IN THE COURT OF APPEALS OF IOWA

No. 8-430 / 07-1211
Filed October 1, 2008

NOVA L. KAMRADT, and DANNY L. KAMRADT,
Plaintiffs-Appellants,

vs.

ANITA G. FROEHLIG,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Plaintiff contends that the jury was improperly instructed in her negligence claim against defendant in a case arising out of an automobile accident and that her motion for new trial should have been granted. **AFFIRMED.**

Paul Deck of Deck & Deck, Sioux City, for appellant.

Scott Green, West Des Moines, for appellee.

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

VAITHESWARAN, J.

Nova Kamradt and Anita Froehlig were involved in a car accident in Sioux City, Iowa. Kamradt sued Froehlig for personal injuries sustained in the accident. A jury found Kamradt fifty percent at fault, which resulted in a proportionate reduction of her damage award. On appeal, Kamradt's primary challenge is to the comparative fault instruction.

I. Background Facts and Proceedings

Kamradt was traveling west and Froehlig was traveling north toward an intersection that was not controlled by a stop sign. The intersection was in a residential area with a speed limit of twenty-five miles per hour. Froehlig moved into the intersection. Kamradt's vehicle, which was to the right of Froehlig's, also moved into the intersection and "t-boned" the passenger side of Froehlig's car.

Kamradt sued Froehlig. She alleged Froehlig was negligent in several respects, including "failure to afford the right-of-way to Plaintiff's vehicle . . . ." At trial, the district court instructed the jury to consider whether Kamradt was also at fault in the accident. The jury returned a special verdict finding Kamradt and Froehlig each fifty percent at fault. Kamradt was awarded damages for past medical expenses, past physical and mental pain and suffering, past loss of function of the body, past lost wages, and damage to her vehicle. The jury did not award Kamradt damages for future medical expenses, future physical and mental pain and suffering, future loss of function of her body, or loss of future

earning capacity. The court entered judgment in favor of Kamradt and against Froehlig for $11,630.[1]

Kamradt moved for a new trial on a number of grounds. The district court granted a conditional new trial on the issue of damages after concluding the jury failed to properly address the amount of damages for past medical expenses and future pain and suffering. To avoid a new trial on those matters, Froehlig consented to an amendment of the jury's award. The court entered an amended judgment.

On appeal, Kamradt argues the district court erred in (1) "submitting to the jury comparative fault," (2) "submitting to the jury the specifications of plaintiff's contributory negligence,"[2] and (3) "refusing to grant a new trial."

II. Analysis

A. Challenges to Jury Instructions

"Parties are entitled to have their legal theories submitted to the jury when the instructions expressing those theories correctly state the law, have application to the case, and are not otherwise covered in other instructions." *Wolbers v. Finley Hosp.*, 673 N.W.2d 728, 731–32 (Iowa 2003). "Proposed instructions must be supported by the pleadings and substantial evidence in the record." *Id.* at 732.

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[1] The court also entered judgment in favor of Kamradt's husband on his loss of consortium claim. That claim is not at issue on appeal.

[2] Kamradt refers to "contributory negligence." That doctrine has been replaced by the concept of comparative fault. *See* Iowa Code ch. 668 (2005); *Goetzman v. Wichern*, 327 N.W.2d 742, 754 (Iowa 1982). However, Iowa Code chapter 668, titled "Liability in Tort—Comparative Fault," makes reference to "contributory fault." Iowa Code § 668.3. To avoid confusion, we will assume that all references to the concept of contributory negligence in the record and briefs are in fact references to the concept of comparative fault.

1. Comparative Fault Instruction

The comparative fault instruction stated in pertinent part that if Kamradt's fault "was 50% or less of the total fault, the Court will reduce the plaintiffs' damages by the percentage of Nova Kamradt's fault."

Kamradt argues "there is not sufficient evidence . . . in the record to support the submission of comparative fault to the jury in an intersection accident" because she had the right of way at the intersection. Froehlig counters that "the right of way law does not trump every other traffic law." The law supports Froehlig's argument.

