

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001145-MR

ALONZO ROYLES, JR.,
AS ADMINISTRATOR OF THE
ESTATE OF LOIS M. ROYLES;
ALONZO ROYLES, SR.; AND
JILL HALL

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ERNEST A. JASMIN, JUDGE
ACTION NO. 95-CI-002731

CITY OF LOUISVILLE;
CITY OF LOUISVILLE
POLICE DEPARTMENT; AND
ELVIS D. COLBERT

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI and SCHRODER, Judges.

GUIDUGLI, JUDGE. Appellants, Alonzo Royles, Jr., as administrator of the estate of Lois M. Royles, Alonzo Royles, Sr., and Jill Hall, appeal from an order of the Jefferson Circuit Court entered March 25, 1997, which granted a directed verdict in favor of appellees, Elvis D. Colbert, the City of Louisville, and the City of Louisville Police Department. We affirm.

On October 2, 1994, a four-door Buick was stolen by a group of teenagers. The owner of the car reported it stolen.

After the theft, it appears that the Buick's license plate was removed and the license plate of another car was placed in the rear window. On October 3, 1994, four teenagers were driving the car around Louisville with music blaring.

On that same afternoon, Officer Elvis D. Colbert (Officer Colbert) was on patrol with his partner, Detective Gina Anthony (Det. Anthony), in a marked city police cruiser. Officer Colbert was driving. The Buick caught their attention because of the loud music. Officer Colbert began to follow the Buick with the intent of stopping it to warn the driver about the loud music.

Officer Colbert followed the Buick two blocks south on 28th Street. When the Buick turned onto Garland Street, Officer Colbert was stopped by a red light. He turned onto Garland after the light changed. At this time there were two vehicles between Officer Colbert and the Buick. Officer Colbert activated the cruiser's lights and the two cars moved, allowing him to move up behind the Buick. He sounded his siren at 29th and Garland to attract the Buick's attention. When he sounded the siren, the two occupants of the Buick's back seat turned around and saw the police cruiser. One of them tapped the driver on the shoulder. The Buick came to a stop at 32nd and Garland.

Officer Colbert pulled up behind the Buick, exited the police cruiser, and began to walk towards the Buick. As he walked toward the Buick, Officer Colbert observed that the steering column of the Buick was broken. When Officer Colbert

was 3 to 4 feet away from the rear driver's side door the Buick sped off, running the stop sign at 32nd and Garland.

Officer Colbert ran back to his cruiser, told Det. Anthony about the broken steering column and asked her to call in the plate number of the Buick as a "rolling stolen." Officer Colbert then took off after the Buick with his lights flashing. As they approached the intersection of Garland and 34th Street, Det. Anthony activated the cruiser's siren because she saw that the Buick was going to run through the intersection.

At the intersection of Garland and 34th Street the Buick ran a red light and turned north onto 34th Street, almost colliding with two cars. When Officer Colbert reached the intersection he stopped at the red light long enough for traffic to see him and then turned north onto 34th Street. At this point the dispatcher informed Officer Colbert that the car registered to the license plate called in had not been reported stolen, but that the license plate belonged to a two-door Buick, not a four-door.

At the intersection of 34th Street and Broadway the Buick again ran a right light, almost collided with two cars, and turned east onto Broadway. By the time Officer Colbert reached the intersection, the Buick had ran a red light at Broadway and 32nd Street. Officer Colbert also turned onto Broadway.

As Officer Colbert proceeded down Broadway, he observed the Buick attempting to turn left across the westbound lanes of Broadway onto northbound 30th Street. The Buick had to maneuver

around several cars to make the turn, and Officer Colbert was able to close in to two or three car lengths of the Buick.

By the time Officer Colbert was able to maneuver around the two cars, the Buick was once again one to two blocks ahead of him. The Buick ran a stop sign at Magazine and 30th Street. At that point Officer Colbert stopped because the Buick had entered the Second District and he wanted them to take over the pursuit.

