

IN THE COURT OF APPEALS OF IOWA

No. 8-661 / 98-425
Filed January 27, 1999

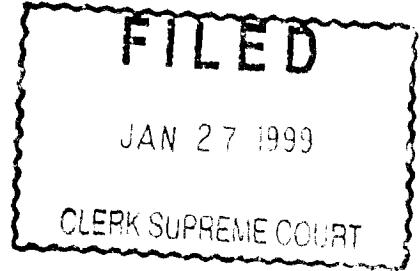
LINDA L. HUGHES and JAMES O. HUGHES III,

Appellants,

vs.

CHEROKEE COUNTY, IOWA,

Appellee.



Appeal from the Iowa District Court for Cherokee County, John P. Duffy,
Judge.

Linda and James Hughes appeal from a judgment for Cherokee County entered
after a bench trial in a tort action arising out of a motor vehicle accident.

AFFIRMED.

George W. Wittgraf of Sayre, Wittgraf & Meloy, Cherokee, for appellants.

Marvin Wallace Miller of Miller, Miller, Miller, P.C., Cherokee, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

Zimmer, J., takes no part.

STREIT, J.

Linda and John Hughes appeal a judgment for Cherokee County entered after a bench trial in this tort action arising out of a motor vehicle accident. We affirm on appeal.

On March 1, 1994, Donald Pitts was employed by Cherokee County as an equipment operator. On that day, he was operating a road grader on gravel roads to remove snow which had blown across the roadways. The road grader had a revolving amber light on top, two flashers on the cab, four headlights in the front, three sets of headlights that shine toward the side and rear of the machine, and two red tail-lights. It also has a slow-moving vehicle sign.

At about 7:30 a.m., a chain on one of the tires broke. Pitts pulled over on the road and fixed the chain. While he was doing this, a heavy fog came in. It took Pitts about fifteen or twenty minutes to fix the chain. He then proceeded forward, going about six miles per hour. All of his lights were on.

Linda Hughes left her home to drive to work at about 7:35 a.m. She noticed it was very foggy; visibility was about fifty feet. She was driving thirty to thirty-five miles per hour. Hughes suddenly noticed the road grader in front of her on the road. She hit the brakes, but hit the rear end of the road grader. Hughes suffered physical injuries as a result of the accident.

Hughes and her husband filed suit against Cherokee County alleging Pitts was negligent in his operation of the road grader. They also alleged Pitts' supervisor, Gerald Parrott, was negligent in allowing Pitts to operate the grader in the fog.

The case was tried to the court. The district court found that at the time of the accident Linda was driving too fast for conditions then existing. The court concluded Linda's negligence was a proximate cause of the accident. The court dismissed the petition. Plaintiffs appealed.

I. Findings of fact in a law action are binding upon an appellate court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. *Cook v. State*, 431 N.W.2d 800, 806 (Iowa 1988). The factual findings of the trial court have the force of a jury verdict and the evidence will be viewed favorably to those findings. *Brichacek v. Hiskey*, 401 N.W.2d 44, 47 (Iowa 1987).

II. Plaintiffs had claimed Pitts was negligent in stopping on the traveled portion of the roadway, which would be a violation of Iowa Code section 321.354(2). The district court found this section was not applicable because the road grader was not stopped on the roadway at the time of the accident. We find there is substantial evidence to support the district court's finding the road grader was moving forward at the time of the accident, and thus, section 321.354(2) is inapplicable.

III. Plaintiffs also claimed Pitts was negligent in failing to maintain a proper lookout. Maintaining a proper lookout encompasses the duty to be careful of the

movements of one's self in relation to things seen or that could have been discerned or seen in the exercise of due care. *Sonnek v. Warren*, 522 N.W.2d 45, 49 (Iowa 1994).

The duty of lookout to the rear does not require constant attention at all times, but only sufficient observation to establish an awareness of the presence of others at a time when a maneuver is contemplated which may endanger a following vehicle. *Lyons v. Lange*, 447 N.W.2d 407, 409 (Iowa App. 1989) (citing *McCoy v. Miller*, 257 Iowa 1151, 1156-57, 136 N.W.2d 332, 336 (1965)). Making a left turn under conditions of reduced visibility may be considered a failure to keep a proper lookout to the rear. See *Sawyer v. Kirk*, 182 N.W.2d 925, 927 (Iowa 1971). The district court found the duty to maintain a proper lookout did not apply to Pitts, presumably because he was not engaged in any maneuvers which could have endangered a following vehicle. We find there is sufficient evidence to support the district court's conclusion. Pitts was driving straight ahead at the time of the accident.

IV. Plaintiffs assert the district court erred by not finding Pitts and Parrott were generally negligent for operating, or permitting the operation of the road grader under foggy conditions. They contend because the road grader was a slow-moving vehicle it should not have been out on the roadway when there was fog.

The driver of a vehicle encountering fog is not bound, as a matter of law, to stop and wait for the fog to lift. *McCormick v. Sioux City*, 243 Iowa 35, 38, 50 N.W.2d 564, 566 (1951). A driver must, however, exercise a degree of care

consistent with the existing conditions. *Id.*, 50 N.W.2d at 566. There is sufficient evidence to support the district court's finding Pitts and Parrott were not negligent, as a matter of law, for having the road grader out in the fog.

V. Plaintiffs contend the district court erred by finding Hughes was negligent for driving too fast for conditions then existing. The district court found that since visibility was only about fifty feet, at thirty miles per hour, Hughes was driving too fast to be able to stop within the assured clear distance ahead. We determine this is sufficient evidence to show Hughes was driving too fast under the circumstances of the case.

The district court also found Hughes failed to keep a proper lookout. As noted above, the road grader had a rotating amber light, as well as many other lights, all of which were operating at the time of the accident. Hughes testified she did not see the road grader until it was too late for her to avoid hitting it. We find this is sufficient evidence to support the district court's factual finding.

In addition, the district court found Hughes failed to have her vehicle under control. Section 321.288(5) requires a person to have his or her vehicle under control at all times and to reduce speed to a reasonable and proper rate when approaching and passing a slow-moving vehicle displaying a reflective device. The road grader displayed a slow-moving vehicle sign. The evidence shows Hughes did not reduce her speed when approaching the road grader. We find there is sufficient evidence to support the finding Hughes failed to have her vehicle under control.

After consideration of all issues raised in this appeal, we affirm the decision of the district court dismissing plaintiffs' tort action. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.