IN THE COURT OF APPEALS OF IOWA

No. 2-1181 / 11-1721
Filed March 13, 2013

MAURA GARCIA,
Plaintiff-Appellant,

vs.

IOWA INTERSTATE RAILROAD, LTD,
AND JESSE WEST,
Defendant-Appellees.

Appeal from the Iowa District Court for Muscatine County, Thomas G. Reidel, Judge.

Maura Garcia appeals from the district court's ruling directing verdicts in favor of the defendants, Iowa Interstate Railroad, Ltd., and Jesse West, the engineer of the train that collided with the car driven by Garcia. **AFFIRMED.**

Christopher J. Foster of Foster Law Office, Iowa City, for appellant.

James D. Helenhause of Fletcher & Sipple, LLC, Chicago, Illinois, and Lanny M. Van Daele of Iowa Interstate Railroad, Ltd., Cedar Rapids, for appellees.

Heard by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Maura Garcia appeals from the district court's ruling directing verdicts in favor of the defendants, Iowa Interstate Railroad, Ltd., and Jesse West, the engineer of the train that collided with the car driven by Garcia. Where it is undisputed that the driver had an unobstructed view of the crossing, the train horn was blowing, and the signal bells were sounding, the district court did not err in directing verdicts against Garcia. A railroad is not required to anticipate and guard against the possibility that a motorist will disregard warning devices at a railroad crossing.

I. Background Facts and Proceedings.

Maura Garcia was involved in an automobile-train accident on July 3, 2007, in West Liberty, Iowa. Garcia was driving her automobile, which was struck by a train operated by Iowa Interstate Railroad, Ltd. Jesse West, the train's engineer, was the person who physically operated the controls. Howard Emery was the conductor.

Garcia brought suit against the railroad and West, alleging negligence in failing to keep a proper lookout, sound the whistle, or ensure the warning lights were on. The case proceeded to jury trial. In Garcia's case in chief, the following evidence was introduced.

West had been employed, in some capacity, by a railroad for approximately sixteen years. He had been employed by Iowa Interstate Railroad for approximately three years at the time of the accident and had operated a locomotive on the segment of tracks involved in this accident, going both east and west on it, many times over the course of his employment. In July 2007,

West's job required him to make round trips from Rock Island, Illinois, to Iowa City, Iowa, two days each week.

On the morning of the accident, West and Emery had been on duty since approximately 11:30 p.m. the night before, and were on their return trip. West was acting in his capacity as engineer, which meant he was operating the throttle and the various brakes. Emery was the conductor whose functions included "groundwork and paperwork."[1] West testified that at train crossings, it was his responsibility to look out of the left side and to the front of the train and Emery's responsibility to look out the right side and to the front. West testified that the conductor is the boss, the person who can tell the engineer to speed up, slow down, or what to do in some other sort of situation. Both the engineer and the conductor had the responsibility to keep a lookout.

West, as the engineer, was seated on the left side of the cab, behind the controls. Emery, as conductor, was on the right side of the locomotive. From the engineer's location in the cab, there is a blind spot on the right corner of the locomotive. West testified that he was unaware that there was a blind spot at that location in the cab until the accident occurred. He did not see Garcia's car. He stated the warning lights at the crossing were on and that he heard the bells ringing. When Emery yelled "she's not going to stop," West pulled the emergency brake handle.

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[1] Emery stated that as the conductor he made sure that all the paperwork "is present and accounted for as far as what the train consists of, kind of lengths and weights." He described groundwork as

> [a]nytime the train needs to either be—cars need to be set out in certain industries or places or need—the train needs to be rearranged in any way, I'm the person on the ground taking it apart, putting it back together, setting it out, making sure it's going in the right place.