The Buick continued north on 30th Street, disregarding several traffic control devices. The Buick then ran a red light at 30th and Muhammad Ali and collided with vehicles driven by Lois Royles and Jill Hall. As a result of the accident, Lois Royles was killed and Jill Hall sustained severe injuries.

Officer Colbert and Det. Anthony saw the collision, called it in, and sped to the scene of the accident. At this time Officer Colbert realized that the occupants of the Buick were juveniles. Officer Colbert testified that he did not exceed 40 m.p.h. during the incident and that he was not trying to overtake the Buick. An accident reconstructionist estimated that the Buick was traveling 65 to 70 m.p.h. at the time of the accident.

Appellants brought separate negligence actions against the City of Louisville, the City of Louisville Police Department, and Officer Colbert. In identical language, the appellants alleged that "the negligence of Defendant Colbert in the operation of his motor vehicle, independently and/or concurrently with the negligence of the other Defendants named herein, caused

and brought about the damages complained of herein." Appellants sought to hold the City liable under the theory of respondent superior and inadequate training. Appellants further alleged that Officer Colbert violated written policy regarding motor vehicle pursuits which was in effect at the time of the accident.

The trial of this manner began on February 4, 1997. Appellants completed their case in chief on February 6, 1997. Appellees then moved for a directed verdict. Appellees' motion was thoroughly briefed, as was Appellants' response, and oral arguments on Appellees' motion were held.

The trial court indicated on February 7, 1997, that it was entering summary judgment in favor of Appellees. The trial court made no findings of fact on the record, but indicated that Chambers v. Ideal Pure Milk Co., Ky., 245 S.W.2d 589 (1952), controlled its decision and read the following language from Chambers into the record:

Charged as they were with the obligation to enforce the law, the traffic laws included, they would have been derelict in their duty had they not pursued him. The police were performing their duty when Shearer, in gross violation of his duty to obey the speed laws, crashed into the milk wagon. To argue that the officers' pursuit caused Shearer to speed may be factually true, but it does not follow that the officers are liable at law for the results of Shearer's negligent speed. Police cannot be made insurer's of the conduct of the culprits they chase. It is our conclusion that the action of the police was not the legal proximate cause of the accident, and that the jury should have been instructed to find for the appellants.

Chambers, 245 S.W.2d at 590-91. The trial court further stated that it was bound by the precedent set in Chambers, and that any change would have to come from the Kentucky Supreme Court.

The trial court entered its formal memorandum opinion and order granting summary judgment in favor of Appellees on March 25, 1997. In its conclusion of law, the trial court found that Appellants failed to produce sufficient evidence which would permit a reasonable person to find in their favor. The trial court further found the Appellants failed to bring forth any evidence which would tend to show that Officer Colbert negligently operated his vehicle, and that the evidence showed that the Buick was the actual cause of the damages. The trial court pointed out that Officer Colbert's vehicle was parked at the time of the accident. The trial court stated "On these undisputed facts, the Court holds that a reasonable person could not find Officer Colbert negligently operated his vehicle. This is an independent ground justifying a directed verdict[.]" The trial court also found that Officer Colbert did not violate the pursuit policy because he was merely following the Buick as opposed to trying to overtake it. Finally, the trial court held that based on the above-quoted language of Chambers, it was obliged to find that the driver of the Buick was the legal cause of Appellants' injuries. In support of its decision, the trial court noted that Officer Colbert had a duty to apprehend the Buick's driver and a right to follow or pursue the car. The trial court found this to also be an independent ground

justifying entry of a directed verdict. Finally, the trial court found that there was no special relationship between the Appellants and Appellees which would justify holding the Appellees liable.

On appeal, Appellants urge us to find that Chambers is no longer the law in Kentucky and reverse entry of the directed verdict. This is the only argument Appellants make on appeal.

When ruling on a motion for directed verdict, the trial court is required to review the evidence in the strongest possible light in favor of the party opposing the motion, and must also give the opposing party the advantage of every reasonable inference which can be drawn from the evidence.

