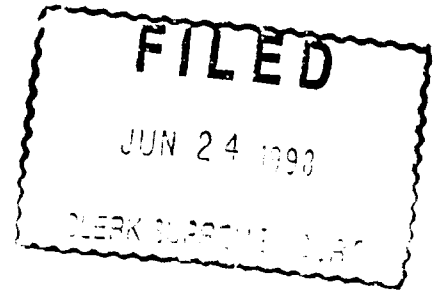


IN THE COURT OF APPEALS OF IOWA

No. 8-188 / 97-0075
Filed June 24, 1998



PATRICIA A. RAUSENBERGER,
Appellant,

vs.

CHRISTINE SCHUTTE,
Appellee.

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge.

The plaintiff appeals a district court judgment, following a jury trial, denying her claims for damages from the defendant resulting from a personal injury accident.

REVERSED AND REMANDED.

Richard W. Farwell and Christopher L. Farwell of Farwell & Bruhn, Clinton,
for appellant.

John D. Stonebraker of McDonald, Stonebraker & Cepican, P.C., Davenport,
for appellee.

Heard by Cady, C.J., and Vogel and Mahan, JJ., but decided en banc.

CADY, C.J.

Patricia Rausenberger appeals the district court judgment following a jury trial denying her claim for damages from an automobile accident. Rausenberger challenges the district court's use of the legal excuse and sudden emergency jury instructions and the denial of her motion for a new trial. We reverse the district court.

The facts giving rise to this case resulted from a two car accident on the downward slope of a steep hill. The accident occurred on a street consisting of four lanes of traffic, two in the easterly direction and two in the westerly direction. The posted speed limit was thirty-five miles per hour. At the time of the accident, the roads were icy due to freezing drizzle. Salt or sand had not been applied to the roads.

Rausenberger approached the top of the hill heading east. As she reached the top of the hill, she noticed five to seven vehicles, including police cars at the bottom of the hill. She tapped her brakes and angled her car toward the curb to stop as she descended the hill.

Christine Schutte was also traveling east on the same road, some distance behind Rausenberger. She was in the center lane, driving approximately fifteen miles per hour, as she approached the top of the same hill. As she crested the hill, she observed another car traveling in the west bound lane. Schutte also observed Rausenberger's car, as well as another car stopped on the side of the road. As Schutte proceeded down the hill she applied the brakes, but was unable to stop. She slid into Rausenberger's vehicle.

Rausenberger subsequently filed an action against Schutte for damages resulting from the accident. She alleged Schutte was negligent in failing to maintain control, failing to stop within an assured clear distance, failing to maintain a proper lookout, and traveling too fast for the conditions. Schutte relied on a defense of sudden emergency and legal excuse. The jury returned a verdict in Schutte's favor.

On appeal Rausenberger contends the district court erred by: (1) submitting jury instructions on legal excuse and sudden emergency; (2) failing to give instructions which would provide the jury a full and fair understanding of the issues and legal standards; (3) submitting instructions which unduly emphasized legal excuse and sudden emergency; and (4) denying her motion for a new trial.

I. Sudden Emergency

We review objections to jury instructions for errors at law. *See Grefe & Sidney v. Watters*, 525 N.W.2d 821, 824 (Iowa 1994); Iowa R. App. P. 4. Jury instructions are designed to explain the applicable law to jurors so the law may be applied to the facts proven at trial. *See Mosell v. Estate of Marks*, 526 N.W.2d 179, 182 (Iowa App. 1994). Submission of legal issues to the jury that lack support in the evidence is error. *Id.* Conversely, failure to submit issues supported by substantial evidence is error. *Id.* The party relying upon the doctrine has the burden of proving the existence of a sudden emergency. *Bannon v. Pfiffner*, 333 N.W.2d 464, 469 (Iowa 1983). In determining whether the issue of legal excuse was properly submitted to the jury, we construe the evidence in a light most favorable to the party asserting the defense. *See Jones v. Blair*, 387 N.W.2d 349, 352 (Iowa 1986).

A sudden emergency occurs when there exists:

- (1) an unforeseen combination of circumstances which calls for immediate action;
- (2) a perplexing contingency or complication of circumstances;
- (3) a sudden or unexpected occasion for action, exigency, pressing necessity.

