



IN THE COURT OF APPEALS OF IOWA

STEPHEN G. BROOKS,	)	
Appellee,	)	Filed February 22, 1979
vs.	)	
DAVID E. WHITE, WILLIAM D.	)	724
WHITE, and CITY OF DES MOINES,	)	2-61366
IOWA,	)	
Appellant.	)	

Appeal from Polk District Court - A. B. Crouch, Judge.

Defendants appeal judgment for plaintiff in an action arising out of intersection accident alleging erroneous jury instructions. - Reversed.

Jack W. Rogers and James M. Sullivan, Des Moines, for Appellants.

Martin E. Spellman, Perry, for Appellee.

Heard by Oxberger, C. J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

Defendants David White, William White and the city of Des Moines appeal judgment in favor of plaintiff Steven Brooks for injuries sustained in a motor vehicle accident. We reverse the judgment against both defendants White and the City of Des Moines.

Among other propositions raised on appeal, the Whites argue trial court erred by failing to give requested jury instructions. The gist of Whites' proposed Instruction #3 was that if plaintiff exceeded the applicable speed limit of 25 m.p.h., he would have been negligent. Trial court refused to give the instruction on the ground that there was no evidence to support it. Plaintiff's expert witness testified that the time it takes for an individual to recognize an unexpected hazard and react to it is 2.5 seconds. Other evidence established that a car going 25 m.p.h. travels 37 feet per second. Plaintiff left skid marks of 28.1 feet prior to impact. According to plaintiff's testimony, he first observed the White vehicle when it was 40 feet from the intersection. The collision occurred in the southeast corner of the intersection approximately 17 feet from the west curb line. From the evidence the jury could conclude that plaintiff's vehicle traveled 119.6 feet in the same time that it took for defendant's car to travel 57 feet. White testified that he was traveling at approximately 25 m.p.h. prior to the accident. White's skid marks indicated his speed was about 33 m.p.h. He also introduced a photograph of his car showing extensive damage to the right side at the point of impact with plaintiff's motorcycle. We find there was substantial evidence that plaintiff was going faster than 25 m.p.h., and therefore, trial court erred in refusing to give the requested instruction. See Walker v. Sedrel, 260 Iowa 625, 631, 149 N.W.2d 874 (1967).

In his petition, plaintiff alleged that the city of Des Moines was negligent for failing to erect certain traffic control devices at the intersection where the accident occurred. Plaintiff's expert witness, Dr. George Brown, testified that a stop sign was warranted at that intersection. He based this opinion, in part, on § 2B-5 of the Iowa Manual on Uniform Traffic Control Devices which provides in pertinent part:

Because the STOP sign causes a substantial inconvenience to motorists, it should be used only where warranted. A STOP sign may be warranted at an intersection where one or more of the following conditions exist: . . . 4. Other intersections where a combination of high speed, restricted view and serious accident record indicates a need for control by the STOP sign.

Section 321.255, The Code, provides that all traffic control devices installed by local authorities shall conform to the state manual. Trial court instructed the jury that the above-cited manual was applicable to the city of Des Moines and that non-compliance therewith would constitute negligence. The city contends this instruction was erroneous because there was no evidence that § 2B-5 is a mandatory provision. We recognize the rule that violations of a statute or ordinance which establishes a standard of care constitute negligence per se. *Jorgensen v. Horton*, 206 N.W.2d 100, 102 (Iowa 1973). In the instant case, however, it cannot be said that § 2B-5 of the manual prescribes a standard of care. That section states that a stop sign may be warranted if certain conditions exist. Furthermore, on cross examination of Dr. Brown, it was established that the manual defines the word "may" as "a permissive condition, no requirement for design or application is intended." We find the following language from *Diamond v. Grow*, 243 C.A.2d 396, 52 Cal. Rptr. 265 at 268 (1966), applicable:

In determining if a rule or order establishes a standard of care the violation of which constitutes negligence per se, the critical test is whether compliance therewith is mandatory. Or, to state it somewhat differently, the test is whether the standard of care is merely suggested by the order or defined by it.

We conclude it was reversible error to instruct the jury that proof of noncompliance with the Iowa manual would constitute negligence on the part of the city of Des Moines.

Reversed and remanded for new trial.