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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

L. E. SHACKELFORD,	)	
Plaintiff-Appellant,	)	Filed September 20, 1979
vs.	)	
THE STATE OF IOWA,	)	166
Defendant-Appellee.	)	2-62476

Appeal from Muscatine District Court - R. K. Stohr, Judge.

Plaintiff appeals from judgment in favor of defendant in personal injury case. Affirmed.

David W. Newell, Muscatine, for appellant.

Robert W. Goodwin, Special Assistant Attorney General, for appellee.

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

DONIELSON, J.

Plaintiff appeals from judgment in favor of defendant in personal injury case that arose when plaintiff's truck struck a drainage structure in the median of an interstate highway. Plaintiff asserts trial court erred in finding the State was not negligent because it followed standard engineering specifications in designing and constructing the drainage structure, rather than requiring compliance with the proper standard of providing a reasonably safe highway, and that some of the trial court's findings of fact were not supported by substantial evidence. We affirm.

I. The issue of negligence is ordinarily for the trier of fact. Only in exceptional cases may the issue be decided as a matter of law. The trial court's fact-findings in a case tried to the court at law have the force of a jury verdict. On appeal we view the evidence in its light most favorable to the judgment and construe the court's findings liberally to support the result. We need only consider evidence favorable to the successful party, even if it is contradicted by other evidence. Koehler v. State, 263 N.W.2d 760, 761 (Iowa 1978); Hunt v. State, 252 N.W.2d 715, 717 (Iowa 1977); Ehlinger v. State, 237 N.W.2d 784, 781 (Iowa 1976); Iowa R. App. P. 14(f)(1). We are not, however, precluded from inquiry into whether the trial court applied an erroneous rule of law that materially affected its decision. State Sur. Co. v. Lensing, 249 N.W.2d 608, 610-11 (Iowa 1977); Farmers Ins. Group v. Merryweather, 214 N.W.2d 184, 186-87 (Iowa 1974); Houlahan v. Brockmeir, 258 Iowa 1197, 1204, 141 N.W.2d 545, 549 (1966), supplemented, 258 Iowa 1205, 141 N.W.2d 924 (1966); Werthman v. Catholic Order of Foresters, 257 Iowa 483, 491, 133 N.W.2d 104, 109 (1965).

II. The proper standard of care in tort cases involving design and construction of highways requires that the State provide reasonable safety for the traveling public. Lewis v. State, 256 N.W.2d 181, 195 (Iowa 1977) (quoting State v. Webster, 88 Nev. 690, 693-94, 504 P.2d 1316, 1318-19 (1972)). The issue raised by plaintiff is whether the trial court erred in finding that the State was not negligent because it followed standard engineering specifications in designing and constructing the drainage structure, rather than requiring compliance with the standard of providing reasonable safety for the traveling public. We find no basis for plaintiff's argument and hold that the trial court used the proper standard of due care in reaching its decision.

The trial court's decision, taken as a whole, indicates it applied a standard of due care requiring that the State provide reasonably safe highways. In its decision, the trial court stated:

> [A] duty is imposed upon [the State] to construct the drains and viaducts according to standards of reasonable safety. . . .
> . . . [The State] must provide safe conditions for travel in the usual and ordinary modes of travel. . . .
> . . . .
> In cases dealing with similar situations, injured persons produce standards . . . which set forth the rules and regulations adopted by the governmental agencies. Violations of these standards are evidence of negligence. It could also be shown that the adopted standards were not adequate, and this would show negligence, even though the standards had been complied with.
> The court would find that the design and condition of the drainage structure that existed in 1973 at the time of the accident, met the reasonable standards of engineering procedures and provided adequate safety for the motoring public.