Weiss v. Bal, 501 N.W.2d 478, 481 (Iowa 1993). A defendant's failure to obey statutory law when confronted with an emergency not of his or her own making is permitted by the doctrine of legal excuse. *Id.* at 480. Two approaches to the application of the sudden emergency doctrine have been identified when a driver of a vehicle encounters icy roads. They are:

In one situation the icy condition is general, and the driver must be taken as being aware of it. If such a driver proceeds in normal fashion notwithstanding the ice and eventually slides on a patch of it, he cannot set up the icy condition as an "emergency." An emergency requires "an unforeseen combination of circumstances" but the element of unforeseeability is missing.

In the other situation, although the weather may be inclement, ice has not formed so far as the driver reasonably observes. He proceeds in accordance with conditions as they appear. Suddenly he encounters an unanticipated patch of ice and slides. Normally in this situation the driver may rightly claim that the decision on whether the ice was reasonably foreseeable is for the jury to make.

Bannon, 333 N.W.2d at 469-70 (citations omitted); *see also Jones*, 387 N.W.2d at 352.

The sudden emergency doctrine has also been applied or considered in a variety of other circumstances. *See, e.g., Weiss*, 501 N.W.2d at 481 (holding in action on behalf of pedestrian struck by car in high school parking lot, sudden emergency instruction was inappropriate); *Guzman v. Des Moines Hotel Partners*,

Ltd. Partnership, 489 N.W.2d 7, 12 (Iowa 1992) (providing trial court did not abuse its discretion in submitting sudden emergency instructions where sprinkler system malfunctioned causing water to spray onto the road); *Johnson v. Junkmann*, 395 N.W.2d 862, 865 (Iowa 1986) (holding sudden emergency did not excuse southbound driver who collided with northbound driver after southbound driver was struck from rear while waiting to turn left); *Jones*, 387 N.W.2d at 352 (holding where defendant driver was faced with the unexpected maneuver of plaintiffs' car in turning to the right and then making a left turn off the highway, coupled with the icy conditions, submission of sudden emergency instruction was proper); *Bannon*, 333 N.W.2d at 470 (holding it was for jury to determine whether defendant's decedent was confronted with a sudden emergency when she encountered an unanticipated patch of ice, causing her eastbound vehicle to slide over into westbound lane and collide head-on with vehicle of plaintiff's decedent); *Schmitt v. Clayton County*, 284 N.W.2d 186, 190 (Iowa 1979) (stating in action against county for alleged negligent failure to place adequate warning signs on dangerous curve resulting in automobile accident, it was not abuse of discretion to instruct jury on legal excuse of sudden emergency); *Hoth v. Clayton County*, 269 N.W.2d 133, 135 (Iowa 1978) (holding where snowplow operator did not see automobile prior to collision and was not aware of its presence until impact, snowplow operator was not confronted with a sudden emergency); *Larsen v. Johannsen*, 220 N.W.2d 872, 874 (Iowa 1974) (providing emergency instruction properly submitted where motorist coming over a rise encounters an individual backing out of driveway onto the highway); *Boge v. Jack*

Link Truck Line, Inc., 200 N.W.2d 544, 548 (Iowa 1972) (holding sudden emergency instruction inapplicable after truck struck bridge because defendant knew of the dangerous icy conditions in ample time to avoid accident); *Rice v. McDonald*, 258 Iowa 372, 381, 138 N.W.2d 889, 894 (1965) (holding evidence justified submission of sudden emergency instruction where tractor came over a hill to encounter stationary vehicles ahead); *Pinckney v. Watkinson*, 254 Iowa 144, 147, 116 N.W.2d 258, 260 (1962) (stating sudden emergency instruction was appropriate where vehicle coming over a hill encountered a stopped vehicle on the road and another vehicle was approaching in the oncoming lane of traffic); *Mosell*, 526 N.W.2d at 181-82 (holding trial court erred by failing to instruct on sudden emergency doctrine when eastbound motorist struck westbound motorist after sliding across center line in attempt to avoid hitting deer that sprang in front of his car); *Reener v. Hill & Williams Bros., Inc.*, 502 N.W.2d 26, 29 (Iowa App. 1993) (concluding substantial evidence under Tennessee law justified submission of instructions on sudden emergency where accident was caused by a couch that had fallen from the vehicle carrying it); *Miller v. Eichhorn*, 426 N.W.2d 641, 645 (Iowa App. 1988) (holding defendant driver's backing into road from his driveway could raise issue of sudden emergency, but failure to give sudden emergency instruction did not prejudice plaintiff). We must determine if the icy road conditions in this case, together with the other circumstances faced by Schutte, justified application of the doctrine.

