

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-003013-MR

DARRELL MONYHAN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS WINE, JUDGE
ACTION NO. 97-CI-005548

JAMES A. YOUNGBLOOD

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, GUIDUGLI, and MILLER, Judges.

COMBS, JUDGE: Darrell Monyhan appeals from the judgment of the Jefferson Circuit Court entered September 17, 1999, based on a jury verdict, dismissing his complaint against James Youngblood. Monyhan sought to recover for personal injuries which he sustained as a result of an automobile accident with Youngblood. The jury found no liability as to Youngblood. On appeal, Monyhan maintains that the trial court committed reversible error by denying his motion for a directed verdict on the issue of

liability and by refusing a tendered instruction pertaining to Youngblood's duties. Finding no error, we affirm.

At trial, the jury heard two opposing theories of the accident. Monyhan told the jury that immediately prior to his impact with Youngblood's vehicle, he was travelling south in the right-hand lane of South Third Street in Louisville (a four-lane roadway) below the speed limit. As he approached the intersection of South Third and Florence streets, Monyhan noticed two cars in the left lane. The first car was stopped, preparing to turn left; the second vehicle, operated by Youngblood, was stopped (or nearly stopped), waiting for the car in front to turn. According to Monyhan, Youngblood abruptly turned his car to the right and entered into Monyhan's lane without signaling. Although Monyhan stomped on his brakes and veered sharply to the left, he could not avoid hitting Youngblood's vehicle. Monyhan's automobile sustained about \$3,000 in damage, and he incurred nearly \$20,000 in medical bills for the treatment of his resulting back injury.

Youngblood agreed with Monyhan that he and the car in front of him were travelling south in the left lane of South Third Street at about 35 miles an hour. However, he denied that he was stopped or even nearly stopped just before the accident. He told the jury that when the driver in front gave a left-turn signal, he decided to pass the driver on the right. He looked in his side view mirror and did not see any vehicle in the right lane to his rear to impede his passing. He activated his right turn signal and moved into the right lane. After he completed

the lane change, disengaged his turn signal, and started to regain speed, he heard brakes squealing and thought to himself that someone was about to be hit. He was then hit from behind by the Honda driven by Monyhan. The only damage to Youngblood's car consisted of two tires that were blown after the car was forced over a curb. He sustained no personal injuries.

The trial court gave the following instruction to the jury with respect to Youngblood's duties:

It was the duty of the Defendant, James Youngblood, in driving his automobile, to exercise ordinary care for the safety of other persons using the roadway. This general duty included the following, specific duties:

- a. To keep a lookout for other persons or vehicles in front of or to the rear of or so near his intended line of travel as to be in danger of collision;
- b. To have his motor vehicle under reasonable control;
- c. To drive at a speed no greater than was reasonable and prudent having regard for the traffic and for the condition and use of the roadway; and
- d. To exercise ordinary care generally to avoid collision with other persons or vehicles using the roadway.

If you believe from the evidence that the Defendant, James Youngblood, failed to comply with one or more of these duties, and that such failure was a substantial factor in causing the motor vehicle collision, you shall find for the Plaintiff, and proceed to Instruction No. 3. Otherwise, you shall find for the Defendant, and shall enter your verdict on Verdict Form A, then return to Court.

The jury was unanimous in exonerating Youngblood, and judgment was entered accordingly. Monyhan's motions for a judgment notwithstanding the verdict and for a new trial were denied on November 15, 1999. This appeal followed.

In regard to the denial of his motion for a directed verdict, Monyhan cites Roberts v. Rogers, Ky., 265 S.W.2d 448 (1954), which held that "the law not only requires a person to look when he should, but also to see what he should see." He argues that there was no issue of fact for the jury to consider and that Youngblood was negligent as a matter of law by failing to see his vehicle approaching at a close distance in the right lane before cutting into that lane.

The standard of review of a trial court's denial of a motion for directed verdict in a civil jury action was set forth in Lewis v. Bledsoe Surface Mining Co., Ky., 798 S.W.2d 459, 461 (1990):

All evidence which favors the prevailing party must be taken as true and the reviewing court is not at liberty to determine credibility or the weight which should be given to the evidence, these being functions reserved to the trier of fact. The prevailing party is entitled to all reasonable inferences which may be drawn from the evidence. Upon completion of such an evidentiary review, the appellate court must determine whether the verdict rendered is "'palpably or flagrantly' against the evidence so as 'to indicate that it was reached as a result of passion or prejudice.'"

(Citations omitted). See also, USAA Casualty Insurance Company v. Kramer, Ky., 987 S.W.2d 779 (1999).

We have reviewed the evidence presented at trial and have studied the inferences which that evidence supported. We cannot agree that the jury's verdict on the issue of liability was unjustified. The jury was entitled to believe: (1) that Youngblood looked in his side view mirror prior to changing lanes

and (2) that he saw no vehicle in that lane. Based on Youngblood's testimony, the jury could have inferred that Monyhan had a reasonable opportunity to avoid the collision and that Youngblood had complied with all of his duties, leaving Monyhan solely at fault for the rear-end collision. Thus, we find no error in the trial court's refusal to direct a verdict in favor of Monyhan and in permitting the question of Youngblood's negligence to proceed to the jury.

Next, Monyhan contends that the trial court erred in refusing to instruct the jury as he requested with regard to Youngblood's duty of care. Specifically, he argues that the trial court should have instructed the jury that Youngblood had a duty:

not to turn his automobile from a direct course upon the highway unless and until such movement could be made with reasonable safety and if Plaintiff [sic], Monyhan's, automobile was near enough to be affected by such movement, not to change lanes without first giving an intention to do so for not less than the last one hundred feet traveled by him before turning, by mechanical right turn signal visible to the rear or by the extension of his hand and arm upward from the left side of his automobile.

This tendered instruction was based upon on Kentucky Revised Statutes (KRS) 189.380, which provides:

(1) A person shall not turn a vehicle or move right or left upon a roadway until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.

(2) A signal indicating the intention to turn right or left shall be given continuously for not less than the last 100 feet traveled by the motor vehicle before the turn.

Although subsection (1) of the statute does require a motorist to signal when moving to the right or left on a roadway, it does not require a continuous signal for 100 feet except when preparing to turn. Since Youngblood was merely changing lanes rather than turning, the tendered instruction did not accurately reflect Youngblood's statutory duties. Thus, the trial court did not err in refusing to instruct the jury as Monyhan requested. We find that Youngblood's duties were fairly presented to the jury. See Yellow Cab Company of Louisville v. Crume, Ky., 552 S.W.2d 662 (1977).

Monyhan concedes that his tendered instruction may have been faulty with respect to the length of time during which the signal was required to be used. Nonetheless, he contends that the omission in the instructions of any reference to a duty to use a turn signal constituted reversible error. However, Monyhan did not tender an alternate instruction; nor did he object to the instructions ultimately given to the jury. Thus, the issue is not preserved for appellate review. Kentucky Rules of Civil Procedure 51(3).

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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