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IN THE COURT OF APPEALS OF IOWA

ROGER D. SCHULZ,	)	
Appellant,	)	Filed April 28, 1978
vs.	)	
ROBERT D. CAMPBELL,	)	415
Appellee.	)	<u>2-60387</u>

Appeal from Wright District Court - David R. Hansen, Judge.

Plaintiff appeals trial court's findings and judgment awarding \$2000 for damage to defendant's pickup truck on counterclaim in intersection accident. - Affirmed.

James L. Kramer & Dale A. Johnson, of Johnson, Burnquist, Erb, Latham & Gibb, P.C., Fort Dodge, for Appellant.

Robert Malloy, of Larson & Malloy, Goldfield, for Appellee.

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

PER CURIAM

Plaintiff Roger D. Schulz appeals from the trial court judgment entered in favor of defendant Robert D. Campbell in the amount of \$2,000 on defendant's counterclaim in an action commenced by plaintiff for personal injuries and property damage received in a collision at an uncontrolled intersection between plaintiff's pickup and a pickup driven by defendant. At the time of the accident, plaintiff was approaching the intersection from defendant's right. On appeal plaintiff alleges the evidence is insufficient to support the trial court's finding that plaintiff was 80 feet from the intersection when he first observed defendant's vehicle, that defendant's pickup occupied the intersection so as to deprive plaintiff of the benefit of § 321.319, The Code, and that plaintiff, but not defendant, failed to maintain a proper lookout.

Findings of fact in a law action tried to the court have the effect of a special verdict and are binding upon the appellate court if supported by substantial evidence. Rules 4 and 14(f)(1), Rules of Appellate Procedure. The trial court found that plaintiff's vehicle was coming from the defendant's right. Both drivers looked as they approached the intersection, but neither saw the other at that time. Plaintiff was 80 to 82 feet, plus reaction-time distance, south of the intersection when he first observed defendant's vehicle as it approached the intersection. The sun was in plaintiff's eyes as he looked to the west. However, the trial court found defendant was already in the intersection when he first saw plaintiff's vehicle coming right at him.

From the testimony, the trial court found plaintiff's vehicle weighed approximately 3,200 pounds and was traveling at a speed of 45 m.p.h. according to plaintiff. Defendant's vehicle had a one ton load and its total weight was close to 7,400 pounds; his speed was approximately 40 m.p.h. The force of the impact spun the rear of defendant's truck in a clockwise direction completely rolling it over once. Plaintiff's truck continued through the intersection ultimately ending up in the east ditch of the north-south road.

There was conflicting testimony as to exactly where the impact occurred within the intersection. The deputy sheriff who investigated the accident testified

it occurred dead center. Plaintiff agreed. Defendant and his passenger testified the collision occurred east of the center line. Defendant's father who lives nearby and observed the skid marks agreed. The trial court ultimately found that the impact did in fact occur in the east half of the intersection.

In its conclusions of law, the trial court held that the vehicles did not enter the intersection "at approximately the same time" within the meaning of § 321.319, The Code. It also found that this was not a case of a "race to the intersection", nor did either driver increase his speed as he approached. Defendant's speed was not excessive, nor did he fail to have his vehicle under control. The court also found defendant maintained a proper lookout.

Conversely, the court found plaintiff failed to maintain a proper lookout based upon the point of impact in the intersection, as found, and the force with which plaintiff's truck hit the much heavier vehicle owned by defendant. Although not specifically finding plaintiff's speed excessive, the trial court found it was greater than that of defendant, thus it placed plaintiff's vehicle further back from the intersection when defendant looked south and when he subsequently entered the intersection.

The trial court reasonably could have found the vehicles entered the intersection at approximately the same time. However, our inquiry is whether it could reasonably find the opposite--that defendant's vehicle sufficiently entered in advance that the trial court could say defendant was in possession of the intersection when plaintiff's vehicle arrived. *Schultz v. Chicago, R.I. & P. R.R. Co.*, 207 N.W.2d 748, 749 (Iowa 1973).

In *General Casualty Co. of Wisc. v. Hines*, 261 Iowa 738, 749-50, 156 N.W.2d 118 (Iowa 1968), the court quoting with approval from 5 Am. Jur.2d Appeal & Error, § 844, p. 288, citing *Rank v. Kuhn*, 236 Iowa 854, 20 N.W.2d 72 (1945) said:

In reviewing the findings of fact of the trial judge an appellate court must give them a liberal construction so as to uphold rather than defeat the decision appealed from; doubtful or ambiguous findings of the trial judge will wherever this is reasonably possible, be construed so as to support the decision appealed from. * * * Even if the findings of the court below are actually irreconcilable, the appellate court may sustain the decision appealed from on the basis of those findings which allow the conclusion reached by the court below, if they are supported by the evidence.

The question is close but, the issue of whether the vehicles entered the intersection at approximately the same time is one of fact rather than law. Schultz, supra. The trial court considered the width of the intersection, the position of the vehicles within the intersection, the parts of the vehicles struck, which vehicle did the striking and that defendant's vehicle was leaving the intersection as plaintiff's was entering. It found as a factual matter that the vehicles did not enter at approximately the same time. This finding of fact must stand. Schultz, supra.

AFFIRMED.