Emery testified that he could see the Calhoun street crossing from the prior Columbus Street crossing.[2] He saw the telltale light flashing, which indicated that the train-crossing warning lights were flashing. As the train got closer to the Calhoun street crossing, he kept a lookout to the right and West kept a lookout to the left. Emery saw Garcia's car when it came into view as it passed a building north of North Spencer Street, and continued to watch it as the train proceeded. When Emery first saw Garcia's car she was travelling at a slow rate of speed. He stated he had no concerns because "[c]ars approach crossings all the time." Emery continued to watch Garcia's car. As soon as it became apparent that Garcia was not going to stop, Emery yelled something to the effect that "she's not going to stop," at which time West activated the emergency brake. Emery testified that it takes several seconds before the train begins to slow down after applying the brakes because "[i]t's an air system." Garcia's vehicle was dragged down the track about 250 feet—the train proceeded for another 100 feet before stopping.[3]

Emery called the train dispatcher about the collision. The West Liberty chief of police, Paul Brewer Jr., arrived at the scene within about three minutes. He testified that when he arrived, he saw the warning lights flashing and heard

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[2] Emery testified the two crossings were at least a thousand feet apart and that travelling at twenty-five miles an hour, it would take not less than twenty seconds for the train to travel between them. Data extracted from the train's event record or "blackbox" on the date of the accident indicated the train was moving at twenty-four miles per hour. The blackbox data confirmed that the train whistle was being sounded sixteen to seventeen seconds before the crossing.

[3] At arguments before this court, Garcia's counsel suggested there was some indication in the record that the train stopped within 100 feet of the crossing. In his testimony, Police Chief Paul Brewer stated that he wrote in his accident report that "[t]he car was dragged approximately 250 feet down the tracks," and the train came to rest approximately 100 feet west on the tracks.

the bells ringing. He stated he had not ever seen a train go by where the warning signals did not come on. He also testified no one reported the warning lights and bells were not operating on the day of the accident. The weather that day was clear. There were no skid marks. Brewer stated Garcia did not have a driver's license. He also stated that when the warning signals come on, motorists are obligated to stop.

Garcia testified that the accident took place as she was driving to her job at West Liberty Foods at approximately 7:00 a.m. She would need to turn just past the railroad crossing to get to West Liberty Foods. Garcia was early for work that morning, as her shift did not begin until 7:30. She recalled travelling down Third Street before turning left onto Calhoun Street, the location of the railroad crossing. She stopped at the corner of Third Street and Calhoun before actually making the turn. At the time of the left hand turn, she saw no flashing lights at the crossing. When she came to the Calhoun crossing, she did not actually stop, but drove slowly because she did not believe there was any reason for her to stop. She testified that "[w]hat I remember, what my mind still gives me is that I made the turn onto Calhoun, I looked up and didn't see any lights. I looked and saw the signs, but I didn't see any lights." She was going around ten miles per an hour as she crossed the train tracks.

After the accident, Garcia told somebody at the University of Iowa Medical Center that, at the time of the accident, her car was stalled on the tracks, smoking, and she was looking for her keys. This was memorialized in a report. However, Garcia testified that she did not know what keys the report was referencing. She agreed that she doesn't have a good memory of right before

the accident, because "the impact was very strong and it hurt my head, so a lot of times I forget things." Garcia testified as to her injuries and damages.

At the close of Garcia's case-in-chief, the railroad and West moved for directed verdicts, which the court granted. The court stated on the record:

