STATE OF MICHIGAN

COURT OF APPEALS

RYAN R. HELVIE,

Plaintiff-Appellee,

v

JEFF P. HIDDEMA,

Defendant,

and

DEPARTMENT OF NATURAL RESOURCES

Defendant-Appellant.

UNPUBLISHED
December 28, 2004

No. 250417
Court of Claims
LC No. 01-018144-CM

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Defendant Michigan Department of Natural Resources ("DNR") appeals as of right from a judgment awarding plaintiff Ryan R. Helvie $260,000 for an off-road vehicle ("ORV") accident. We affirm.

I. Facts and Procedural History

This case involves an accident that occurred on the dunes at Silver Lake State Park on June 23, 2001. Jeffrey Hiddema, an employee of defendant, was responding to a personal injury accident with his emergency lights and siren activated when his DNR truck collided with plaintiff on his motorcycle in an area called "the flats." Although one could travel in any direction on the flats, traffic predominately traveled north and south and at high rates of speed. Plaintiff was traveling north and struck Mr. Hiddema's truck, which was traveling east, when it emerged from behind two parked trucks. Plaintiff suffered numerous injuries as a result of the accident.

At the close of the trial, the court determined that Mr. Hiddema, as a park ranger on patrol in a state park, breached his duty to exercise reasonable care in operating his vehicle to protect the safety of himself and others. The court also found that plaintiff breached his duty to operate his vehicle in a reasonably safe and prudent manner by traveling so fast as to eliminate

reaction time. Plaintiff was originally awarded $400,000 in damages, but the award was reduced by thirty-five percent to reflect his negligence leading to the accident.

II. Duty to Yield

Defendant asserts the trial court erred in failing to find that plaintiff had a duty to yield to Mr. Hiddema's emergency vehicle. Defendant concedes that MCL 257.653, which requires drivers to yield to emergency vehicles whose lights and siren are activated, does not apply to ORVs.[1] MCL 324.81133(a), which applies specifically to ORVs, provides that "A person shall not operate an ORV at a rate of speed greater than it is reasonable and proper, or in a careless manner having due regard for conditions then existing."[2] Defendant argues that plaintiff operated his motorcycle in a careless manner by failing to yield to an emergency vehicle whose lights and siren were activated.

To establish a negligence claim, a party must show: (1) a duty owed to the party, (2) a breach of that duty, (3) causation, and (4) damages.[3] The existence of a duty in a negligence action is a question of law[4] which we review de novo.[5] The standard of conduct necessary to meet an existing duty is a question of fact.[6] We review a trial court's factual findings in determining the necessary conduct to meet a duty of care for clear error.[7] "A finding is clearly erroneous when, although evidence supports it, this Court is left with a firm conviction that the trial court made a mistake."[8]

The trial court did conclude that plaintiff owed defendant a duty of care, but determined that plaintiff was not required to yield to Mr. Hiddema's vehicle under the circumstances. Although MCL 257.653 does not apply in this situation, we note that the statute requires drivers to yield to an emergency vehicle with its siren and lights activated.[9] However, it also requires drivers of emergency vehicles "to drive with due regard for the safety of persons using the

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[1] Chapter VI of the Motor Vehicle Code, MCL 257.1 *et seq.*, applies "exclusively to the operation of vehicles upon highways" unless a particular section indicates otherwise. MCL 257.601.

[2] MCL 324.81133(a).

[3] *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

[4] *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995).

[5] *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 513; 667 NW2d 379 (2003).

[6] *Moning v Alfono*, 400 Mich 425, 437-438; 254 NW2d 759 (1977).

[7] *Lamp v Reynolds*, 249 Mich App 591, 595; 645 NW2d 311 (2002); *Howe v Detroit Free Press*, 219 Mich App 150, 156; 555 NW2d 738 (1996).

[8] *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997).