Iowa's "right of way" law, Iowa Code section 321.319, provides in pertinent part that:

> When two vehicles enter an intersection from different highways or public streets at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

This right "is not an absolute right, but a relative one." *Glandon v. Fiala*, 261 Iowa 750, 757, 156 N.W.2d 327, 332 (1968); *see also Reich v. Miller*, 257 Iowa 1040, 1043, 135 N.W.2d 651, 653 (1965) (holding that although defendant had the directional right-of-way, that right was qualified by the Iowa law requiring a driver to maintain control and reduce the speed to a reasonable and proper rate when approaching and crossing an intersection); *Jacobsen v. Aldrich*, 246 Iowa 1160, 1164, 68 N.W.2d 733, 735 (1955) (stating that a driver's directional right-of-way is not absolute, but is modified by other traffic laws). Although the driver on the left has a duty to yield to the driver on the right, the driver on the left can

assume that the other will obey the law. *Brown v. Guiter*, 256 Iowa 671, 677, 128 N.W.2d 896, 900 (1964).

Based on this law, Froehlig was entitled to the comparative fault instruction if there was substantial evidence to support it. Froehlig retained an expert who conservatively estimated Kamradt's speed at forty to forty-four miles per hour. He also surmised that Kamradt must have been inattentive because there "was no preimpact attempt to avoid in braking or steering . . . ." The expert opined that if Kamradt had been traveling at the speed limit, the accident would not have happened. This testimony amounted to substantial evidence supporting the comparative fault instruction. *See Kuehn v. Jenkins*, 251 Iowa 557, 565, 100 N.W.2d 604, 609 (1959) (holding that although the defendant had the right of way in an intersection collision, it was a jury question "whether defendant was exceeding the speed limit as he approached the intersection, and if so, to what extent"); *Perry v. Eblen*, 250 Iowa 1338, 1347-48, 98 N.W.2d 832, 837 (1959) (affirming submission of contributory negligence instruction).

2. Instruction Specifying Kamradt's Negligence

Kamradt next contends the court erred in instructing the jurors that they could find her negligent in: (1) "operating her vehicle at a speed greater than the legal limit," (2) "failing to maintain a proper lookout," (3) "failing to have her vehicle under control," and (4) "failing to operate her vehicle at a reasonable and proper rate."

Bypassing the error preservation concerns raised by Froehlig, we find sufficient evidence on all four specifications to warrant submission of this instruction. As noted, Kamradt's speed was clearly an issue in dispute, justifying

the submission of the first and fourth specifications. With respect to Kamradt's claimed failure to maintain a proper lookout, Froehlig's expert interpreted her failure to brake as a sign that she was inattentive. Additionally, Kamradt admitted she was talking to her daughter as she was driving. These pieces of evidence support the second specification as well as the third specification on Kamradt's failure to maintain control.

B. New Trial Ruling

Kamradt argues the district court erred in denying her motion for new trial. She cites the following grounds for reversal: (1) "irregularity in the proceeding of the jury," (2) "misconduct of the jury," (3) "misconduct of the prevailing party," (4) "damages awarded inadequate," (5) "verdict not sustained by sufficient evidence," (6) "errors of law occurring in the proceedings," and (7) "the verdict fails to effectuate substantial justice."

The first, second, fifth, sixth, and seventh grounds are in fact challenges to the jury's finding of comparative fault. As we have addressed that finding above, we will not delve into it again. Additionally, it is established that a jury's misunderstanding of the court's instructions or misapplication of the law to the facts does not amount to jury misconduct. *Weatherwax v. Koontz*, 545 N.W.2d 522, 525 (Iowa 1996); *Anderson v. Goodyear Tire & Rubber Co.*, 259 N.W.2d 814, 820 (Iowa 1977).

The third ground relates to defense counsel's comments during closing arguments concerning the payment of medical bills. The district court addressed these comments in its ruling on Kamradt's new trial motion, concluded the jury interpreted them incorrectly, and further concluded Kamradt was entitled to the

payment of hospital emergency room and surgery expenses. The court's ruling resolved the issue.

The fourth ground, damages, was adequately addressed by the district court's amended judgment.

We conclude the district court did not err or abuse its discretion in ruling on Kamradt's motion for new trial.

AFFIRMED.