Although there is language in the trial court's conclusions and its ruling on plaintiff's motion for a new trial indicating a reliance on engineering standards, such language does not establish that the trial court applied the wrong standard of due care. Applying the reasonable highway safety standard, the trial court was compelled to determine the due care required in this instance. Both parties sought to establish their respective notions regarding due care through introduction or refutation of engineering standards existing at the time of construction of the drainage structure and at the time of the accident. The engineering standards were relevant to the determination of a standard providing for reasonable highway safety. Reference to them in the trial court's findings and conclusions does not establish that the trial court used the engineering standards as presumptively reasonable standards of due care but only indicates their use as probative evidence of the appropriate standard. The trial court applied the proper standard of due care, requiring reasonable highway safety, in determing whether the State breached that duty.

III. Plaintiff contends that certain findings of fact made and relied on by the trial court are not supported by substantial evidence. Specifically, he challenges the following findings: That the State's design followed federally-approved specifications; that the bars of the drainage structure bent but did not break; and that the structure allowed plaintiff's vehicle to pass over it and thus served its intended purpose. We find substantial evidence in the record to support these findings and the decision reached by the court.

The median drainage structure not only followed federally-approved design standards, it surpassed them. The State added bars across the structure's opening, enhancing its safety and in furtherance of its purpose--allowing a vehicle to traverse the median drainage structure without a sudden, abrupt stop. Thus, if there is any error in the finding's language, plaintiff was not prejudiced by it. Denniston & Partridge Co. v. Mingus, 179 N.W.2d 748, 755 (Iowa 1970); Sands v. Iowa Mut. Ins. Co. of DeWitt, 244 Iowa 16, 18, 55 N.W.2d 572, 573 (1952).

We find substantial evidence in the record supporting the finding that the bars covering the opening of the structure bent but did not break. It is true that at least one bar was dislodged from its setting in the pipe apron. We agree with plaintiff, however, that it is immaterial whether the bars were bent or broken since the determining issue is whether the design fulfilled its purpose and thereby provided reasonable highway safety for the traveling public. Even assuming the finding was not supported by substantial evidence, plaintiff suffered no prejudice. Iowa Mut. Ins. Co. v. Combes, 257 Iowa 135, 139-40, 131 N.W.2d 751, 752-53 (1952).

Plaintiff also controverts the trial court's finding that the structure allowed plaintiff's vehicle to pass over it and thus served its intended purpose. We disagree as there is substantial evidence in the record supporting this finding. The intended purpose of the structure was to allow a vehicle to traverse it without an abrupt stop that would unreasonably endanger persons or property, and thereby provide reasonably safe conditions for the traveling public. This purpose did not extend to preventing losses of whatever nature in every circumstance. The structure allowed plaintiff's vehicle to pass over it and travel for 100 to 150 feet before tipping over. A sudden, abrupt stop of plaintiff's vehicle, which could have resulted in far greater damage to himself and his property, was averted. Considering along with the other evidence the weight (73,000 pounds) and length (approximately 55 feet) of plaintiff's truck, the trial court's finding that the structure fulfilled its intended purpose and provided adequate safety for the motoring public was correct and supported by substantial evidence. See Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (1978); Ertl Co. v. Lange Plastic Co., 158 N.W.2d 93, 95 (Iowa 1968).

We affirm the judgment in favor of defendant.

AFFIRMED.

Oxberger, C. J., concurs specially.

OXBERGER, C.J. (specially concurring)

I concur with the majority's holding that the trial court applied the reasonable safety test and did not place improper reliance on the professional engineering standards. I believe, however, the focus should not have been on the issue whether the professional standards met the reasonable safety test. The State, by installing the one inch horizontal safety bars on the culvert openings, had rejected those professional standards as inadequate. By installing the additional safety bars the State raised its duty from merely providing safe highways to performing the safety measures it initiated with due care. One who undertakes an affirmative act has the duty to perform it with ordinary and reasonable care. See W. Prosser, The Law of Torts § 56 (4th ed. 1971). Thus, the State had the duty to complete the safety measures with ordinary and reasonable care. I believe a jury question was present however. I would affirm the trial court because the plaintiff failed to plead the higher standard of care assumed by the State.