.2d 117, 123-124, 235 N.E.2d 132, 137 (1968)."

Subsequently *Vanderheiden v. Clearfield Truck Rentals, Inc.*, 210 N.W.2d 527, 531 (Iowa 1973) noted that *Coppola* had approved

the following authority:

"The assured-clear-distance rule is not applied where there are extraordinary or disconcerting circumstances affecting the operator's judgment and actions, as where the motorist is confronted with a sudden emergency not of his making or where the motorist encounters a dangerous situation which in the exercise of reasonable care he had no reason to expect. So, a sudden and unexpected entry of a person, motor vehicle, or other object into the path of travel will take the case out of the assured-clear-distance statute or rule. * * * " (Footnotes omitted) 60A C.J.S. *Motor Vehicles* § 293(2)b at page 208-209. Cited in Coppola, 200 N.W. 2d at 880.

The decision regarding the applicability or inapplicability of the rule or its exception turns upon the point in time when the assured-clear-distance is constricted. *Nolte v. Case*, 221 N.W.2d 741, 745 (Iowa 1974); *Coppola*, 200 N.W.2d at 880.

The issue is not resolved solely by determining whether *Pickrell's* truck was within *Brown's* directional line of travel at a point in time sufficiently in front of *Brown* to have made it possible for her in the exercise of ordinary care, to avoid the collision. *Brown* had the right to assume as she approached the intersection that *Pickrell* would observe the stop sign. " . . . such driver having the right to assume, however that all persons using said highway will observe the law." Section 321.85, The Code. She had the duty to try to stop when she saw *Pickrell's* vehicle was not moving through the intersection but was, in fact, stopped within her path.

However, this case is not a situation where a vehicle has become disabled and has been stationary for a sufficient time to give notice to the approaching vehicle of its disabled status.

Pickrell testified as follows:

"Well I pulled up to the stop sign . . . looked . . . an' I never saw . . . anything from either direction . . . I started to move forward . . . I looked south an' I still didn't see anything an' I glanced back north . . .

I looked back south . . . an' there was a red Ford (Brown) about . . . oh . . . she was . . . over the crown of the hill . . . a ways . . . I saw I wasn't to the center of the road yet I knew I couldn't . . . never clear the intersection . . . I didn't want 'em runnin' under the truck an' I thought . . . well . . . I just automatically stopped . . . I didn't have time to get in reverse to back up . . . an' by the time I got stopped I was about half way across the . . . I'm afraid I was . . . trying to get stopped an' get in reverse but I never got in reverse." R 16-17, 19.

By his testimony Pickrell did not have time after he stopped his truck "to get it in reverse to back up." Under the Statute Brown had the right to assume that once the crossing vehicle started traversing the intersection he would continue moving and would not stop abruptly. Considering Brown's right to assume Pickrell's lawful conduct, we do not believe the length of time that the Pickrell vehicle was stationary within Brown's lane of travel was sufficient time to apply the assured-clear-distance rule.

Reversed and remanded for a new trial.