STATE OF MICHIGAN

COURT OF APPEALS

CITY OF LANSING,

Plaintiff-Appellant,

v

AUDREY SAVAGE,

Defendant-Appellee.

UNPUBLISHED
October 20, 2009

No. 286405
Ingham Circuit Court
LC No. 07-000666-AR

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendant was found responsible in the 54-A District Court for violating the city ordinance for careless driving. Lansing Ordinances, § 5.14a. She appealed as of right to the Ingham Circuit Court, which reversed the ruling. Plaintiff appeals the decision of the circuit court by leave granted. We reverse and reinstate the district court's decision. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The standard of proof for a civil infraction is a preponderance of the evidence. MCL 257.747(5); *People v Ferency*, 133 Mich App 526, 535-36; 351 NW2d 255 (1984). Both the circuit court and this Court review a trial court's factual findings for clear error while its conclusions of law are reviewed de novo. *Ligon v City of Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007).

After narrowly missing a police office and lightly striking a patrol car, defendant was cited for violating Lansing Ordinances, § 5.14a, Careless Driving, which states:

> Any person who operates a vehicle on a highway or a frozen public lake, stream, pond, or other place open to the general public, including any area designated for the parking of vehicles, in a careless or negligent manner likely to endanger any person or property, but without wantonness or recklessness, is responsible for a civil infraction.

A municipality may adopt an ordinance that parallels a section of the Michigan vehicle code, MCL 257.1 to 257.923, and adjudicate the violation of that ordinance as a civil infraction.[1] MCL 42.21(2). An ordinance can fairly be interpreted by the same rules of statutory construction applicable to any statute, *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). The ordinance at issue may be broken down into two discrete units: to be responsible, a driver must act carelessly or negligently, and in a manner likely to endanger person or property. Since neither the ordinance, nor the identical statute, provides a definition of the terms "careless" or "negligent," the terms may be given their plain meaning, and dictionary definitions may be applied. *Piasecki v City of Hamtramck*, 249 Mich App 37, 42; 640 NW2d 885 (2001). Random House Webster's College Dictionary (2001), lists the following definitions for "careless":

> 1) not paying enough attention to what one does; 2) not exact or accurate: *careless work*; 3) heedless: *a careless remark*; 4) unconcerned; 5) artless, unstudied: *careless beauty*. [p 202].

The same source defines "negligent" as:

> 1) guilty of or characterized by neglect, as of duty: *negligent officials.* 2) careless and indifferent; offhand: *a negligent shrug.* [p 886].

These definitions suggest lack of attention or indifference as the common aspects of careless or negligent behavior. The facts clearly show that defendant was driving carelessly or negligently when she backed up her vehicle without looking behind her, almost ran over the police officer's foot, and bumped into the patrol car. *Jenkins v Bentley*, 277 Mich 81, 84; 268 NW 819 (1936) (backing up vehicle without looking behind "is a lack of ordinary care and is sufficient to constitute actionable negligence"); *Kinsler v Simpson*, 257 Mich 7, 9; 240 NW 98 (1932) (backing up slowly in driveway without looking behind and running over child constituted negligence); *Roach v Petrequin*, 234 Mich 551, 553; 208 NW 695 (1926) (backing up wagon "very fast" into driveway and injuring child was "careless operation" of vehicle). See also: *People v Drost*, 353 Mich 691, 692; 91 NW2d 851 (1958) (speeding late at night without lights on); *Mason v Wurth*, 181 Mich App 129, 131-132; 449 NW2d 119 (1989) (weaving in and out of traffic at excessive speeds); *People v Abramczyk*, 163 Mich App 473, 475; 477; 415 NW2d 249 (1987) (not looking twice before turning); *Hickey v Kaser*, 20 Mich App 296, 297; 174 NW2d 33 (1969) (changing lanes without looking). These decisions establish that driving with inattention or indifference to one's surroundings constitutes careless or negligent driving. Therefore, the district court properly found that defendant's actions satisfied this standard.

Defendant was also driving in a manner that was likely to endanger a person or property. Defendant argues that the absence of damage to her car or the patrol car is evidence in and of itself that neither property nor person was endangered by the low-speed collision. If the ordinance read, "likely to damage," this argument might have merit, but it reads, "likely to

[1] Lansing Ordinances, § 5.14a is identical to MCL 257.626b.

endanger any person or property." Lansing Ordinances, § 5.14a (emphasis added). Therefore, the language "likely to endanger" only requires that the actions will likely, not certainly, expose something to danger.

Defendant endangered both the City of Lansing's property and the police officer. When two cars collide, regardless of speed, the vehicles will likely be exposed to the risk of damage. Similarly, when a driver operates a vehicle carelessly in extreme proximity to a pedestrian, that pedestrian is endangered. Defendant's "slow-speed" argument is meritless when applied to the officer's safety. Even at extremely slow speeds, an automobile can cause serious injury or death to any person it strikes. Once again, the low threshold of "likely to endanger" is clearly met.

Further, the circuit court erroneously interpreted both the district court's findings and the basis for the traffic citation. In finding defendant responsible for careless driving, the district court stated:

> I am persuaded by a preponderance of the evidence that there was impact between the two vehicles, but it . . . did not leave any physical evidence of that impact having occurred. . . .
>
> [E]ven without the impact, the proximity to the police officer was such that this would constitute driving in a careless manner, even though it was slow. Driving can be careless, if slow, if not with sufficient attention to where one is propelling the motor vehicle and that's what I find, that there was inattention to the direction in which the vehicle was being propelled.

On appeal, the circuit court did not contest the district court's factual findings, but arrived at a different conclusion, erroneously interpreting the district court's decision:

> Mainly what [the district judge] is directing his opinion on is the fact of the proximity of the police officer to the vehicle that Mrs. Savage was driving, but that's not what the police officer gave her a ticket for. He gave her a ticket for careless driving striking his vehicle after driving in a very slow manner. . . .

The circuit court concluded that the citation was written solely for the collision between the two automobiles, but evidently thought the district court found defendant responsible for careless driving strictly on account of the danger the automobile posed to the officer. The officer's endangerment, however, was not the solitary basis for the district court's decision. The district court simply stated that endangering the officer alone was sufficiently careless to meet the statutory threshold; that is, the danger to the officer in conjunction with the danger to City property would satisfy the requirements of the ordinance.

Moreover, there is no support for the circuit court's finding that the traffic citation was issued only because defendant hit the officer's patrol car. The ticket simply states "careless driving," and the ordinance expressly addresses endangerment to persons and property. Defendant's neglect and lack of care while pulling out of her parking spot, coupled with both the

danger her actions presented to the patrol car and the officer, are unequivocally sufficient to satisfy the ordinance.

Reversed.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Pat M. Donofrio