

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**PATRICIA ANNE JULIUS AND THE OHIO
CASUALTY INSURANCE CO.,**

Filed April 26, 1983

Plaintiffs-Appellants,

vs.

2-4862-68251**DAVID MARTIN HINDAL,**

Defendant-appellee.

Appeal from Polk District Court, A. M. Critelli, Judge.

Plaintiffs appeal from the judgment entered on a jury verdict for defendant in this personal injury tort case arising from an intersection accident. REVERSED AND REMANDED.

Paul A. Zoss of Myers, Knox & Hart, Des Moines, for plaintiffs-appellants.

Jack W. Rogers of Putnam, Putnam & Rogers, Des Moines, for defendant-appellee.

Considered en banc.

OXBERGER, C.J.

Plaintiffs appeal from the judgment entered on a jury verdict for defendant in this personal injury tort case arising from an intersection accident. The primary issue in this appeal concerns the status of contributory negligence in Iowa. Plaintiffs object to the instruction given to the jury that plaintiff Julius's alleged contributory negligence would, if established, bar recovery.

The common law of Iowa was changed to replace the doctrine of contributory negligence with the doctrine of comparative negligence by Goetzman v. Wichern, 327 N.W.2d 742 (Iowa 1982). Under this new doctrine, contributory negligence does not bar recovery. Instead, it reduces it in the proportion that plaintiffs' negligence bears to the total negligence which was the cause of the damages.

At the time the case at bar was tried, Goetzman had not yet been decided. However, the doctrine of comparative negligence was expressly made retroactively applicable.

The other courts that have adopted comparative negligence have all made the doctrine effective to pending cases to some extent... We conclude that the doctrine shall apply to (1) the present case, (2) all cases tried or retried after the date of filing of this opinion, and (3) all pending cases, including appeals, in which the issue has been preserved.

Goetzman v. Wichern, at 754.

Defendant argues that plaintiffs' objection to the jury instruction on contributory negligence was not sufficiently specific to preserve the issue. We do not agree. Objections to jury instructions must be specific enough to alert the trial court to the basis of the complaint. See Dutcher v. Lewis, 221 N.W.2d 755, 759 (Iowa 1974). As the Supreme Court pointed out in Goetzman, an objection to a jury instruction on contributory negligence which contends that the doctrine of

comparative negligence ought to be substituted is "not made in a vacuum. The question whether Iowa should adopt the doctrine of comparative negligence was addressed in two cases decided by this court in the two years before the present case was tried. Because the question was not settled by those decisions, it is reasonable to believe the bench and bar were aware the question was still viable. . . [I]t is unlikely a trial court would not know what a lawyer meant in advocating substitution of comparative negligence for contributory negligence as a statement of the "proper" law." (citations omitted) Id. at 745.

Accordingly, we reverse and remand with instructions that a jury instruction on comparative negligence be given.

REVERSED AND REMANDED.