IN THE COURT OF APPEALS OF IOWA

No. 8-218 / 07-0417
Filed June 25, 2008

JAMIE BIRCH**,**
Plaintiff,

vs.

MICHAEL D. JUEHRING,
Defendant/Cross-claim Defendant-Appellee,

LETHA BIRCH,
Defendant/Cross-claim Plaintiff-Appellant.

LETHA BIRCH,
Third-Party Plaintiff-Appellant,

vs.

ANITA M. JUEHRING,
Third-Party Defendant-Appellee.

Appeal from the Iowa District Court for Dubuque County, John Bauercamper, Judge.

Cross-claim plaintiff/third-party plaintiff appeals following a jury verdict and judgment entry in favor of cross-claim defendant and third-party defendant in her personal injury action. **REVERSED AND REMANDED.**

David A. Lemanski, Dubuque, for appellant.

Patrick Woodward of McDonald, Woodward & Ivers, P.C., Davenport, for appellee.

Considered by Huitink, P.J., and Zimmer and Miller, JJ.

MILLER, J.

Letha Birch appeals following a jury verdict and judgment entry in favor of Michael and Anita Juehring in her personal injury action. We reverse and remand for a new trial.

I. BACKGROUND FACTS AND PROCEEDINGS.

On the afternoon of February 11, 2003, Birch and her son, Jamie, were traveling east on Highway 20 near Farley, Iowa, to Dubuque. When they left their home in Oelwein earlier that day, the sun was out and the weather conditions were good. As they proceeded east, however, it became windy and began snowing. There were "small drifts blowing across the highway" as they approached Farley. According to Birch, she was driving about forty to forty-five miles per hour due to the deteriorating weather conditions.

Birch testified that a red car passed her after she went by the intersection of Highway 20 and Old Cascade Road, which provides access into Farley. She continued driving east in the right lane of the highway until she came upon a red car that, according to her, was facing northwest and "driving from the [right] shoulder onto the highway towards" her. She did not know if this was the same red car that had passed her earlier, but she testified there had not been any other vehicles ahead of her on the highway. Birch testified that she swerved into the left lane in an attempt to avoid hitting the car, but they collided "because he was at least halfway through the slow lane."

The driver of the red car involved in the accident was then eighteen-year-old Michael Juehring. His mother, Anita, owned the car. Juehring testified that on the afternoon of February 11, he was driving east on Highway 20 from

Dyersville to his home in Farley. He was traveling at about fifty miles per hour due to "whiteout" conditions near Farley. Juehring testified that a red car traveling towards him appeared in his lane. He swerved to avoid a collision, which caused his car to spin and slide into the ditch on the right side of the road. When he came to a stop, the front end of his car was "a little bit on the pavement" perpendicular to the highway but facing towards the east. He backed up so that his car was off the road and put it in park. He testified that while he was parked on the shoulder, Birch's vehicle "veered off" the highway and hit his car.

After the collision, Juehring got out of his car to look at the damage. He then got back into his car and drove away. Birch remained at the scene of the accident and called 911 to report the collision. She had her son write down the license plate number of Juehring's car before he drove away. An Iowa State Trooper interviewed Birch and her son at the scene of the accident. The trooper interviewed Juehring the following day at his residence and issued him a citation for failing to wear his eyeglasses while driving on the day of the accident.

Birch's son, Jamie, filed a personal injury lawsuit against her and Juehring in June 2004. Birch filed a cross-claim against Juehring and a third-party petition against Juehring's mother, Anita, alleging the accident was the result of Juehring's negligence. Jamie dismissed his lawsuit after Birch filed her cross-claim and third-party petition against the Juehrings.

The Juehrings filed a motion in limine prior to trial seeking to prohibit Birch from making "[a]ny reference that Michael Juehring left the scene of the accident." The trial court granted the motion, and the case proceeded to a jury

trial. Birch made offers of proof at trial about Juehring leaving the scene of the accident, and the Juehrings objected to questioning by Birch's counsel regarding when Juehring spoke to law enforcement officials. The trial court sustained its earlier ruling on the motion in limine.

The jury returned a verdict in favor of the Juehrings, finding Michael Juehring was not negligent. Birch filed a motion for new trial, which asserted in relevant part, that the trial court erred in prohibiting her from referring to Juehring leaving the scene of the accident. The court denied the motion for new trial.

Birch appeals. She claims the trial court erred in prohibiting her from introducing evidence that Juehring left the scene of the accident and from arguing that his act of leaving the scene was an admission of fault.

II. SCOPE AND STANDARDS OF REVIEW.

Our scope of review in this law action is for the correction of errors at law. Iowa R. App. P. 6.4. Trial courts are granted broad discretion concerning the admissibility of evidence. *Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 149 (Iowa 2002). "We review alleged errors concerning the admission of evidence under an abuse of discretion standard." *Dettmann v. Kruckenberg*, 613 N.W.2d 238, 249 (Iowa 2000). Thus, evidentiary rulings are reversed only upon a showing that the court clearly abused its discretion to the prejudice of the complaining party. *Horak*, 648 N.W.2d at 149.

