IN THE COURT OF APPEALS OF IOWA

FILED
FEB 28 1996
CLERK SUPREME COURT

No. 6-028 / 95-0476

DONNA KAIN,

Appellee,

vs.

CARROLL VEITCH,

Appellant.

Appeal from the Iowa District Court for Kossuth County, Joseph J. Straub, Judge.

Carroll Veitch appeals a district court ruling granting Donna Kain's motion for new trial in Kain's action for damages for injuries incurred in an automobile accident.

AFFIRMED.

Patrick J. McNulty and Kevin W. Techau of Grefe & Sidney, P.L.C., Des Moines, and Redge O. Berg of Berg and Howe, Spencer, for appellant.

Eldon J. Winkel, Algona, for appellee.

Considered by Habhab, P.J., Huitink, J., and Peterson, S.J.*

*Senior judge from the first judicial district serving on this court by order of the Iowa Supreme Court.

HUITINK, J.

Carroll Veitch appeals a district court ruling granting plaintiff Donna Kain's motion for a new trial. We affirm.

Kain and Veitch were involved in an automobile collision at a four-way stoplight intersection in Algona on May 17, 1993. Kain filed a petition for personal injury and property damages alleging Veitch was negligent in failing to maintain a proper lookout and failing to stop for a red light. Veitch counterclaimed that Kain was negligent in failing to maintain a proper lookout, failure to obey a traffic control signal, and failing to maintain control of her vehicle.

At trial Veitch testified he was traveling thirty miles per hour northbound on highway 169 and noticed a green traffic signal when he was about seventy-five feet from the intersection. He then saw Kain's vehicle entering the intersection but was unable to avoid the collision. He stated that from the time he saw Kain's automobile until the time of the collision, he focused all of his attention on Kain rather than on the status of the traffic signal.

Kain also testified she had a green light at the time of the accident. She stated that when she saw the light turn green, she looked both ways approximately three to four car lengths before entering the intersection. As she entered the intersection at about five miles per hour, she collided with Veitch's vehicle. She also testified that if

she had looked further than four car lengths each way, she would have seen Veitch's car before she entered the intersection.

The police officer investigating the accident testified the traffic lights at the intersection were in working order and that both parties could not have had a green light at the same time. He also indicated the topography near the intersection was flat and the view was not obstructed. There were no eyewitnesses to the accident.

The jury returned special verdict forms finding neither driver was at fault. The district court entered judgment on the verdict, and Kain subsequently filed a motion for a new trial. She alleged the jury's verdict was not supported by the evidence and that it should have found, at a minimum, Veitch failed to maintain a proper lookout. The district court granted Kain's motion, concluding the jury's determination neither driver was at fault was contradicted by the evidence. Veitch appeals.

Our review is for correction of errors of law. Iowa R. App. P. 4. A trial court has broad but not unlimited discretion in determining whether a verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3). We review the district court's decision to grant a new trial for an abuse of discretion. *Winchester v. Strottman*, 535 N.W.2d 480, 481 (Iowa App. 1995). We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4).

Generally, questions of negligence and proximate cause are for a jury, and it is only in exceptional cases that they may be decided as a matter of law. Iowa R. App. P.

14(f)(10); *Surgical Consultants, P.C. v. Ball*, 447 N.W.2d 676, 678 (Iowa App 1989). When, however, a special finding of the jury is not supported by the evidence, a new trial must be granted. *Cowan v. Flannery*, 461 N.W.2d 155, 158 (Iowa 1990).

The jury returned a special verdict finding neither party was negligent. This verdict essentially required the jury to conclude both parties entered the intersection on a green light when such simultaneous green signals would be impossible. Moreover, the parties' testimony suggests that neither maintained a proper lookout before proceeding into the intersection.

Based on the evidence at trial, one or both parties must have been negligent for the resulting collision to occur. Had the jury found the parties were negligent but that their negligence was not a proximate cause of the damages incurred, a new trial would not have been in order. Here, however, the jury's determination was directly contradicted by the evidence. The district court correctly granted Kain's motion for a new trial.

AFFIRMED.