

FILED

OCT 21 1980

CLERK SUPREME COURT
OF IOWA

157

IN THE COURT OF APPEALS OF IOWA

JOYCE A. WHITING,)

Plaintiff-Appellant,)

Filed October 21, 1980

vs.)

PATRICK JAMES VANCE,)

Defendant-Appellee.)

0-223
2-63293

Appeal from Linn District Court - Harold D. Vietor, Judge.

Plaintiff appeals from judgment for defendant in case involving a car accident, alleging 1) that defendant was not entitled to a legal excuse instruction because he was at least partially at fault in the accident; 2) that the instruction was not supported by the evidence and should therefore not have been given; and 3) that the instruction was confusing and incomplete. **AFFIRMED.**

Mitchell E. Turner and Francis J. Pruss, Cedar Rapids, for plaintiff-appellant.

Robert D. Van Horne and Kenneth L. Perry of Terpstra, Wilkinson & Van Horne, Cedar Rapids, for defendant-appellee.

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

DONIELSON, J.

Plaintiff, Joyce Whiting, appeals from judgment entered on jury verdict for defendant in this action involving a car accident. Plaintiff contends on appeal 1) that defendant was not entitled to the legal excuse instruction given by the trial court because he was at least partially at fault in the accident; 2) that the legal excuse instruction was not supported by the evidence and should thus not have been given; and 3) that the legal excuse instruction was confusing, incomplete, and did not fully apprise the jury of the elements of a legal excuse defense. We affirm the judgment for defendant.

I.

In August, 1977, plaintiff filed a petition alleging that on November 29, 1974, she was a passenger in a car driven by her daughter. The car was being driven east on a one-way four-lane street, which consisted of three lanes for moving traffic and one lane on the far left for parked vehicles. At the time in question, there were cars parked in this lane. Defendant, Patrick Vance, was driving south on a smaller street that intersected with the four-lane street. Plaintiff alleges that defendant failed to stop for the stop sign at the intersection and that he hit the car in which plaintiff was riding. Defendant contends that he stopped at the stop sign but, being unable to see oncoming traffic on his right because of cars parked in the northernmost lane of the four-lane street, he eased his car cautiously beyond the stop sign. He testified that he did not see plaintiff's car until he had entered the four-lane street, at which time he put his car in reverse to back up and was hit by plaintiff's car.

When the trial court provided counsel with a final version of the instructions, plaintiff objected to the instruction concerning a legal excuse defense. The instruction was given, however, and the jury returned a verdict for the defendant. Plaintiff then filed a motion for new trial, which was denied.

II.

Plaintiff contends that defendant was not entitled to an instruction discussing a legal excuse defense because he contributed in part to the circumstances that made it impossible for him to yield the right of way to oncoming cross traffic as required by statute. We find that the defendant was not at fault and that he was entitled to the instruction.

The doctrine of legal excuse involves an attempt to avoid the consequences of one's own conduct by showing justification for acts that would otherwise be considered negligent. Teeling v. Heles, 195 N.W.2d 704, 705 (Iowa 1972); Bangs v. Keifer, 174 N.W.2d 372, 374 (Iowa 1970); Gibbs v. Wilmeth, 261 Iowa 1015, 1020, 157 N.W.2d 93, 96 (1968). The defense of legal excuse is applicable in various circumstances, including those that make it impossible for the defendant to comply with the statute or ordinance. City of Cedar Rapids v. Moses, 223 N.W.2d 263, 268-69 (Iowa 1974); Gibbs, 261 Iowa at 1020, 157 N.W.2d at 96; Kisling v. Thierman, 214 Iowa 911, 916, 243 N.W. 552, 554 (1932). However, as plaintiff correctly contends, the defense is not available to one whose negligence contributes to the situation that renders compliance with the statute impossible. Freese v. Lemmon, 267 N.W.2d 680, 684 (Iowa 1978); Moses, 223 N.W.2d at 269.

We are not convinced by plaintiff's contention that the negligence of this defendant contributed to the circumstances that made it impossible for him to yield to oncoming traffic as required by statute. Compliance with the statute was made impossible by the fact that parked cars obstructed defendant's vision. We fail to see how defendant can be held responsible in any way for this unsafe parking arrangement. Furthermore, we cannot say that defendant acted unreasonably in easing his car forward in an attempt to see around the parked cars. Plaintiff alleges that the defendant did not stop at the stop sign at all. The jury, however, apparently found that he stopped at the sign, was unable to see around the parked cars, and pulled forward in an attempt to improve his view of the oncoming traffic. A review of the record indicates that this finding is supported by substantial evidence and we are therefore bound by it. Iowa R. App. P. 14(f)(1). We believe that the defendant was entitled to the instruction on the legal excuse defense.

III.

Plaintiff next contends that the legal excuse instruction should not have been given because it was not supported by the evidence. We find no merit in this contention.

In determining whether there was sufficient evidentiary support for an instruction, this court should uphold delivery of the instruction so long as there is some evidence bearing on the issue to which the instruction is addressed. Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393, 399 (Iowa 1977). The evidence should be given the most favorable

construction it will reasonably bear. Id.; Rush v. Sioux City, 240 N.W.2d 431, 443 (Iowa 1976). In the instant case, there was extensive testimony about the hazard created by the parked cars. We find this evidence sufficient to support the trial court's decision to give the legal excuse instruction.

IV.

Finally, plaintiff alleges that it was error to give the legal excuse instruction because it was confusing and incomplete and did not fully apprise the jury of the elements of the legal excuse defense. While we acknowledge that the trial court has a duty to fully and fairly instruct the jury on the issues, Gibbs, 261 Iowa at 1022, 157 N.W. at 97, we disagree with plaintiff's contentions and find the instruction adequate to indicate the nature of the defense as well as the possibility of its application in the instant case.

We therefore affirm the judgment for the defendant.

AFFIRMED.