> In regards to the proper lookout, the Court finds that the testimony of Jesse West that there was a blind spot is not sufficient, even in the light most favorable to the . . . plaintiff, to take this matter to the jury.
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> Emery testified that, while he was covering the right and West was covering the left, that that might not have been what was in the rules and regulations, that it was consistent with the hands-on training provided by the company, as it provided the greatest amount of safety to the members of society who would cross over.
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> West and Emery both testified they were keeping a lookout. Emery said he saw the car approaching slowly. The car did not stop. That he yelled when it became apparent the car was not going to stop, and that he yelled for West to throw on the emergency brake because that would be the fastest way, as West could reach the emergency brake without moving.
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> Additionally, there is a right on behalf of the defendants to expect Ms. Garcia to follow the rules of the road, and to stop at the railroad crossing where it's uncontroverted that at least the horn was sounded and there was no testimony from Ms. Garcia that the bell was not ringing. And that's actually West, Emery, and Brewer all testified that they heard the bell ringing on top.
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> The Court does think that the facts in this case are similar to those in *Hoyt v*. *Chicago*, the case cited by the defendant, and accordingly thinks that, as a matter of law, the Court can reach the conclusion that the plaintiff has failed to establish sufficient evidence for the issue of proper lookout to go to the jury.
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> In regards to the failure, alleged failure of the lights on the crossbuck, the plaintiff called four witnesses who testified in this regard. Jesse West testified that he saw the telltale lights and that he saw the white lights. He clarified his testimony concerning the "I believe" statement in his affidavit. His testimony is consistent with that of Mr. Emery, who said he also saw the telltale light and the side white lights. Additionally, Emery testified that he saw the telltale light and that, while it was on only one side of the tracks, he made the comment that it would only work if all four flashers were working. Also pointed out that the flashers on the crossbuck where the telltale light is are on both sides, and that would be looking back. Both West and Emery said not only did they see the telltale light, but they also saw the side white lights flashing.

> Chief of Police Paul Brewer arrived about three minutes after the accident, and testified that the lights were working also at that time. As indicated, the bell also sounds when the lights are flashed. Everyone heard the bell, and there was no testimony from Ms. Garcia that she did not hear the bell.
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> Based on those facts, the Court finds as a matter of law that Plaintiff has failed to establish evidence sufficient to go to the jury on the issue of failure of lights on the crossbuck.
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> . . . The plaintiff also had an obligation to use ordinary care and to maintain a proper lookout. You've got a situation here where a train is sufficiently bigger, louder, and much more noticeable than a car. There's no controversy that the train sounded its horn, there's no controversy that the bell on top was ringing.
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> There is a slight limited controversy concerning the lights. However, the Court does note that the language of the plaintiff was not strong in that regard. She testified she did not see the lights. The Court could infer from that that means she simply did not look at the lights, rather than she did not see them flashing. That was somewhat corrected by questioning by the defense concerning her deposition, where in there she referenced that she did not see the lights flashing. She saw the lights, but they were not flashing. However, she also, when questioned about her deposition testimony on several instances, indicated that she could not remember providing those answers, and her answers at trial were somewhat inconsistent with her deposition testimony.
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> What is clear is that she pulled right in front of the train, she did not exercise ordinary care in looking and listening for a train in driving towards a railroad crossing. As I said, the bells were ringing, the horn sounded, there were lights, uncontroverted on at least one side where the telltale lights were, and I think the credible evidence would clearly show the lights were operating on both sides. The testimony of Plaintiff's witnesses, Emery and West, although clearly hostile witnesses as they work for the defendant and West himself is a defendant, was that they maintained a proper lookout, that the signals were operating, the horn sounded, the bell was on.

Garcia appeals, contending the evidence was sufficient, given proper inferences, to send her claims to the jury.

II. Scope and Standard of Review.

We review the district court's ruling on a motion for a directed verdict for the correction of errors at law. *Deboom v. Raining Rose, Inc.*, 772 N.W.2d 1, 5

(Iowa 2009). A directed verdict should be granted "only if there was no substantial evidence to support the elements of the plaintiff's claim." *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 472 (Iowa 2005). "When reasonable minds would accept the evidence as adequate to reach the same findings, evidence is substantial." *Easton v. Howard*, 751 N.W.2d 1, 5 (Iowa 2008). We view the evidence in the light most favorable to the nonmoving party, and take all reasonable inferences into consideration. *Id.*

