IN THE COURT OF APPEALS OF IOWA

No. 6-753 / 06-0358
Filed December 28, 2006

BRENDA PIGNOLET DE FRESNE,
Plaintiff-Appellant,

vs.

JAMES C. ROOK,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge.

Plaintiff appeals following a jury verdict and district court judgment in favor of defendant, asserting instructional errors by the district court. **REVERSED AND REMANDED.**

Thomas A. Palmer of Lawyer, Dougherty, Palmer & Flansburg, P.L.C., West Des Moines, for appellant.

Scott K. Green, West Des Moines, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Plaintiff Brenda Pignolet De Fresne appeals following a jury verdict in favor of defendant James Rook. Pignolet De Fresne asserts the district court committed reversible error in submitting a sudden emergency instruction to the jury. We agree, and accordingly reverse and remand for a new trial.

I. Background Facts and Proceedings.

Pignolet De Fresne and Rook were involved in a motor vehicle collision on September 28, 2002. The underlying facts of the accident are essentially undisputed.

Both parties were traveling westbound on Interstate 80. Pignolet De Fresne was operating her tractor and semi-trailer in the left westbound lane. Rook was operating his recreational vehicle (RV), which was towing an automobile, in the center westbound lane. The roadway was dry and visibility was good.

The vehicles entered a construction zone. Traffic was "heavily congested." Although Rook did not recall seeing any construction signs, Pignolet De Fresne remembered seeing signs, on the both the left and right sides of the westbound lanes, that stated "Construction Ahead, Merge Left." She also recalled seeing a flashing arrow light directing traffic to move to the left.

As the parties approached the construction, a tractor and semi-trailer immediately in front of Rook began braking. Pignolet De Fresne, who had been alerted via her CB radio that two school buses were stopped ahead in the center lane, slowed down to allow the tractor and semi-trailer in front of Rook to move into the left lane. Rook also applied his brakes, and began to move into the right

lane. Once he was "about a third of the way over," Rook realized the right lane was blocked off with concrete barricades.

Concluding he could not come to a stop before colliding with the barricades, Rook moved back to the left while continuing to apply his brakes. However, the tractor and semi-trailer in the center lane was "braking hard" and stopping faster than Rook's RV. Rook determined that in order to avoid colliding with the back of the tractor and semi-trailer he would need to move into the left lane. Rook "glanced out [his] side window" and continued to move to the left.

Pignolet De Fresne observed that Rook's RV was entering her lane, and moved her tractor and semi-trailer towards the shoulder of the road. Rook's vehicle collided with Pignolet De Fresne's vehicle. At the time of the collision Pignolet De Fresne's tractor and semi-trailer was partially on the shoulder and partially in the left lane, and Rook's RV was partially in the left lane and partially in the center lane.

In September 2004 Pignolet De Fresne filed a petition against Rook asserting the accident was the result of Rook's negligence and seeking damages for physical injuries she had allegedly suffered as a result of the accident. The matter proceeded to trial in January 2006. The jury was instructed that a driver is negligent if he or she (1) fails to "have his or her vehicle under control," (2) drives "any vehicle on a highway at a speed greater than will permit him or her to stop within the assured clear distance ahead," or (3) fails to keep a "proper lookout." The jury was also instructed, over the objections of Pignolet De Fresne, on the sudden emergency doctrine, and Rook's claim that he was confronted with the sudden emergency of "the rapidly braking semi truck in the center lane."

The jury returned a verdict finding Rook was not at fault for the accident. Pignolet De Fresne appeals. She asserts the court erred in submitting the sudden emergency instruction to the jury, to her prejudice.

II. Scope and Standards of Review.

We review the district court's decision to submit the sudden emergency instruction for the correction of errors at law. *Beyer v. Todd*, 601 N.W.2d 35, 38 (Iowa 1999). A requested instruction must be given only if it is a correct statement of the law, is applicable to the case, and is not elsewhere stated in the instructions. *Id*. at 38. "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). In determining whether substantial evidence supports the requested instruction, we view the evidence in the light most favorable to the party seeking the instruction. *Beyer*, 601 N.W.2d at 39. If an instruction is erroneously given, reversal is warranted if the court's action results in prejudice to the objecting party. *Foggia v. Des Moines Bowl-O-Mat, Inc*., 543 N.W.2d 889, 892 (Iowa 1996).

