

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001523-MR

JAMES DAILY, SR.

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE HENRY M. GRIFFIN, III, JUDGE
ACTION NO. 98-CI-00136

GEORGE N. CLARK;
SYLVIA CLARK, HIS WIFE;
WILLIAM E. WELLMAN; AND
JAMES R. DAILY, II

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUIDUGLI, MILLER AND TACKETT, JUDGES.

GUIDUGLI, JUDGE. James Daily, Sr., (hereinafter "Daily") has appealed from the May 18, 2001, trial order and judgment, from the June 21, 2001, order denying his motions for a new trial and for judgment notwithstanding the verdict, and from the July 16, 2001, order amending the judgment. Following a jury trial, the Daviess Circuit Court awarded plaintiff, George N. Clark (hereinafter "Clark") a judgment of \$19,374.39 and plaintiff, Sylvia Clark a judgment of \$7,200.00 against Daily.¹ Having

¹The Clarks proceeded only against Daily at trial as they
(continued...)

considered the parties' briefs, the written record, the videotape of the trial, and the applicable case law, we affirm.

This action concerns a multiple automobile wreck occurring on February 15, 1997. The facts surrounding the wreck are both complicated and highly disputed. Briefly, the Clark's van was hit by the pick-up truck driven by William Wellman (hereinafter "Wellman") and possibly by the Corvette driven by James Daily, II, who is Daily's son (hereinafter "Jimmy"). Daily and Jimmy had been chasing Wellman after Wellman had apparently cut off Daily's station wagon. Because the facts are in such dispute, we will attempt to summarize the testimony of the witnesses at trial regarding the events that took place.²

George Clark, an Indiana resident, was in Philpot, Kentucky, on February 15, 1997, with his wife, Sylvia, and their children to attend the funeral of his sister, Mary Ammons. Clark turned right, or eastbound, onto Highway 54 upon leaving the cemetery, and proceeded to Highway 142, where he turned right, or southbound. He and his family were on their way to the Ammons' home, located on Highway 142, to have lunch before going home. He began to slow down to turn left into the Ammons' driveway, turned on his turn signal, and checked his mirrors before beginning the turn. Although he saw cars behind him, he did not

¹(...continued)
settled their claims against the other defendants prior to trial.

²As the appellant is not contesting the amount of damages awarded, we will not concern ourselves with the expert medical testimony of Dr. Sean O'Malley and any testimony regarding injuries the Clarks sustained.

see a pick-up truck. His van was hit twice, but he could not provide any information as to who caused the wreck.

Deputy David Bryan Stone of the Daviess County Sheriff's Department began his investigation shortly following the wreck. He saw the pick-up truck upside down in the yard next to the Ammons' property, the Corvette in a ditch, and the van still on the Highway 142, as well as other vehicles involved in the funeral procession on the road or in the driveway. He described that area of Highway 142 as a narrow roadway without a lot of shoulder and with ditches on either side. The posted speed limit was 35 miles per hour and that section of the roadway was designated as a no passing zone. Deputy Stone indicated that the right front of the pick-up truck impacted the left front of the van and that the red Corvette was damaged in the right rear section where it impacted the left rear of the van. He found red paint on the van, and noted that the Corvette left skid marks on the pavement. There was no indication that Daily's station wagon impacted the van. However, Daily would not talk to him or provide him with any information.

William Wellman, accompanied by his son, was in his pick-up truck traveling eastbound on Highway 54 when he reached the cemetery on his right. There had been a funeral, and he had to stop behind a stopped car ahead of him in the roadway for three to four minutes. Because the procession was over, he drove around the stopped car. He was driving back into the eastbound lane when Daily's station wagon was coming onto the road. Because there was no impact, Wellman drove on. In his mirror,

Wellman saw Daily speed up behind him, waving his hands. Thinking Daily would continue on Highway 54 at the Y-intersection of Highway 54 and Old Highway 54, Wellman veered to the right onto Old Highway 54. Daily followed him, went around the curve too quickly, and went off the road to the left. He last saw Daily on the left side of Old Highway 54 trying to get his car back on the road. Wellman continued to proceed eastbound on Old Highway 54, and thought the incident was over until Jimmy took over the chase in his Corvette. Jimmy drove right behind him up on his bumper, tailgating, going in and out of his lane, and swinging his fists. He continued this until reaching the intersection of Highway 142. Having heard of road rages cases and wanting to protect himself and his son, Wellman did not want any contact with Jimmy and chose not to pull over to the side of the road. At the stop sign at the intersection of Old Highway 54 and Highway 142, Wellman did not stop and turn left to go home. Instead, he stopped accelerating, checked the left lane of Highway 142, and without stopping proceeded through the stop sign to the right with Jimmy's Corvette close behind him. On Highway 142, Wellman saw a van ahead of him moving slowly, but did not see any signal or brake lights. He decided to pass the van on the left. However, he hit the left front of the van, and his pick-up truck flipped over. He exited through the back window and searched for his son. The Corvette hit the rear of the van and went into a ditch. The van remained on the road. Daily and Jimmy both approached Wellman after the wreck, Jimmy being the more vocal of the two.