III. Discussion.

"The essential elements of a tort claim for negligence generally include: (1) the existence of a duty on the part of the defendant to protect plaintiff from injury; (2) a failure to perform that duty; (3) a reasonably close causal connection, i.e., legal cause or proximate cause; and (4) damages." *Bockelman v. State, Dep't of Transp.*, 366 N.W.2d 550, 552 (Iowa 1985); *accord Thompson v. Kaczinski*, 774 N.W.2d 829, 834 (Iowa 2009) ("An actionable claim of negligence requires the existence of a duty to conform to a standard of conduct to protect others, a failure to conform to that standard, proximate cause, and damages." (internal quotation marks and citations omitted)). On appeal, Garcia contends she presented sufficient evidence from which the jury could find that West failed to keep a proper lookout, and that the warning lights were not functioning.[4]

"It is well-settled that questions of negligence or proximate cause are ordinarily for the jury, and only in exceptional cases should they be decided as a matter of law." *Thompson*, 774 N.W.2d at 832 (internal quotations and citation omitted); *see also Paulsen v. Des Moines Union Ry. Co.*, 262 N.W.2d 592, 596

[4] Garcia had alleged other claims of negligence, but she does not argue them on appeal.

(Iowa 1978) ("Ordinarily the questions of negligence and proximate cause are for the trier of fact.").[5] However, where a plaintiff has failed to present evidence to support any element of a claim, the defendant is entitled to a judgment as a matter of law. *See Meeker v*. *City of* Clinton, 259 N.W.2d 822, 832 (Iowa 1977) (concluding the evidence in this record was insufficient to warrant submitting to the jury the question whether some alleged breach of duty by the city was a proximate cause of the plaintiffs' injury).

A. *Proper lookout*.

Both a motorist and railroad crew have a duty to maintain a proper lookout. *See Paulsen*, 262 N.W.2d at 596 ("A traveler approaching a railroad must look when by looking he can see. A traveler is required to look for approaching trains within a reasonable distance from the crossing, but not at any particular place nor at all points."); *Simmons v*. *Chicago, Rock Island & Pac*. *Ry*. *Co*., 252 N.W. 516, 517–18 (Iowa 1934) (stating that "as a general proposition of law, it is true that there is a duty imposed upon the [railroad], while operating its trains, to keep a proper lookout through its employees"). The train has the right-of-way at railroad grade crossing. *See* Iowa Code § 321.341 (2007) (requiring a motorist to stop when a "warning is given by automatic signal, crossing gates, a

[5] In *Ressler v*. *Wabash R. Co*., 132 N.W. 827, 829 (Iowa 1911), the court stated:

> It is not within the province of the court to prescribe as a matter of law what particular acts of caution shall be observed, but it may direct the jury that if in its judgment, in view of all the matters adduced in evidence, reasonable care requires the enginemen in charge of a train to anticipate the possibility of collision with persons rightfully using the crossing and to keep a lookout in approaching it in order to avoid such accident, then the omission so to do will be negligence.

flag person, otherwise of the immediate approach of a train"). This is practical because of the relative difficulty in stopping a train versus a motor vehicle.[6]

In *Strom v. Des Moines & Central Iowa Ry. Co.*, 82 N.W.2d 781, 788 (Iowa 1957), the supreme court held it was error to submit the issue of failure to maintain a proper lookout under a record where there was "no substantial evidence" of a failure to keep a proper lookout.

> [T]wo of defendant's trainmen testify in substance they saw plaintiff as soon as the cars ahead of her turned off on (highway) 64. There is no evidence to the contrary. Until plaintiff continued north from the highway junction the trainmen had no way of knowing she would not turn onto 64 as the other automobiles did. There was no lack of care shown in keeping a lookout.

In contrast, *Tilghman v. Chicago & North Western Ry. Co.*, 115 N.W.2d 165, 170-71 (Iowa 1962), was a case where there was evidence the railroad employee knew of the motorist's peril, but failed to do anything.

