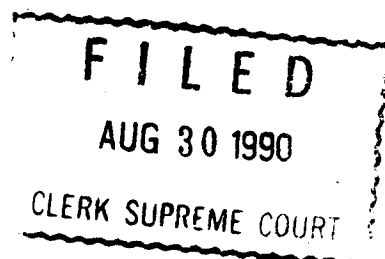


IN THE COURT OF APPEALS OF IOWA

No. 0-181 / 89-1443



PAUL HEIN and JUDITH POTTER,

Appellees,

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vs.

ROBERT BUIKEMA,

Appellant,

and

MARY KIGGINS,

Defendant.

Appeal from the Iowa District Court for Clinton County,
Margaret S. Briles, Judge.

Buikema appeals an adverse jury verdict in a personal
injury suit arising out of a three-vehicle accident.
AFFIRMED.

Charles W. Brooke of Lane & Waterman, Davenport, for
appellant.

Michael Bush of Carlin, Hellstrom & Bittner, Davenport,
for appellees.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

DONIELSON, J.

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On March 8, 1987, at about 6:15 p.m., a motor vehicle accident occurred involving two cars and one motorcycle. Defendant Mary Kiggins was driving her car thirty-five miles per hour in the center lane of the two eastbound lanes. She was in heavy traffic and had her headlights on. Kiggins saw a vehicle stopped in the eastbound curb lane in front of a Hardee's restaurant a block or half block ahead awaiting to turn in. From a half block to a block away, Kiggins also saw Robert Buikema's car in the driveway of Hardee's facing northerly, waiting to exit onto the same street. Kiggins saw Buikema's car moving or inching out, and so she slowed down before she came up behind the stopped van. Kiggins knew either the van had to move or Buikema had to pull out. As Kiggins passed the van, her car was hit from the side and it spun, ending up partly across the center line. Kiggins did not see the westbound oncoming motorcycle driven by Hein on the same street in the center lane. The first Hein knew of anything amiss was when he heard the noise of the Kiggins-Buikema collision and saw "some collision" and tried to go to his right. However, the rear of the Buikema car hit Hein's motorcycle. As a result, Hein and Judith Potter, a passenger on his motorcycle, were injured.

Hein and Potter filed a personal injury lawsuit against Buikema and Kiggins. The district court instructed the jury on Buikema's negligence, Kiggins' negligence, and

Hein's and Potter's failure to mitigate damages. The district court refused to submit to the jury the issue of whether Hein was negligent. The jury found Buikema 100 percent at fault and awarded Potter \$125,000 and Hein \$6,500.

Buikema appeals the adverse jury verdict. He contends the district court erred by finding Hein was not negligent as a matter of law and by refusing to submit the issue of Hein's contributory negligence to the jury.

In ruling on whether a jury question has been engendered, we view the evidence in the light most favorable to the nonmoving party. Harvey v. Palmer College, 363 N.W.2d 443, 444 (Iowa App. 1984). As a general rule, questions of negligence are for the jury; only in exceptional cases may they be decided as a matter of law. Iowa R. App. P. 14(f)(10).

Buikema alleges Hein was negligent in failing to keep a proper lookout. A "proper lookout" is that which would be maintained by an ordinarily reasonable and prudent person under the same or similar circumstances. Lyons v. Lange, 447 N.W.2d 407, 408 (Iowa App. 1989). A proper and sufficient lookout is further determined by the particular surrounding circumstances as revealed by the evidence then under consideration. Id.

There is no evidence in the record regarding Hein's alleged failure to keep a proper lookout. The trial court

properly declined to submit the issue of Hein's negligence to the jury.

AFFIRMED.

Hayden, J., concurs; Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

I respectfully dissent. I believe Johnson v. Junkmann, 395 N.W.2d 862 (Iowa 1986), requires a reversal because the trial court did not submit the issue of plaintiff's contributory negligence to the jury.