

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002738-MR

LILLIAN L. RENTSCHLER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, JUDGE
ACTION NO. 95-CI-005441

TIMOTHY S. LEWIS

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. Appellant, Lillian L. Rentschler (Rentschler), appeals from a judgment of the Jefferson Circuit Court entered October 3, 1997, pursuant to a jury verdict dismissing her complaint against appellee, Timothy S. Lewis (Lewis). Rentschler's complaint alleged that Lewis had negligently operated his motor vehicle thus causing a collision which allegedly caused her bodily injuries, as well as, physical and mental pain, which resulted in lost earning capacity and medical expenses. Having thoroughly reviewed this matter, we affirm.

On October 4, 1994, Rentschler and Lewis were involved in an automobile accident in a parking lot adjacent to

Shelbyville Road in Louisville, Kentucky. Appellant filed her complaint alleging that appellee had negligently operated his motor vehicle on that day causing the accident. Lewis filed an answer and counterclaim alleging that Rentschler had actually caused the accident due to her negligence and carelessness. The case proceeded to trial before a jury on September 30 and October 1, 1997. The jury returned a verdict that neither party had failed to comply with any duty owed to the other party which was a substantial factor in causing this accident. As such, the Jefferson Circuit Court entered a judgment dismissing both parties' claims. On appeal, Rentschler alleges the trial court erred when it failed to permit evidence that Lewis' license to operate a motor vehicle had been suspended and consequently failed to instruct the jury pursuant to KRS 186.640 that Lewis was, therefore, deemed prima facie negligent in causing or contributing to the cause of the accident.

During the deposition of Lewis on September 19, 1997, it was discovered that Lewis had been convicted of driving under the influence on August 1, 1993. As a result of said conviction, Lewis' driver's license was suspended until he completed an alcohol evaluation and treatment. Lewis served two weeks on home incarceration and paid his fines but did not complete the alcohol evaluation or treatment as required at that time. However, on the day of the accident Lewis had a Kentucky driver's license in his possession and testified in his deposition that on that date (October 4, 1994) he knew that "[he] did have a valid driver's license." As a result of this information, Lewis filed a motion

to exclude any evidence relating to the previous driving under the influence conviction or possible driving on a suspended driver's license allegation. Each party filed a memorandum in support of his/her position and the trial court addressed the matter in a pre-trial hearing on the morning of the trial, prior to the jury being called.

Initially the trial court ruled that Rentschler could not present evidence of the prior driving under the influence charge, but could address the issue of the license suspension under KRS 186.640. However, before appellant had called any witnesses relative to the suspended license issue, the trial court reversed its prior ruling. Relying on Tipton v. Estill Ice Co., Ky., 132 S.W.2d 347 (1939), Judge Ryan held that he would not permit evidence relating to Lewis' license suspension. Quoting from Tipton the trial judge stated, "However, we do unhesitatingly hold that it was not competent for the Legislature to make the mere failure to secure [an] operator's license prima facie evidence that the driver involved in an accident was negligent in causing or contributing to such accident." Tipton, 132 S.W.2d at 350.

Rentschler preserved the alleged error by both objecting to the trial court's ruling at that time and by submitting a specific written jury instruction on the issue at the conclusion of the evidence.

Before we discuss the parties' arguments on appeal, it is essential to understand how the suspended license issue developed in this case. Lewis was convicted of D.U.I. on

August 1, 1993. His license was suspended for some time, although neither the length of the suspension nor his driving record was made part of this record. On the date of the accident, October 4, 1994, Lewis had in his possession a Kentucky driver's license,¹ and indicated that he thought he had a valid Kentucky driver's license. Subsequent to the accident, Lewis was stopped by police in October 1996 and it was then discovered through a computer check of his license that Lewis' license was suspended. He was charged with driving on a suspended license and Lewis admitted that charge and he received an additional license suspension at that time. It is unclear from the record or from Lewis' deposition whether or not his license was suspended on October 4, 1994, the date of the accident. It should also be noted that there was no department of transportation certified driving record introduced into the record.

