FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

LILLIAN TAFT EXLEY and WARREN EDWARD EXLEY,

Appellants,

v.

DALE ABEL and CRAIG ALLEN ABEL,

Appellees.

October 7, 1977

III
2-58390

Appeal from Wayne District Court - A. V. Hass, Judge.

Plaintiffs appeal from adverse judgment in a negligence action arising from an automobile accident. Affirmed.

Theodore T. Duffield, of Patterson, Lorentzen, Duffield, Timmons, Irish & Becker, of Des Moines, and Hoffman, Hoffman & Stewart, of Leon, for appellants.

Kenneth L. Keith, of Dull, Keith & Beaver, of Ottumwa, for appellee.

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

Plaintiffs, Lillian and Warren Exley, appeal from trial court's ruling which denied their motion for a new trial. We consider the various issues in the order in which they are briefed.

I. Failure to Supplement Interrogatories.

Plaintiffs first contend trial court erred in permitting defendants to call witnesses not revealed prior to trial in response to an interrogatory designed to identify persons having knowledge of relevant facts. Although defendants failed to comply with rule 125, Rules of Civil Procedure, under the circumstances revealed by the record, such failure does not require reversal. The plaintiffs knew of three of the four witnesses in question. Kentner had been interviewed by plaintiffs' insurance adjuster. Plaintiffs counsel, by his own account, was not concerned about the witness Hanson. Hughes testified only to a statement made by Lillian Exley, and presumably would be known to her. The defense attorney only became aware of their possible benefit as witnesses the afternoon before the trial began. He interviewed them that afternoon and night, and later, before plaintiff had rested, advised plaintiffs' counsel that they would be called as defense witnesses. Trial court recessed to enable plaintiffs' attorney to interview the witnesses and thereafter offered plaintiffs a continuance to conduct further investigation. Plaintiffs, however, elected to proceed after interviewing the witnesses.

In considering this assignment, decisions from other states with rules patterned after the federal rules are helpful. Daboll v. Hoden, 222 N.W.2d 727, 732 (Iowa 1974). Trial courts are vested with wide discretion in dealing with matters of discovery. S. Kann's Sons Corp. v. Hayes, 320 A.2d 593, 596 (D.C. 1974); cf. Haumersen v. Ford Motor Co., No. 2-58043 (Iowa, Aug. 31, 1977); Smiley v. Twin City Beef Co., 236 N.W.2d 356 (Iowa 1975). Here, trial court's action in offering plaintiffs a continuance and refusing to suppress the testimony of the recently discovered witnesses was well within its sound discretion. Laney v. Hefley, 262 S.C. 54, 202 S.E.2d 12, 14 (1974); Hollins v. Sneed, 300 A.2d 447, 449 (D.C. 1973); see generally, 8 Wright & Miller, Federal Practice and Procedure § 2050 (1970).

II. Instructions on Specifications of Negligence.

Trial court submitted, as specifications of Lillian Exley's contributory negligence, instructions concerning her failure to maintain a proper lookout, and the stopping of her car on the highway. Plaintiffs assign these instructions as error.

Questions of contributory negligence are generally for the jury. Rule 14(f)(10), Rules of Appellate Procedure. In considering whether evidentiary support exists for an instruction, we give the evidence the most favorable construction it will bear. Clubb v. Osborn, 256 Iowa 1154, 1160-61, 130 N.W.2d 648 (1964).

Defendant Craig Abel, although equivocal, testified that Lillian's car was stopped on the highway. Both Craig and Marilyn Hanson testified that Lillian admitted that her car had been stopped. Therefore, the instruction on stopping on the highway was supported by substantial evidence.

The same evidence justified the instruction on Lillian's lookout. The duty of lookout to the rear arises "when a maneuver is contemplated which may endanger the following vehicle." Jesse v. Wemer & Wemer, 248 Iowa 1002, 1014, 82 N.W.2d 82 (1957). Slowing or stopping a car on the highway is such a maneuver. See Cavanaugh v. Jepson, 167 N.W.2d 616, 621 (Iowa 1969).

There was no error in the submission of these instructions.

III. Expert Testimony.

Plaintiffs complain of trial court's refusal to permit trooper Williams to express his opinion as to (1) the minimum speed of the defendants' car just prior to impact and (2) whether the Exley car was moving at the time of the collision. It is not enough that a witness be generally qualified in a certain area; he must also be qualified to answer the particular question propounded. Ruden v. Hansen, 206 N.W.2d 713, 717 (Iowa 1973); Ganrud v. Smith, 206 N.W.2d 311, 314 (Iowa 1973). Plaintiffs failed to establish that Williams had observed the condition of the highway surface. The trooper, in fact, testified he had not taken note of its condition. That information is essential to a proper determination of the coefficient of friction, which in turn, contrary to Williams's testimony, is vital to the testimony plaintiff wished to offer. Hedges v. Conder, 166 N.W.2d 844, 857 (Iowa 1969). Moreover, there was no showing that he knew the formula used to compute speed. Hedges, supra at 857. Nor was there any foundation relating to how Williams might determine whether the Exley car had been in motion at the time of the collision. "Before a jury can evaluate an expert's opinion, the jury must know what it is founded on." Dougherty v. Boyken, 261 Iowa 602, 614, 155 N.W.2d 488, 495 (1968).

IV. Consortium.

Plaintiff Warren Exley contends that the jury verdict denying him loss of consortium is inconsistent with the allowance of damages for his car. This contention is based upon the premise that his consortium claim is independent of his wife's claim. Hence, because he is not barred by his wife's contributory negligence, so he contends, he must be allowed recovery for consortium. Assuming, arguendo, that the law in Iowa now makes his claim for consortium independent of his wife's claim, and therefore independent of her contributory negligence, his contention nonetheless fails.

Simply stated, although the jury found Craig Abel negligent, it did not have to find that Warren was damaged through loss of Lillian's consortium. While the evidence is sufficient to find that he was so damaged, that evidence does not compel a verdict for Warren on his consortium claim. Cf. Daboll v. Hoden, 222 N.W.2d 727, 736 (Iowa 1974).

V. Final Argument.

We also conclude plaintiffs were not denied a fair trial by the alleged misconduct of defense counsel in final argument. We note plaintiffs' counsel specifically told trial court that he did not want a mistrial. Trial court carefully admonished the jury to disregard defense counsel's statements. This admonition, a cause for embarrassment to defendants' counsel, was sufficient. Misconduct in final argument does not require a new trial unless prejudicial, and considerable discretion is accorded the trial court in passing on such a matter. State v. LaMar, 260 Iowa 957, 965, 151 N.W.2d 496 (1967), Corkery v. Greenberg, 253 Iowa 846, 853-54, 114 N.W.2d 327 (1962).

Our examination of the entire record reveals nothing to warrant disturbing the judgment below.

AFFIRMED.