STATE OF MICHIGAN

COURT OF APPEALS

SARAH GREENLUND,

Plaintiff-Appellant,

v

STEPHEN MENARD,

Defendant-Appellee.

UNPUBLISHED
June 8, 2004

No. 246483
Delta Circuit Court
LC No. 01-015950-NI

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action rendered by a jury in this automobile negligence action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant rear-ended plaintiff's car after sliding on a patch of black ice. Plaintiff sued, contending that defendant was negligent for violating the assured clear distance statute, MCL 257.627(1). Defendant claimed that he was not negligent because he was confronted by a sudden emergency. Plaintiff's sole claim on appeal is that the trial court erred in instructing the jury on the sudden emergency doctrine.

"Jury instructions are reviewed in their entirety to determine whether the theories of the parties and the applicable law were adequately and fairly presented to the jury." *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 403; 628 NW2d 86 (2001). If the applicability of a particular instruction depends on whether the evidence supports the instruction, the trial court's ruling is reviewed for an abuse of discretion. If the applicability of a particular instruction is a question of law, the claim is reviewed de novo on appeal. *Hilgendorf v St John Hosp & Medical Ctr Corp*, 245 Mich App 670, 694-695; 630 NW2d 356 (2001).

A driver has a statutory duty to drive at a careful and prudent speed in light of existing conditions. A driver must not drive at a speed greater than that which will allow him to stop within the assured clear distance ahead. MCL 257.627(1). Violation of this statute constitutes negligence per se. *McKinney v Anderson*, 373 Mich 414, 419; 129 NW2d 851 (1964). However, a violation of the statute is not negligence or evidence of negligence if the driver was faced with a sudden emergency not of his own making. If a driver is confronted with a sudden emergency not of his own making, the assured clear distance statute is inapplicable. *Vander Laan v Miedema*, 385 Mich 226, 231; 188 NW2d 564 (1971); *McKinney, supra.*

Under the sudden emergency doctrine, one who suddenly finds himself in a place of danger and is required to act without time to consider the best means of avoiding the impending danger is not guilty of negligence if he fails to use what, upon hindsight, may appear to have been a better method, unless the emergency is brought about by his own negligence. *Lepley v Bryant*, 336 Mich 224, 235; 57 NW2d 507 (1953). The circumstances attending the accident must be either unusual or unsuspected. *Vander Laan*, *supra* at 232. The factual pattern is "unusual" if it varies from the everyday traffic routine confronting the motorist, such as extreme weather conditions like a blizzard. *Amick v Baller*, 102 Mich App 339, 341-342; 301 NW2d 530 (1980). A situation is "unsuspected" if it is suddenly revealed, i.e., it had not been in clear view for a significant length of time and is totally unexpected. *Farris v Bui*, 147 Mich App 477, 480; 382 NW2d 802 (1985). "An instruction on sudden emergency is to be given whenever there is evidence which existed within the meaning of that doctrine." *Young v Flood*, 182 Mich App 538, 544; 452 NW2d 869 (1990).

A patch of ice can be an unsuspected condition constituting a sudden emergency. *Id*.; *Vsetula v Whitmyer*, 187 Mich App 675, 681-682; 468 NW2d 53 (1991). It may excuse a violation of the assured clear distance statute when the defendant driver neither knew nor should have known of the ice and was not otherwise negligent. *Middleton v Smigielski*, 366 Mich 302, 306-307; 115 NW2d 84 (1962). However, sliding on a patch of ice will not excuse a violation of the assured clear distance statute where the defendant driver has reason to suspect icy spots and adjust his speed to be able to stop but fails to do so. *Young*, *supra* at 543-544. See also, e.g., *Morrison v Demogala*, 336 Mich 298; 57 NW2d 893 (1953); *Jackson v Coeling*, 133 Mich App 394; 349 NW2d 517 (1984); *Hughes v Polk*, 40 Mich App 634; 199 NW2d 224 (1972),

In the present case, the evidence showed that defendant was slowing as he approached plaintiff's car and was going approximately five miles per hour. Defendant testified that plaintiff began to make her turn and then stopped, causing him to brake. By that point, he had entered onto a large patch of black ice that covered three quarters of the intersection and was very slippery. There was no evidence that defendant was going too fast for existing conditions, much less speeding, that he was following plaintiff too closely, or that he delayed in slowing and stopping. Although there was some ice and snow on the roads, the ice patch at issue was not a known condition for which defendant failed to account. Under such circumstances, the trial court did not err by instructing the jury on the sudden emergency doctrine.

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens