IN THE COURT OF APPEALS OF IOWA

No. 3-917 / 13-0493
Filed December 18, 2013

DARREN BARRETT,
Plaintiff-Appellant,

vs.

AMANDA SWANK and AEROPOSTALE, INC.,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

Darren Barrett appeals the district court order denying his motion for new trial, motion for judgment notwithstanding the verdict, and request for a sudden emergency instruction. **AFFIRMED.**

Pete Leehey of Pete Leehey Law Firm, P.C., Cedar Rapids, for appellant.

Jeffrey M. Margolin of Hopkins & Huebner, P.C., Des Moines, for appellees.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

BOWER, J.

Darren Barrett appeals the district court order denying his motion for new trial, motion for judgment notwithstanding the verdict, and request for a sudden emergency instruction. We determine a reasonable jury could find the defendant, Amanda Swank, was not negligent in operating a motor vehicle. We also reject the claim that Swank was negligent as a matter of law because there was evidence indicating she stopped her vehicle at a stop sign and stopped again before entering the path of Barrett's motorcycle as required by Iowa Code section 321.322 (2011). We additionally find the district court properly rejected the requested sudden emergency instruction because the incident was foreseeable. We affirm.

I. Background Facts and Proceedings

Darren Barrett was injured on May 26, 2011, while riding his motorcycle on 68th Street in West Des Moines, Iowa, when he crossed the frontage road into the Jordan Creek Mall parking lot. At the same time, Amanda Swank was exiting the parking lot through the frontage road. Swank stopped at a stop sign[1] and waited for another vehicle, which she believed had the right-of-way. After looking left and right, Swank began to drive through the intersection.[2] Seeing Barrett on his way through the intersection,[3] Swank stopped her vehicle. Barrett swerved,

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[1] The intersection was controlled in three directions.

[2] The intersection consisted of multiple lanes. To Swanks's right were three lanes, two outbound towards 68th Street and one inbound from 68th street.

[3] Barrett's incoming lane was not controlled by a stop sign.

briefly regained control, and then set the motorcycle down on its side after losing control. He suffered physical injuries as a result of the incident.

Barrett brought an action against Swank and her employer, Aeropostale,[4] alleging negligence for failing to keep a proper lookout and failing to yield the right-of-way. Trial on the matter was held on January 28 and 29, 2013. At the close of evidence, Barrett requested a sudden emergency instruction, which was denied by the district court. Following a jury verdict finding Swank not at fault, Barrett filed a combined motion for judgment notwithstanding the verdict and for new trial. Both were denied.

II. Standard of Review

We review the district court's denial of a motion for judgment notwithstanding the verdict for errors at law. *Mitchell v. Cedar Rapids Cmty. Sch. Dist.*, 832 N.W.2d 689, 694 (2013). Evidence is viewed in the light most favorable to the nonmoving party. *Wolbers v. The Finley Hosp.*, 673 N.W.2d 728, 734 (Iowa 2003). The motion is to be overruled so long as there is substantial evidence on each element of the claim. *Id.* "[I]f reasonable minds could reach different conclusions based upon the evidence presented, the issue is properly submitted to the jury." *Id.*

Our review of a motion for new trial depends upon the grounds raised in the motion. *Pavone v. Kirke*, 801 N.W.2d 477, 496 (Iowa 2011). Barrett's request for new trial was based upon the sufficiency of the evidence, which

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[4] Barrett alleges Swank was operating a vehicle owned by Areopostale and was within the scope of her employment at the time of the accident. Consideration of this allegation is not necessary for purposes of this appeal.

presents a question of law. *See In re Estate of Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004). Our review is for errors at law. *Id.*

Challenges to jury instructions are reviewed for errors at law; however, the trial court's refusal to give a requested instruction is reviewed for an abuse of discretion. *State v. Frei*, 831 N.W.2d 70, 74 (Iowa 2013). Error in refusing to give a requested instruction requires reversal unless there is an absence of prejudice. *Id.*

III. Discussion

A. Motion for Directed Verdict

Iowa Rule of Civil Procedure 1.1003(2) permits a judgment in a party's favor despite an adverse verdict. The rule affords the district court an opportunity to correct any error in failing to direct a verdict. *See Rife v. D.T. Corner, Inc.*, 641 N.W.2d 761, 767 (Iowa 2002). Barrett argues the district court should have directed a verdict in his favor because all the evidence indicated Swank was negligent as a matter of law for failing to keep a proper lookout and failing to yield the right-of–way.

Because the motion for new trial and motion for judgment notwithstanding the verdict argue identical grounds, we address them as one.

1. Failure to Maintain a Proper Lookout

The operator of a motor vehicle has a duty to maintain a proper lookout. *Matuska v. Bryant*, 150 N.W.2d 716, 735 (Iowa 1967). The duty requires the operator to "see that which is clearly visible or which in the exercise of ordinary care would be visible." *Id.* The duty does not require the motorist to immediately

notice another driver approaching a protected intersection or to anticipate the other driver may not yield the right-of-way. *Id.* at 721–22. Drivers are required to keep a proper lookout not only to the front and either side, but also to the rear; however, the rear lookout duty requires only the level of attention needed to establish awareness of other drivers to the extent a particular maneuver might endanger a driver to the rear. *McCoy v. Miller*, 136 N.W.2d 332, 336 (Iowa 1965). A driver possessing the legal right-of-way may not rely on that superior right-of-way, but must remain reasonably vigilant of the actions of others. *Youngs v. Fort*, 109 N.W.2d 230, 233 (Iowa 1961). Where a driver looks both left and right but nonetheless fails to see an oncoming vehicle, it does not necessarily follow that the driver was negligent as a matter of law. *See Matuska*, 150 N.W.2d at 736.