Schutte claims the emergency she faced came from a combination of: (1) the untreated icy roads; (2) the multi-car accident at the bottom of the hill interfering with

her progress; (3) the presence of two vehicles, including Rausenberger's car, stopped in the curb lane; (4) an oncoming car; and (5) the lack of visibility because of the hill where the accident took place. Rausenberger, conversely, contends no sudden emergency existed and any sudden emergency was caused or contributed to by Schutte.

After reviewing the circumstances under which we have permitted or forbidden the use of the sudden emergency instruction, we conclude this case is most analogous to the situation presented in *Boge v. Jack Link Truck Line, Inc.*, 200 N.W.2d 544 (Iowa 1972). As in *Boge*, Schutte knew of the potential peril in time to avoid it. Schutte acknowledges ice was expected beyond the crest of the hill.¹ This is important because the icy conditions, made the accident and the surrounding circumstances encountered by Schutte foreseeable. See *Bannon*, 333 N.W.2d at 469-70. Consequently, we conclude the doctrine of sudden emergency was inapplicable and it was reversible error for the trial court to instruct on it. Accordingly, we reverse and remand for a new trial.

REVERSED AND REMANDED.

All judges concur except Sackett, and Streit, JJ., who specially concur.

¹ This is reflected in Schutte's reduced speed. She was driving at approximately fifteen miles per hour in a thirty five mile per hour zone.

SACKETT, J. (concurring specially)

I concur specially, noting the continual difficulty for Iowa courts to determine when, in our comparative fault state,¹ the facts support the giving of a "sudden emergency" jury instruction.

In 1988, in *Miller v. Eichhorn*, 426 N.W.2d 641 (Iowa App. 1988), we recognized, though Iowa had continued to authorize an instruction on sudden emergency after the adoption of the comparative fault doctrine,² the purpose of the sudden emergency instruction when dealing with the fault of two competing parties became somewhat hazy when viewed in the comparative negligence context. *Id.* at 644. In *Miller*, we cited cases from Mississippi and Montana which state the advent of comparative fault had abolished the doctrine. See *Knapp v. Stanford*, 392 So.2d 196, 198 (Miss. 1980); *Simonson v. White*, 713 P.2d 983, 990 (Mont. 1985).

The Mississippi court, in abolishing the doctrine, said:

The hazard of relying on the doctrine of "sudden emergency" is the tendency to elevate its principles above what is required to be proven in a negligence action. Even the wording of a well-drawn instruction intimates that ordinary rules of negligence do not apply to the circumstances constituting the claimed "sudden emergency." Also, it tends to confuse the principle of comparative negligence that is well-ingrained in the jurisprudence of this State. The fallacy is pointed out in the instruction itself when, after seemingly commenting on the

¹ Since December 22, 1982, Iowa has been a comparative negligence state. The sudden emergency doctrine is a holdover from the contributory negligence concept existing under earlier law. See *Goetzman v. Wichern*, 327 N.W.2d 742, 754 (Iowa 1982).

² *Jones v. Blair*, 387 N.W.2d 349, 353 (Iowa 1986); *Johnson v. Junkmann*, 395 N.W.2d 862, 864-65 (Iowa 1986).

evidence, the court instructs that the defendant should have "used the same degree of care that a reasonably prudent automobile driver would have used under the same or similar unusual circumstances." In this Court's opinion, the same rules of negligence should apply to all circumstances in a negligence action and these rules of procedure adequately provide for instructions on negligence.

Knapp, 392 So.2d at 198; *see also Simonson*, 713 P.2d at 989-90.

The Montana court, in abolishing the doctrine, said:

There is no reason for this instruction to ever be given in an automobile accident case. It adds nothing to the established law applicable in any negligence case, that due care under the circumstances must be exercised. "The circumstances" includes the pressure and split-second decision-making which accompanies the crisis prior to some automobile accidents. Further, a driver is never held responsible for non-negligent actions which prove, with hindsight, to have been incorrect. The instruction adds nothing to the law of negligence and serves only to leave the impression in the minds of the jurors that a driver is somehow excused from the ordinary standard of care because the emergency existed. This is not the law. *See W. Keeton, The Law of Torts* § 33 (5th ed. 1984).

Simonson, 713 P.2d at 989.

Now that Iowa has operated for a considerable time period under comparative fault, the Iowa Supreme Court may wish to revisit their holdings on the sudden emergency doctrine.

Streit, J., joins this special concurrence.