III. Discussion.

Sudden emergency is a doctrine that provides a legal excuse for "a defendant's failure to obey statutory law when confronted with an emergency not of his or her own making," and may also be applied when only common-law negligence is alleged. *Weiss v. Bal*, 501 N.W.2d 478, 480-81 (Iowa 1993). A sudden emergency is defined as "(1) an unforeseen combination of circumstances which calls for immediate action; (2) a perplexing contingency or complication of circumstances; (3) a sudden or unexpected occasion for action,

exigency, pressing necessity." *Id*. at 481 (quoting *Bangs v. Keifer*, 174 N.W.2d 372, 374 (Iowa 1970)). A sudden emergency instruction is appropriate if the driver's actions are the result of an unforeseen, unanticipated, or unexpected event, but not when driver's negligence caused the emergency. *See Beyer*, 601 N.W.2d at 39-40; *Weiss*, 501 N.W.2d at 482.

The seminal case in this area is *Beyer v. Todd*, 601 N.W.2d 35 (Iowa 1999). There, two drivers had successfully slowed and stopped their vehicles behind a stalled car on a divided, four-lane highway, when the rear-most vehicle was struck from behind by a vehicle being driven by the defendant. *Beyer*, 601 N.W.2d at 37. In concluding that a sudden emergency instruction was not supported by the record, our supreme court stated:

> A sudden stop in traffic on a divided, four-lane highway, during a busy time of day . . . is not an uncommon or unforeseen event on the traveled roadways. We believe that the sudden stop in traffic which confronted [the defendant] is more like the everyday hazard of driving through a school parking lot, than like a deer bounding onto the road at night directly in front of a driver, or a couch falling from a pickup truck onto the freeway without warning.
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> Thus, while [the defendant] was forced to take immediate action in response to the vehicles stopping in front of him, we believe such an event does not qualify as an emergency for purposes of submitting a sudden emergency jury instruction to the jury. Additionally, we believe our statutes concerning a driver's duty to keep his or her vehicle under control, and the duty to operate a vehicle such that it can be stopped within the assured clear distance ahead, imply that a driver should be prepared for a sudden stop in traffic.
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> To extend the sudden emergency doctrine to cases like the one before us, would . . . 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." We do not believe that excusing the failure to anticipate such ordinary hazards as abrupt stops in traffic "is in keeping with the spirit or purpose of the doctrine."

Id. at 39-40 (citations omitted).

Looking to the facts of this case, we conclude that, like the defendant in *Beyer*, Rook was confronted with an ordinary hazard of the road that could be foreseen by a reasonably prudent driver. Rook was driving on an interstate, with good road conditions and visibility, in a construction zone, in the midst of congested traffic. Even when the evidence is viewed in the light most favorable to Rook, under those circumstances a "rapidly braking semi truck" immediately in front of Rook's RV is not an unanticipated or unexpected event. Rather, it is a situation for which Rook should have been prepared. *See* W. Page Keeton et al., *Prosser and Keaton on Torts* § 33, at 197 (5th ed. 1984) ("[S]ome 'emergencies' must be anticipated, and the actor must be prepared to meet them when he engages in an activity in which they are likely to arise.").

The district court erred in submitting the sudden emergency instruction to the jury in this matter. Because Rook was not entitled to the legal excuse instruction, its submission misled the jury, to Pignolet De Fresne's prejudice. *See Anderson v. Webster City Cmty. Sch. Dist*., 620 N.W.2d 263, 268 (Iowa 2000) ("Prejudice results when the trial court's instruction materially misstates the law, confuses or misleads the jury, or is unduly emphasized."). We accordingly reverse the judgment in this matter, and remand for a new trial.

REVERSED AND REMANDED.