The evidence in this case is clear that Swank did not see Barrett until after she proceeded into the intersection. It is additionally clear Swank looked forward and to both sides before moving the vehicle. Barrett's argument faults Swank for failing to look over her shoulder and to the rear in order to see Barrett as he left 68th Street and turned to cross the frontage road. We find the circumstances presented do not require a finding of negligence as a matter of law. Though, under *McCoy*, Swank had a duty to maintain and establish awareness of vehicles behind her, it does not follow that Swank was required to maintain awareness of a vehicle behind her, a distance to the side, and on another road. Upon seeing Barrett on this side roadway, Swank applied her brakes and—taking the testimony in the light most favorable to the nonmoving party—stopped well

before she entered Barrett's path. A reasonable jury could conclude Swank maintained an adequate lookout and therefore she was not negligent as a matter of law.

2. Failure to Yield

Barrett also argues Swank was negligent as a matter of law by failing to yield the right-of-way. Iowa Code section 321.322(1) requires a driver approaching an intersection controlled by a stop sign to stop and yield the right-of-way to any vehicle in the intersection or approaching so closely as to constitute an immediate hazard. Failure to adhere to the requirements of the statute constitutes negligence. *See Willemsen v. Reedy*, 244 N.W. 691, 692 (Iowa 1932).

There is no question Swank properly stopped for the stop sign, yielded the right-of-way to one other vehicle, rechecked the intersection for vehicles, and started to drive through the intersection. The parties disagree on what happened next. Barrett claims Swank drove through two lanes and into his path causing him to swerve around her. Swank says she stopped just beyond the stop sign and never entered Barrett's path, thereby yielding the intersection to him. We need not resolve this dispute. It is enough that two alternate and reasonable possibilities exist. *See* Iowa R. App. P. 6.904(3)(j) (noting questions of negligence are for the jury). A jury could have determined, based upon the facts as presented by Swank, that she yielded the intersection to Barrett after noticing his motorcycle and did not violate the statute.

The district court properly denied the motion on both grounds.

B. Jury Instruction

At the close of evidence, Barrett requested a sudden emergency instruction, which was denied. A party is entitled to have its theory submitted to the jury when the requested instruction correctly states the law, is not otherwise reflected in the instructions, and applies to the facts of the case. *Wolbers*, 673 N.W.2d at 731–32.

The sudden emergency doctrine excuses an individual's actions when confronted with an emergency not of their own making. *Vasconez v. Mills*, 651 N.W.2d 48, 54 (Iowa 2002). "The doctrine reflects the realization that a person who is confronted with an emergency situation is left no time for thought, or is reasonably so disturbed or excited, that he cannot weigh alternative courses of action, and must make a speedy decision, based largely upon impulse or guess." *Id.* The doctrine also "expresses the notion that the law requires no more from an actor than is reasonable to expect in the event of an emergency." *Weiss v. Bal*, 501 N.W.2d 478, 481 (Iowa 1993).

Because a sudden stop in a parking lot due to pedestrians is a common and foreseeable occurrence; the doctrine has no application in such incidents. *See id.* at 481–82. Vehicles stopping suddenly on a roadway are not unexpected and would not trigger availability of the sudden emergency doctrine. *See Beyer v. Todd*, 601 N.W.2d 35, 40–41 (Iowa 1999).[5] By contrast, a driver confronted with oncoming traffic on the wrong side of the road, where there would be little

[5] In *Beyer*, our supreme court collected, summarized, and expressed approval for a number of cases from Iowa and other jurisdictions on the proper application of the doctrine. *Beyer*, 601 N.W.2d at 39-40.

expectation such a vehicle would be found, would be a proper situation for application of the doctrine. *See Weiss*, 501N.W.2d at 482.

We find the facts of this case fall in line with past decisions limiting application of the sudden emergency doctrine. The situation that confronted Barrett was a foreseeable occurrence, which a prudent driver should reasonably anticipate. A driver pulling out into traffic at a stop sign in a busy mall parking lot is foreseeable, much like the sudden stop of traffic on a busy roadway, or pedestrians walking through a parking lot. *See Beyer*, 601 N.W.2d at 39; *Weiss*, 501 N.W.2d at 481–82. We are mindful of our supreme court's concern in *Beyer*: "[t]o extend the sudden emergency doctrine to cases like the one before us, would, as we noted in *Weiss,* make it so that the doctrine "could be relied upon in nearly any traffic context to excuse 'emergencies' that a reasonably prudent driver must be prepared to meet." *Beyer*, 601 N.W.2d at 40.

The doctrine had no application to these facts and the district court properly declined to present it to the jury.

AFFIRMED.