Taylor v. Kennedy, Ky. App., 700 S.W.2d 415, 416 (1985). A directed verdict is improper "unless there is a complete absence of proof on a material issue in the action, or if no disputed issue of fact exists upon which reasonable men could differ." Taylor, 700 S.W.2d at 416. On appeal, we are to consider the evidence in the same light. Lovins v. Napier, Ky., 814 S.W.2d 921, 922 (1991).

In grounding their argument on appeal on the Chambers issue only, Appellants lose sight of the fact that the trial court indicated that there were several independent grounds which supported its entry of directed verdict in favor of Appellees. Even if, as Appellants argue, Chambers is no longer the law, entry of directed verdict would still be proper if any of the other grounds set forth in the trial court's order are

applicable. See Clark v. Young, Ky. App., 692 S.W.2d 285 (1985) (holding that judgment of trial court may be affirmed if right despite fact that reasoning of trial court was erroneous).

Before any of the Appellees can be found liable for the damages which occurred as a result of this tragic chain of events, it must first be shown that Officer Colbert was negligent. In order to show negligence, Appellants must show that Officer Colbert (1) owed a duty to Appellants; (2) breached that duty; and (3) as a result of that breach caused damage to the Appellants. M & T Chemicals, Inc. v. Westrick, Ky. App., 525 S.W.2d 740, 741 (1974).

Appellants contend that Article 59 of the Louisville Police Department's Policy and Procedures Manual (Article 59) provides the requisite duty and standard of care in this action. Appellees deny that Article 59 applied in this situation on the ground that Officer Colbert was not pursuing the Buick.

Article 59 defines "pursuit" as "an active attempt, by a law enforcement officer(s) operating a marked police vehicle, utilizing emergency equipment, to apprehend the operator of a fleeing vehicle who is attempting to avoid arrest by using speed or other evasive tactics." Four conditions of a vehicle pursuit are listed:

- a. The violator knows that the officer wants him/her to stop;
- b. The violator intentionally takes action in an attempt to evade the officer;

- c. The officer attempts to overtake and stop the violator; and
- d. The officer must have reasonable suspicion to believe that the violator being pursued is a felon or a supported felon. [Emphasis added].

Article 59 further indicates that any pursuit is to be conducted "with due regard to the safety of others." In the event a pursuit occurs, Article 59 also enumerates the procedures to be followed during the course of the pursuit.

Appellees maintain that Article 59 does not apply because Officer Colbert was merely following the Buick and was not pursuing it. In support of their argument, Appellees point to the fact that Officer Colbert made no attempt to overtake or stop the Buick. Appellees further state that Officer Colbert never went faster than 40 m.p.h., stopped for red lights and stop signs during the course of the chase, and stopped following the Buick completely shortly before the accident occurred.

Having reviewed the record on appeal, we find that Article 59 does not apply to this case. Appellants brought forth no evidence to show that Officer Colbert attempted to overtake and stop the vehicle, and we agree with Appellees that under the facts presented it appears that Officer Colbert was merely following the vehicle as opposed to pursuing it. Even if we believed Article 59 applied, we feel a directed verdict would still be proper because Appellants failed to show that Officer Colbert failed to act with due regard for the safety of others.

Even in the absence of Article 59, Appellants' claims against Appellees must fail. As Appellees point out, in enacting Kentucky Revised Statutes (KRS) 189.940, the Kentucky General Assembly has provided that police vehicles are exempt from the strictures of traffic regulations regarding speed limits, traffic control devices, and lane restrictions when in pursuit of an actual or suspected violator of the law. Although KRS 189.940 specifically states that it "does not relieve the driver of any emergency or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway," Appellants did not offer any proof which would tend to show that Officer Colbert was negligent.

Because Appellants failed to show that Officer Colbert was negligent in following the Buick, entry of a directed verdict in favor of Appellees was proper. Having held that entry of the directed verdict was proper on other grounds, we need not reach Appellants' arguments regarding the continued validity of the Chambers decision.

The opinion of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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