On appeal, Rentschler contends that the trial court erred by not permitting her to introduce evidence that Lewis was operating his vehicle at the time of the accident while his operator's license was suspended. KRS 186.640, which became effective October 1, 1992, provides as follows:

Any driver involved in any accident resulting in any damage whatever to person or to property who is ineligible to procure an operator's license, or being eligible therefor has failed to procure a license, or whose license has been canceled, suspended or revoked prior to the time of the accident, shall be deemed prima facie negligent in

¹The police accident report indicates that Lewis had a Kentucky license on that date.

causing or contributing to cause the accident.

In response to this statute appellee relies upon Tipton, supra. In Tipton, the then highest court of Kentucky upheld the denial of a jury instruction based upon Ky. St. § 2739m-62 (the precursor to KRS 186.640). The Court held that the Legislature did not have the authority to make the mere failure to secure a driver's license to be prima facie evidence that a driver was negligent in causing or contributing to an accident. The Tipton Court went on to hold that it is indeed "competent for legislative bodies to prescribe by their enactments that a certain state of facts shall constitute a presumption of the principal fact... ." Tipton, 132 S.W.2d at 350. However, the Court further stated that the Legislature's right to create such presumptions is "qualified to this extent-that the prescribed facts for creating the prima facie presumption shall have a natural and rational evidentiary relation to, and logical tendency to prove, the principal fact." Id. at 350. The Court then concluded that it was "quite obvious" in the case before it that the driver's failure to produce an operator's license had no such "natural and rational evidentiary relationship to - or a logical tendency to prove the principal fact." Id. at 350. Although in this case the allegations are that Lewis' driver's license was suspended, we believe the Tipton analysis is still applicable. There is no more of a logical, rational or natural connection or nexus between the prescribed fact and the presumed fact in this case than there was in Tipton. The relevant issue is whether or not Lewis exercised ordinary care in the operation

of his vehicle on the day in question and whether or not he failed to comply with the duties he owed Rentschler or other vehicles on the roadway at the time of the accident. Unless the alleged statutory violation was some "causal connection" with the claimed injury a statute cannot constitute negligence imposing liability. Moore v. Hart, Ky., 188 S.W.2d 861 (1916). In Ross v. Jones, Ky., 316 S.W.2d 845 (1958), the Court held that where the facts show no casual connection between the statutory violation and the injures alleged "such violation is irrelevant and plays no part in the determination of liability." Ross, 711 S.W.2d at 847.

In this case appellant alleges that Lewis should be held prima facie negligent pursuant to KRS 186.640. However she cites no cases to support her position.² Appellant also failed to provide proof in the record that Lewis' driver's license was actually suspended on the day of the accident. In contrast, the evidence showed that Lewis had a license in his possession on that day, presented the license to the police officer investigating the accident, and the police listed the driver's license number on the police report. Lewis also stated he had automobile insurance which he believed indicated he must have a valid license in order to obtain. Appellant did not present any actual proof that Lewis' license was suspended nor did she protect the record by an avowal of the contested evidence.

²It should be noted that appellant cites several cases in her reply brief. These cases deal with violation of Kentucky statutes which constitutes negligence per se but are not controlling on the issue before this Court.

The second issue raised by Rentschler is that the trial court erred by not instructing the jury pursuant to KRS 186.640. Again, it must be noted that there was no proof that Lewis was subject to the provisions of said statute and thus her second argument must necessarily fail. There was nothing in the record which would justify an instruction under KRS 186.640 being given. Of course, there was nothing in the record due to the trial court's ruling on the original motion to exclude which we previously addressed.

Having determined that Tipton is controlling as to the issue before this Court and that the trial court properly ruled in this matter, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

Robert W. Grant
Louisville, KY

BRIEF AND ORAL ARGUMENT FOR
APPELLEE:

Henry A. Triplett
Louisville, KY