IN THE COURT OF APPEALS OF IOWA

No. 1-041 / 00-0987
May 23, 2001

MIRANDA MATHIS,
Plaintiff-Appellee,

vs.

IBP, INC., and CHARLES R. KERR,
Defendants-Appellants.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Louisa County, John G. Linn, Judge.

Defendants appeal following a trial on the plaintiff's negligence action that arose from an automobile accident. **REVERSED AND REMANDED WITH DIRECTIONS.**

Diane Kutzko and Kevin J. Kaster of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for appellants.

Brian C. Ivers of McDonald, Stonebraker, Cepican & Woodward, P.C., Davenport, for appellee.

Heard by Streit, P.J., and Hecht and Vaitheswaran, JJ.

HECHT, J.

A jury found IBP, Inc., and Charles Kerr liable for damages sustained by Miranda Mathis in a motor vehicle collision. IBP and Kerr contend the district court erred in failing to give a sudden emergency instruction. We reverse and remand for new trial.

I. **Factual Background and Proceedings**. The collision that gave rise to this litigation occurred on the outskirts of Columbus Junction, Iowa. Mathis was driving her vehicle away from Columbus Junction. Kerr, driving an IBP vehicle in the course and scope of his employment, was approaching Columbus Junction. The two cars collided on a gravel road at what might be described as a "blind curve." Kerr testified his vehicle was moving at approximately twenty-five miles per hour when he first saw the Mathis car approaching in the wrong lane at a distance of approximately 300 feet. Kerr claimed he lightly applied his brakes and initially believed the approaching motorist had sufficient time to return to the proper lane of traffic. He further testified the approaching vehicle did not return to its lane of traffic and when it was less than ten feet away, he unsuccessfully attempted to steer to the left to avoid a head-on crash. The car driven by Mathis was across the center line at the point of impact.

IBP and Kerr requested the pattern sudden emergency instruction. *See* Iowa Uniform Jury Instruction No. 600.75.[1] The district court refused to give the

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[1] The instruction reads: "A sudden emergency is a combination of circumstances that calls for immediate action or a sudden or unexpected occasion for action. A driver of a vehicle who, through no fault of [his] [her] own, is placed in a sudden emergency, is not chargeable with negligence if the driver exercises that degree of care which a reasonably careful person would have exercised under the same or similar circumstances.

instruction and explained:

> Sudden emergency is not available if a defendant breaches a duty at the time of the accident. In this case there is evidence that -- and it's implicative evidence, but evidence - - that the defendant may have been going too fast. There is evidence that he had opportunity to apply his brakes and that he did not avoid the accident. Also, the defendant testified that he observed the vehicle well in advance of the accident, saw it in his lane, would have had an opportunity to stop had he applied his brakes at that time. It was not a sudden emergency, the defense is not available under the facts of this case.

The jury found Kerr seventy-five percent at fault and allocated twenty-five percent of the fault to Mathis. The total damages suffered by Mathis were fixed by the jury at $369,500 and judgment in the amount of $277,125 plus interest was entered against IBP and Kerr. The district court also entered judgment in favor of IBP and against Mathis in the amount of $7,316.11 plus interest for property damage.

II. Standard of Review. We review the trial court's determinations concerning jury instructions for correction of errors at law. Iowa R. App. P. 4; *Sheets v. Ritt, Ritt & Ritt, Inc.*, 581 N.W.2d 602, 604 (Iowa 1998). "As long as a requested instruction correctly states the law, has application to the case, and is not stated elsewhere in the instructions, the court must give the requested instruction." *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 539 (Iowa 1996). "Parties to lawsuits are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record." *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994). "Evidence is substantial enough to support a requested instruction when a reasonable mind would accept it as adequate to reach a conclusion." *Bride v. Heckart*, 556 N.W.2d 449, 452 (Iowa

1996). "Error in giving or refusing jury instructions does not merit reversal unless it results in prejudice." *Vaughan*, 542 N.W.2d at 539.

III. The Merits. Mathis first contends defendants failed to preserve the sudden emergency issue for review. To preserve error for our review, a party must specify the subject and grounds of the objection. Iowa R. Civ. P. 196; *Sievers v. Iowa Mut. Ins. Co.*, 581 N.W.2d 633, 638 (Iowa 1998). The objection must be sufficiently specific to alert the district court to the basis for the complaint so, if error does exist, the court may correct it before placing the case in the hands of the jury. *Grefe & Sidney v. Watters*, 525 N.W.2d 821, 824 (Iowa 1994). We conclude the defendants' request for the pattern jury instruction on sudden emergency was sufficient to preserve error under the circumstances of this case.

Mathis contends a sudden emergency instruction was not required because this case presented "nothing more than a normal traffic situation that was foreseeable." She correctly observes routine traffic occurrences such as the need to make sudden stops in traffic do not constitute "sudden emergencies." *See Beyer v. Todd*, 601 N.W.2d 35, 39 (Iowa 1999) (noting the sudden emergency doctrine should be confined to cases where the emergency arises from events the driver could not be expected to anticipate rather than from routine exigencies produced by the impending accident). We conclude the circumstances faced by Kerr at the time of the collision are not properly classified as a routine exigency.

Our supreme court has indicated its approval of sudden emergency instructions in cases where defendants are suddenly confronted with vehicles approaching in the wrong lane of traffic. In *Schmitt v. Jenkins Truck Lines, Inc.*, 170 N.W.2d 632 (Iowa 1969), the court concluded a jury question was raised on

the sudden emergency defense where a motorist left his lane of traffic as an oncoming motorist intermittently drove on the wrong side of the road. *Id.* at 645. More recently, in *Weis v. Bal*, 501 N.W.2d 478 (Iowa 1993), the court concluded a sudden emergency instruction should not have been given in a case that presented a car-pedestrian collision in a parking lot. *Id.* at 482. In explaining its rationale, the court observed: "*This is not a case in which a driver was suddenly confronted with oncoming traffic on the wrong side of the road*, an unexpected patch of ice, a nonnegligent failure of brakes, or a sudden heart attack." *Id. (emphasis added.)* We conclude an oncoming vehicle traveling in the wrong lane of traffic at a blind curve is not an "everyday hazard of driving" that renders the sudden emergency doctrine unavailable.

Whether a party is faced with a sudden emergency is ordinarily a question for the jury. *Bangs v. Kiefer*, 174 N.W.2d 372, 374 (Iowa 1970). We view the evidence in the light most favorable to the party asserting a sudden emergency existed. *Beyer*, 601 N.W.2d at 39. A district court commits reversible error when it fails to submit a sudden emergency instruction in a case that presents substantial evidence of a sudden emergency. *Mosell v. Estate of Marks,* 526 N.W.2d 179, 182 (Iowa Ct. App. 1994). We conclude the district court erred in reasoning IBP and Kerr were not entitled to a sudden emergency instruction because Kerr was negligent and the emergency was not sufficiently sudden. The determination of whether Kerr was negligent and whether he faced a sudden emergency should have been made in this case by the jury following proper instruction on the applicable law. Accordingly, we reverse and remand for new trial. In the interest of judicial economy, we direct the new trial will address only the liability issues. The damage issues pertaining to the claim and counterclaim

have been fully tried and no justification for retrying them appears in the record. *See Powell v. Khodari-Intergreen Co.*, 334 N.W.2d 127, 132 (Iowa 1983) ("When the error in the trial court affects only some of the issues, a new trial may properly be limited to those issues."); *Schmatt v. Arenz,* 176 N.W.2d 771, 775 (Iowa 1970).

REVERSED AND REMANDED WITH DIRECTIONS.