Dr. Artis Truett, a dermatologist, was proceeding south in his vehicle on Highway 142 when he reached the intersection of Old Highway 54. He saw three cars run the stop sign on Old Highway 54 and enter the southbound lane of Highway 142. He first saw the pick-up truck, and a few feet later saw the Corvette with the station wagon a few feet behind the Corvette. Dr. Truett thought the cars were racing. He saw the Corvette trying to swerve out to pass the truck, and then saw the truck swerve out to prevent the Corvette from passing. He saw that cars were stopped ahead, and when a van began to turn left, the truck hit it and then the Corvette hit something. The station wagon was behind the truck and the Corvette. After the wreck, Dr. Truett called 911 from the parking lot of the fire station located just north of the wreck location. He witnessed a fight following the wreck, seeing people rolling on the ground and fists being thrown. He did not know any of the people involved in the incident.

Sylvia Clark, wife of George Clark and a passenger in the van, did not notice anything until the first impact. She then looked to the left and saw the Corvette go into a ditch. The first impact hit the driver's door of the van and pushed it to the right. The second impact changed the direction of the van and pushed it down the road. After the wreck, she saw a person in the pick-up truck get out of the back window and saw several people trying to attack him as well as others restraining them.

Brenda Daily, wife of James Daily, Sr., was a front seat passenger in the station wagon. When the Corvette went

through the intersection at Highway 142, the station wagon was five car lengths back.

Jimmy Daily, the son of James Daily, Sr., and Brenda Daily, was driving the Corvette involved in the wreck and had also attended the funeral. Following the cemetery service, a hearse stopped traffic on Highway 54 and then left. As Jimmy was pulling out of the parking lot, he saw a pick-up truck pull out into the other lane and go around a stopped car. The pick-up truck swerved back into the eastbound lane into spaces occupied by his father's station wagon and his sister's vehicle. Both his father and his sister had to pull their vehicles over to the right to keep from being hit. As the vehicles continued down the road, the driver of the pick-up truck had to put on its brakes to avoid other cars pulling out onto the roadway. This caused the rest of the cars to lock up their brakes. Following the turn onto Old Highway 54, Jimmy started following the pick-up truck, whose driver kept hitting his brakes trying to make Jimmy hit him. Jimmy tried to communicate with the pick-up driver in the mirrors, and wanted him to pull over. Closer to the stop sign, Jimmy backed off. However, the pick-up truck proceeded through the stop sign without slowing down or stopping. Jimmy stopped at the stop sign for two seconds, and a car going southbound on Highway 142 motioned him to continue. At that point, the pick-up truck was five to seven car lengths ahead and Jimmy continued to follow at a distance. Jimmy saw the van ahead, but did not see any brake lights or signals from the van or from the pick-up truck. When the pick-up truck impacted the van, Jimmy was four

to six car lengths behind. He locked his brakes, leaving thirty feet of skid marks, and had almost stopped when he hit some loose gravel from a driveway. His Corvette went sideways, hit a mailbox, and landed in a ditch. After he got out of the Corvette, he attempted to approach the driver of the pick-up truck. No fighting took place after the accident, although there was a lot of discussion. Jimmy last saw his father's station wagon when it went off the road at the saw shop near the Y-intersection of Highway 54 and Old Highway 54.

James Daily, Sr., had been attending the funeral of his sister-in-law, who was married to his wife's brother. Following the cemetery services, he exited the parking lot and turned right onto Highway 54. He was forced off the road by a pick-up truck coming into his lane. He got back on the roadway, and started to exit onto Old Highway 54. The pick-up truck, ten car lengths ahead, had stopped in the middle of the road. Daily attempted to pass the pick-up truck on the left, but was blocked from doing so. Daily slammed on his brakes and ran off the left side of Old Highway 54. He exited his car, and went to the front. The driver of the pick-up truck made an obscene gesture at him out of his window, and took off at a rapid rate. At that point, Jimmy passed him in his Corvette in order to follow the pick-up truck. Daily then got back into his car and returned to the roadway. He saw the pick-up truck driver slam on his brakes two or three times, and then go through the stop sign at Highway 142. Daily was ten car lengths behind the pick-up truck. At the stop sign, Daily stopped but was motioned through by a car in the southbound

lane. After making the right-hand turn onto the southbound lane of Highway 142, Daily saw the van ahead driving slowly in the southbound lane. The pick-up truck and the Corvette, four or five car lengths behind the pick-up truck, were going into the left lane. The van began turning left as the pick-up truck was even with it in the left lane. When he saw the Corvette go off the road, Daily pulled the station wagon into a parking lot off Highway 142. Following the wreck, there was no fighting or anyone rolling on the ground. However, there was a commotion in the yard. Daily did not communicate with Jimmy in the course of these events.