> Defendants' argument overlooks the fact the finding is warranted that the trainmen were aware plaintiff was in peril when he approached the crossing oblivious of impending danger. That plaintiff may then have been physically able to avoid the collision, should he become aware of the danger, does not prevent application of the last clear chance doctrine as a matter of law. The engineer was not justified in assuming plaintiff would stop before reaching the crossing when his fellow trainmen had warned him, in effect, more than once plaintiff appeared to be unaware of the approaching train.
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> 75 C.J.S. Railroads § 814c(2)(b), page 93, thus states the applicable law: "The trainmen, however, must act on the reasonable appearance of peril, . . . and cannot rely on the presumption that the person injured will avoid injury and keep out of danger where such person, by his actions and manner, indicates that he will not get, or stay, out of danger, as where the circumstances show that the person injured is oblivious to the peril."

[6] This record indicates that the train here was traveling at twenty-five miles per hour and once the train's emergency brakes were engaged, the train continued down the track about 350 feet.

Restatement, Torts, section 480, states in effect that a negligent plaintiff may recover if defendant "(a) knew of the plaintiff's situation, and (b) realized or had reason to realize that the plaintiff was inattentive and therefore unlikely to discover his peril in time to avoid the harm, and (c) thereafter is negligent in failing to utilize with reasonable care and competence his then existing ability to avoid harming the plaintiff."

Comment b under section 480 is quite pertinent here:

> "However, it is not necessary that the circumstances be such as to convince the defendant that the plaintiff is inattentive and, therefore in danger. It is enough that the circumstances are such as to indicate a reasonable chance that this is the case. Even such a chance that the plaintiff will not discover his peril is enough to require the defendant to make a reasonable effort to avoid injuring him. Therefore, if there is anything in the demeanor or conduct of the plaintiff which to a reasonable man in the defendant's position would indicate that the plaintiff is inattentive and, therefore, will or may not discover the approach of the train, the engineer must take such steps as a reasonable may would think necessary under the circumstances. If a train is at some little distance, the blowing of a whistle would ordinarily be enough, until it is apparent that the whistle is either unheard or disregarded. The situation in which the plaintiff is observed may clearly indicate that his inattention is likely to persist and that the blowing of the whistle will not be effective. If so, the engineer is not entitled to act upon the assumption that the plaintiff will awaken to his danger but may be liable if he does not so reduce the speed of his train as to enable him to stop if necessary."

Tilghman, 115 N.W.2d at 170-71.

Garcia argues:

Both the conductor and the engineer testified that the emergency brake of the train was not applied until either the moment of the train impacted Garcia's car, or shortly thereafter. Clearly the inference is that, had the crew of the train kept a proper lookout, even providing for some fault on Garcia's part, the brakes would have been applied sometime prior to the impact.

As observed by the district court, a train crew has the "right to assume that [a motorist] will not drive into danger." *Williams v*. *Mason City & Fort Dodge R*.*R*. *Co*., 214 N.W. 692, 695 (Iowa 1927) ("Travelers in motor vehicles frequently and customarily drive toward an oncoming train and stop just before going upon the tracks in order to permit the train to proceed on its way. There is in such conduct, however, no 'peril' until such wayfarer fails to stop in a zone of safety." The train operators "have a right to assume that he will not drive into danger."); *see also Shibley v*. *St*. *Louis-San Francisco Ry*. *Co*., 533 F.2d 1057, 1061 (8th Cir. 1976) ("A member of a train crew keeping a lookout has the right to assume that an approaching motorist will stop instead of place [herself] in a position of peril in the path of a moving train.").