[9] MCL 257.653(1).

highway."[10] A driver of an emergency vehicle does not have "an absolute right to proceed blindly" into an intersection.[11] "[T]he driver traveling on a through street, as against an emergency vehicle, has a right to cross the intersection unless, by reasonable exercise of the senses of sight and hearing, he or she should have noticed or heard warning to the contrary."[12]

Even if MCL 257.653 applied to this situation through MCL 324.81133(a), the trial court properly found that plaintiff did not have a duty to yield in this situation. Plaintiff and Matthew Singer, who was driving near plaintiff at the time of the accident, testified that they did not hear the siren because of their helmets and the loud noises of the motorcycle engines. Plaintiff testified that he never saw the emergency lights, and Mr. Singer only saw the lights at the last minute through the windshield of a parked truck. An accident reconstruction expert testified that it would have been almost impossible for plaintiff to have heard the siren over the loud decibels of vehicle noise, or to have seen the emergency lights due to the sunny conditions. As it was unlikely that plaintiff could have heard the sirens or seen the lights "by reasonable exercise of the senses," the trial court properly concluded that plaintiff's duty did not include yielding to an emergency vehicle. Therefore, it was not clear error for the court to decline to define plaintiff's duty as a specific duty to yield to the emergency vehicle.

III. Comparative Negligence

Defendant also argues that the trial court erred when it found defendant sixty-five percent at fault for the accident and plaintiff only thirty-five percent at fault. We disagree. Comparative negligence is an affirmative defense, and if proven, reduces damages "to the extent that plaintiff's negligence contributed to the injury."[13] When asserting comparative negligence, a defendant has the burden of proving that the plaintiff's conduct was both a cause in fact and a proximate cause of his own damages.[14] We review a trial court's determination regarding comparative negligence for clear error.[15]

The trial court found that Mr. Hiddema had a duty as a DNR officer to exercise due care while operating his vehicle. The court found that Mr. Hiddema, who knew traffic predominately traveled north and south, breached this duty when he crossed the flats going east without ensuring that traffic was clear. The court also found that Mr. Hiddema had obstructions to his vision, including the A-pillar of his truck, the improper position of his rearview mirror, and the two parked trucks that he passed. Because of these obstructions, the court found that Mr.

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[10] MCL 257.653(2). See also *Kalamazoo v Priest*, 331 Mich 43, 46; 49 NW2d 52 (1951).

[11] *Placek v Sterling Heights*, 405 Mich 638, 670; 275 NW2d 511 (1979).

[12] *Id.* at 671-672.

[13] *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 79-80; 618 NW2d 66 (2000). See also MCL 600.2957; MCL 600.2959.

[14] *Lamp*, *supra* at 599.

[15] *Id.* at 595.

Hiddema should have exercised greater caution when crossing the flats. The trial court also held that plaintiff breached his duty to operate his ORV in a reasonable and prudent manner by traveling through the flats at fifty miles per hour. The court found that traveling at this high rate of speed did not allow plaintiff to react to any possible obstructions and contributed to the accident. Based on these findings, the court apportioned fault as previously discussed.

We find that the record supports the trial court's apportionment of fault. The witnesses testified that traffic predominately traveled north and south in the flats, often at high rates of speed. Armed with this knowledge, Mr. Hiddema was not entitled to proceed blindly eastbound on the flats relying only on his lights and siren. Furthermore, Mr. Hiddema testified that he did not see plaintiff's motorcycle until the collision occurred. However, expert testimony suggested that Mr. Hiddema could have taken action to remove the obstructions to his vision. Based on this evidence, the trial court properly found Mr. Hiddema sixty-five percent at fault for the accident.[16]

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald

[16] Defendant also aruges that plaintiff breached his duty by traveling too fast and by failing to yield and, therefore, was more than thirty-five percent at fault. However, as we already determined that the court properly found that plaintiff's duty did not include the duty to yield, the trial court also properly apportioned plaintiff's fault based solely on his high rate of speed.