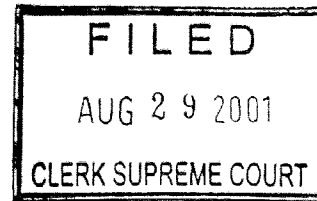


IN THE COURT OF APPEALS OF IOWA

No. 1-482 / 00-1889
Filed August 29, 2001



KELLY BARNHART, f/k/a KELLY HAWXBY,
Plaintiff-Appellee,

vs.

IAN KOENIG,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Linda R. Reade,
Judge.

Ian Koenig appeals the district court's ruling granting the plaintiff's motion
for new trial. **AFFIRMED.**

Steven T. Durick and Joseph M. Barron of Peddicord, Wharton, Thune
and Spencer, P.C., Des Moines, for appellant.

Thomas S. Reavely and Marc T. Beltrame of Whitfield & Eddy, P.L.C.,
Des Moines, for appellee.

Considered by Hayden, P.J., Habhab, and C. Peterson, S.J.*

*Senior judges assigned by order pursuant to Iowa Code section 602.9206

(1999).

HAYDEN, S.J.

Ian Koenig (Koenig) appeals from the district court's ruling granting plaintiff's motion for new trial. The court determined the verdict was not supported by sufficient evidence. We affirm.

On July 10, 1997 both parties were driving their respective automobiles north on Fleur Drive in Des Moines, Polk County, Iowa. They were both stopped at a stop light at the intersection of Bell Avenue and Fleur Drive. Koenig was in the inside, left, through lane. Barnhart was in the right north-bound through traffic lane. At this point Fleur Drive intersects with Bell Avenue. There is a left (west) turn lane onto Bell Avenue and also a right (east) turn lane onto Bell Avenue.

While the traffic light was still red for both parties Koenig attempted to make a right turn in front of Barnhart's vehicle. When the light turned green Barnhart commenced driving forward and ran into the right rear passenger door of Koenig's vehicle.

Koenig apologized to Barnhart at the scene and indicated to her and the police officer he had begun to move his vehicle while the light was still red. He acknowledged making an improper turn. He made like admissions at the trial.

In jury instruction number 9, the trial court instructed the jury, "Fault means one or more acts or omissions towards the person of another which constitutes negligence."

The court's instruction number 11 provided:

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under [the] circumstances

or failing to do something a reasonably careful person would do under similar circumstances.

The court's jury instruction number 15 stated:

The driver of a vehicle intending to turn right at an intersection shall make both the approach for a right turn and the turn as close as possible to the right-hand curb or edge of the road.

A violation of this law is negligence.

On a special verdict form the jury found Ian Koenig was not at fault, and did not answer any further questions on the form.

In ruling on Barnhart's (plaintiff's) motion for new trial the trial court held:

Plaintiff's Motion for New Trial is sustained because the verdict is not supported by sufficient evidence and fails to effectuate substantial justice between the parties. It was not disputed that defendant was negligent and the evidence was that defendant was at fault to some degree. Given that, the jury could not have fairly answered that defendant was not at fault in the accident. The Court surmises that the jury did not think defendant's negligence was the cause of plaintiff's alleged damages, but the fact is the jury did not so indicate on the verdict form.

(Citations omitted).

I. Standard of Review

Appellate review of trial court's grant of new trial is for abuse of discretion.

Gamerding v. Schaefer, 603 N.W.2d 590, 592 (Iowa 1999).

II. Abuse of Discretion

We first look to Iowa Rule of Appellate Procedure 14(f)(3):

In ruling upon motions for new trial the trial court has a broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties.

Also, rule 14(f)(4) provides, "The court is slower to interfere with the grant of a new trial than with its denial."

In the case of *Vojak v. Jensen*, 161 N.W.2d 100, 105-06 (Iowa 1968) the Iowa Supreme Court held "the granting of a new trial is largely discretionary, and an order either granting or refusing one will be set aside only upon a clear showing of abuse of discretion."

It appears the appellate court is more reluctant to interfere with the granting of a new trial than with its refusal. This was recognized in *Kiner v. Reliance Ins. Co.*, 463 N.W.2d 9, 13 (Iowa 1990).

We are more reluctant to interfere with the grant of a new trial than its refusal, Iowa R. App. P. 14(f)(4). Furthermore, we will not find an abuse of discretion unless it is shown that the trial court's discretion was exercised on grounds clearly untenable or to an extent clearly unreasonable.

Id. (citation omitted).

In the appeal before us, we determine the trial court's discretion was exercised on proper grounds and within a reasonable extent. The trial court did not abuse its discretion in granting plaintiff Bamhart's motion for new trial. We affirm.

AFFIRMED.