At the end of the Clarks' case and of his defense, Daily moved the trial court for a directed verdict pursuant to CR 50.01. Daily argued that he was too remotely involved to be a substantial factor in causing the wreck and that Wellman's and Jimmy's actions were superseding, intervening causes. The trial court denied Daily's motions, allowing the jury to determine whether Daily's actions were a substantial factor or proximate cause in causing the wreck. The trial court also refused Daily's request to include instructions to the effect that Wellman and Jimmy were negligent as a matter of law, thereby directing a verdict against them. However, the trial court did include instructions as to the duties Clark, Daily, Wellman, and Jimmy owed. Over Daily's objection, the trial court included an instruction that Daily had the duty to not speed and to keep his car under reasonable control. The jury returned a verdict in favor of the Clarks, and apportioned fault 10% to Wellman, 60% to

Jimmy, and 30% to Daily. The trial court entered a judgment accordingly, and later denied the motions for a new trial and for a judgment notwithstanding the verdict. The judgment was amended to provide for the proper amount of recovery. This appeal followed.

Daily has presented four arguments on appeal, three of which address the denials of his motions for directed verdict. He argues that he was entitled to a directed verdict in his favor because his negligent conduct was too remote to be a substantial factor in causing damage to the Clarks and because Wellman's and Jimmy's negligence were superseding causes of the Clarks' injuries. Additionally, he argues that the trial court should have directed a verdict against Wellman and Jimmy specifically finding that they were both negligent.

We believe the trial court correctly determined that the issues raised in the motions for directed verdict were questions for the jury. In McCoy v. Carter, Ky., 323 S.W.2d 210, 215 (1959), the former Court of Appeals held that

[t]he question of proximate cause in connection with the occurrence of an accident is one of fact to be left to the jury where such cause is open to a reasonable difference of opinion. Stated somewhat differently, the issue of proximate cause should be withheld from the jury only if there is no dispute about the essential facts and but one conclusion may reasonably be drawn from the evidence.

Both the Clarks and Daily presented conflicting evidence at trial regarding the actions of the parties involved. While Dr. Truett testified that he saw three vehicles run the stop sign in close succession, other witnesses testified that the vehicles were

separated by several car lengths. Both Jimmy and Daily testified that they each stopped at the stop sign and were several car lengths behind the vehicle in front of them. Additionally, Jimmy testified that his Corvette only hit a mailbox, while Deputy Stone testified that red paint was found on the van. There was also conflicting testimony as to the speeds the respective vehicles were traveling. It was proper for the trial court to leave to the jury the determinations as to whose actions were negligent and whether those negligent actions were a substantial or proximate cause of the Clarks' damages.

Daily's fourth argument raises the issue as to whether the trial court properly instructed the jury regarding his duties. The trial court instructed the jury that Daily's duties were to exercise ordinary control for the safety of others using the highway in driving his automobile, to drive at a speed no greater than was reasonable and prudent and not exceed the speed limit, and to have his vehicle under reasonable control. Daily argues that because his vehicle did not impact the van, the duties imposed had no connection to the collision or injuries. The trial court correctly viewed this as a chain of events starting from the time Wellman passed the vehicle on Highway 54 in front of the cemetery and concluding with the wreck on Highway 142 so that the conduct of the drivers during the course of events was relevant. Although his vehicle did not actually impact the van, Daily's actions during the course of events contributed to the final event. Dr. Truett testified that his vehicle was directly behind the Corvette and that he ran the stop

sign along with the other vehicles. Daily himself admitted that he continued to follow Wellman and Jimmy after he got back onto Old Highway 54. Therefore, the jury could consider Daily's actions throughout that time and the trial court properly included an instruction detailing the duties he owed.

For the foregoing reasons, the judgment and orders of Daviess Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ronald M. Sullivan
R. Michael Sullivan
Owensboro, KY

BRIEF FOR APPELLEES, GEORGE
AND SYLVIA CLARK:

Christopher G. Safreed
Owensboro, KY

NO BRIEF FILED FOR APPELLEES,
WILLIAM WELLMAN AND JAMES R.
DALEY, II