IN THE COURT OF APPEALS OF IOWA

No. 1-605 / 91-61

FILED
MAR 24 1992
CLERK SUPREME COURT

THOMAS F. ASHING,

Plaintiff-Appellant,

vs.

GENERAL MOTORS CORPORATION, A Foreign Corporation, and **RAMSEY PONTIAC CORP.,** An Iowa Corporation,

Defendants,

and

ALICE M. SPRINGER,

Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Peter A. Keller, Judge.

Ashing appeals from an adverse jury verdict in an automobile negligence case. **AFFIRMED.**

John R. Ward of Hedberg, Ward, Owens & Vonderhaar, Des Moines, for appellant.

Larry D. Spaulding and Sheila K. Tipton of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

On March 19, 1987, Alice Springer purchased a new 1987 Pontiac Bonneville from Ramsey Pontiac. From the date of purchase until the accident with Ashing, Springer experienced several problems with this car. Springer testified that shortly after she purchased the car, the car would stall, losing power to the brakes, for example, when she slowed down. Springer complained to Ramsey about the stalling problem but Ramsey never remedied the problem.

In June 1987, a service bulletin was issued to dealers identifying the Bonneville's stalling problem and suggesting a remedy. On July 2, 1987, Springer's vehicle, while slowing down behind Ashing's vehicle, stalled resulting in a loss of brakes and subsequent rear end collision with Ashing.

In April 1989 Ashing filed this lawsuit against G.M., Ramsey Pontiac, and Springer alleging negligence. Prior to trial, Ashing entered into a settlement agreement with G.M. and Ramsey. Prior to submission of the case to the jury, Ashing moved to dismiss G.M. and Ramsey without prejudice. The district court, however, included G.M. and Ramsey as settling parties for apportionment of fault in instructing the jury. Ashing objected to the inclusion of these two parties. The jury returned a verdict finding G.M. forty percent at fault, Ramsey Pontiac sixty percent at fault, and Springer zero percent at fault. Following the district court's rejection of Ashing's motion for new trial, Ashing filed this appeal.

Scope of Review: We review for errors at law. Iowa R. App. P. 4.

Release Parties: We consider whether the trial court was correct in including General Motors and Ramsey Pontiac on the special verdict form. Springer asserts that General Motors and Ramsey Pontiac were "released" parties to the litigation pursuant to the terms of a settlement agreement and were therefore properly included on the special verdict form for apportioning fault. We agree.

We find upon review of the record the following exchange between counsel for Ashing and the court:

> THE COURT: Before you get into that, let's just clarify that. It's my understanding, and I've been led to believe all along, that G.M. and Ramsey were settling parties in this case.
>
> MR. WARD: They are dismissed parties.
>
> THE COURT: Are they settling parties?
>
> MR. WARD: What is meant by settling, Your Honor? Paying money?
>
> THE COURT: Sounds like settling to me.
>
> MR. WARD: Well, if that's what the Court means by settling parties --
>
> THE COURT: That's what the Court means.
>
> MR. WARD: They are paying money, yes, sir.
>
> THE COURT: And I assume they'll require a release.
>
> MR. WARD: I would anticipate doing that with them, yes.

It is clear from this record that General Motors and Ramsey Pontiac were being dismissed pursuant to a

settlement agreement which was yet to be executed. Iowa Code section 668.2 provides in pertinent part:

> As used in this chapter, unless otherwise required, "party" means any of the following:
> . . .
> 3. A person who has been released pursuant to section 668.7.

Section 668.7 provides:

> A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing party against other persons is reduced by the amount of the released person's equitable share of the obligation, as determined in section 668.3 subsection 4. (emphasis added).

We find General Motors and Ramsey Pontiac were released parties pursuant to Iowa Code Chapter 668. Ashing knew in advance to his motion to dismiss that the only matter left was the actual execution of the release. We interpret section 668.2(3) to include releases where the only matter remaining to be performed is the mere execution of the release agreed upon by the parties.

Counsel for Ashing argues there was insufficient evidence that would allow him "in good conscience" to request the trial court to submit to the jury claims of negligence against General Motors or Ramsey Pontiac in a trial against them. Upon review of the record, we find this argument an unacceptable technique to guise a release of the parties as a dismissal. In so doing, counsel hoped to gather the fruits of a settlement and a higher recovery

from Springer by eliminating from the jury any consideration of General Motors' and Ramsey Pontiac's fault. We affirm the trial court.

Costs are taxed to Ashing.

AFFIRMED.