In *Hoyt v*. *Chicago*, *Rock Island & Pacific R. Co*., 206 N.W.2d 115, 119 (Iowa 1973), the court affirmed a directed verdict for the railroad because "there is nothing which would permit a finding defendants had failed to keep a proper lookout." In *Hoyt*, the facts were similar to the facts presented here:

> The engineer and brakeman both testified unequivocally that they first observed the Hoyt car when it was "on the bridge"—some 750 feet from the crossing. The train was then at least 1200 feet from the point of impact. Both said they observed the car without interruption until the crash. The engineer also said he put the train "on emergency" as soon as he saw Hoyt did not intend to stop.
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> Plaintiff argues the question of lookout should have been submitted despite this testimony because the jury could disbelieve what the train crew said. We concede that is true; but it wouldn't help plaintiff *because there would still be no evidence of failure to keep a proper lookout*.

206 N.W.2d at 119 (emphasis added).[7] As soon as the conductor realized that Garcia was not going to stop, he yelled to the engineer, and the engineer applied the brake. Garcia offers nothing to suggest that the conductor should have realized earlier that Garcia would not stop.

Garcia attempts to distinguish *Hoyt* by arguing that there the "crewmember who could actually apply the brake was aware of the car long before the impact." But the fact remains, Garcia has not shown that the crew here failed to maintain a proper lookout. *See*, *e.g.*, *Stewart v. Madison*, 278

[7] *See also Simmons*, 252 N.W. at 517-18. In *Simmons*, the court noted:

> Immediately after the engineer observed that the automobile which came from the west was safely over the railroad crossing, he then looked to the east, or left, and saw the light truck in which Simmons was riding. The Simmons truck, when first observed, by the engineer, was 100 feet east of the crossing. According to the evidence, the Simmons truck was traveling at a rate of speed ranging from 25 to 30 miles per hour. During this time, the train, according to the appellee's evidence, was traveling from 35 to 40 miles per hour. It was said by the engineer that he could stop the train at the time in a distance of approximately 400 feet. When estimating the speed of the motor train, the engineer fixed the rate at 30 miles per hour. But whether the motor train was traveling at the rate of 30 miles per hour, as claimed by the engineer, or at the higher rate of from 35 to 40 miles per hour, as claimed by the appellee, becomes quite immaterial, for, under the record, it cannot be said that the engineer did not keep a proper lookout when proceeding from the depot in Farmington to the crossing where the accident occurred. Frequently automobile drivers propel their vehicles to a point near the railroad tracks before stopping for the crossing. Engineers constantly observe operations of that kind. So, when an engineer observes an on-coming automobile traveling at the rate of from 25 to 30 miles an hour, he may not detect, under the facts of this case, the peril of the occupants of the car until it is within 100 feet of the railroad track. The North Dakota court, in the Workmen's Compensation Case, said: "Those engaged in the operation of railway trains are not bound to anticipate that drivers of automobiles and trucks upon the highways will be guilty of negligence in approaching crossings without taking reasonable measures to ascertain the approach of a train. If the rule were otherwise, the last clear chance doctrine would require the trainmen, at the peril of being held responsible for an accident, to slow down every time they should observe an on-coming motorist in a position where, if he did not see the train, he might negligently collide with it."

Id. (citations omitted).

N.W.2d 284, 288 (Iowa 1979) ("The jury could find that the engineer looked away from the car at a time he knew it was not going to stop, that he did not request the brakeman to maintain a lookout while he diverted his attention to his 'other duties,' and did nothing to avoid the collision until after it had happened."). We agree with the district court that the fact that from the engineer's position there was a blind spot was not sufficient to send the claim to the jury.

B. *Warning lights*.

Garcia contends that her testimony that she did not see warning lights was sufficient to have this claim go to the jury. The district court found that her testimony was equivocal at best. The train crew testified the warning lights were working and that they saw them from some distance away. The police chief testified the warning lights were working when he arrived three minutes after the accident. Even viewing the evidence in the light most favorable to the plaintiff, there is no evidence the warning lights were *not* working. And Garcia does not challenge the evidence that the crossing bells were ringing and that the train had sounded its whistle.

Under these circumstances, we affirm the verdicts entered in favor of the defendants.

AFFIRMED.