III. MERITS.

In Iowa, a motorist has a statutory duty to stop his vehicle at the scene of an accident in which he is involved when the accident has resulted in injury to or death of a person or damage to a vehicle which is driven or attended by a

person. Iowa Code §§ 321.261(1), .262 (2003); *State v. Tarbox*, 739 N.W.2d 850, 852-53 (Iowa 2007). After stopping the vehicle, sections 321.261(1) and 321.262 require the driver to "remain at the scene" to comply with the additional duties set forth in section 321.263(1), which include providing identifying information to "the person struck, the driver or occupant of, or the person attending the vehicle involved in the accident," and rendering "reasonable assistance" to a person injured in the accident. *See Tarbox*, 739 N.W.2d at 853. In support of her claim that she should have been allowed to introduce evidence and argument at trial regarding Juehring's conduct after the accident, Birch argues that a driver's violation of these statutory duties is relevant evidence of a "consciousness of responsibility."

This issue has not previously been addressed in Iowa. The majority of courts in other states that have addressed the issue have determined that evidence of a defendant leaving the scene of an accident is admissible in civil actions. *See Rock v. McHenry*, 115 S.W.3d 419, 421 (Mo. Ct. App. 2003) (noting courts in nine states have found "flight testimony admissible in a civil action" while courts in four states have declined to allow that evidence).[1] Such evidence can be used to show a defendant's (1) willful, wanton, or reckless state of mind; (2) consciousness of responsibility; or (3) negligence in failing to keep a proper lookout or control of his vehicle. *Peterson v. Henning*, 452 N.E.2d 135, 138 (Ill. App. Ct. 1983). The courts that allow this type of evidence reason that a driver's "[f]ailure to stop creates an inference in the minds of reasonable people that the

[1] Three other states, in addition to those listed in *Rock*, also allow such evidence: Michigan, *Johnson v. Austin*, 280 N.W.2d 9, 14-15 (Mich. 1979); New Jersey, *Jones v. Strelecki*, 231 A.2d 558, 561 (N.J. 1967); and Ohio, *Richards v. Office Prods. Co.*, 380 N.E.2d 725, 727-28 (Ohio Ct. App. 1977).

driver does not wish to be identified and that his wish to be unidentified stems from a fear of the consequences of being known." *Johnson*, 280 N.W.2d at 13; *see also Peterson*, 452 N.E.2d at 138 ("A defendant's flight from the scene of the accident can be interpreted as an admission of his negligence for if he were 'guilt free' it is reasonable to assume he would stop to ascertain the nature of the accident or the extent of the victim's injuries.").

We agree with the reasoning of the courts that allow evidence of a defendant's conduct in leaving the scene of an accident in civil cases. Similar evidence is admissible in criminal cases in Iowa as evidence of a defendant's "consciousness of guilt." *State v. Bone*, 429 N.W.2d 123, 125 (Iowa 1988); *see also Shaddy v. Daley*, 76 P.2d 279, 282 (Idaho 1938) (stating failure of a driver to stop at the scene of an accident and report the accident is comparable to the flight of an accused from the scene of a crime, which is admissible to disclose a consciousness of guilt). Although our supreme court has cautioned that a jury instruction regarding a defendant's "flight" from the scene of a crime is "rarely advisable," it has acknowledged that such evidence is relevant and "may be considered by the jury in the light of all other evidence in the case, in determining guilt or innocence." *Bone*, 429 N.W.2d at 126; *see also State v. Marsh*, 392 N.W.2d 132, 134 (Iowa 1986) (stating evidence of flight may be introduced at trial and used by counsel in argument); *State v. Wimbush*, 260 Iowa 1262, 1268, 150 N.W.2d 653, 656 (1967) (noting "'[m]any acts of a defendant after the crime seeking to escape the toils of the law are received as admissions by conduct, constituting circumstantial evidence of consciousness of guilt,'" such as flight) (citation omitted).

Furthermore, our supreme court has stated that the "manifest intent of section 321.261 is to prevent a motorist involved in personal injury or property damage accidents from evading liability, civil or criminal, as a result of such accident, by escaping before his identify can be established." *State v. Sebben*, 185 N.W.2d 771, 774 (Iowa 1971). We therefore believe evidence regarding Juehring's failure to remain at the scene and provide identifying information or render assistance after the accident, like evidence of a defendant's flight from the scene of a crime in a criminal case, was highly relevant to show a "consciousness of responsibility." *See* Iowa R. Evid. 5.401 (defining relevant evidence); *Johnson*, 280 N.W.2d at 14 (reasoning that because it "is unlikely . . . there would be a reason unrelated to culpability in the accident that would outweigh the risk of" the criminal penalties for violating Michigan's statute requiring a motorist involved in an accident to stop and give information and aid, "it is reasonable to draw the inference that he [left the scene] to avoid revealing such culpability").

The Juehrings argue the probative value of such evidence is outweighed by the danger of unfair prejudice because there could be other reasons for his conduct following the accident. *See* Iowa R. Evid. 5.403 (stating even relevant evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice). We recognize "it is possible that for personal reasons, innocent as far as the law is concerned, a driver may wish to avoid identifying himself," such as "fear, to avoid 'becoming involved,' or to avoid publicity and embarrassment in being at the scene." *Johnson*, 280 N.W.2d at 13; *see also Bone*, 429 N.W.2d at 127 (stating if a flight instruction is given in a

criminal case, the court should include a caveat that there may be reasons for the flight which are fully consistent with innocence). However, unfair prejudice only "arises when the evidence prompts the jury to make a decision on an improper basis, often an emotional one."[2] *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 158 (Iowa 2004). Just as a defendant in a criminal case may present evidence to explain his flight from the scene of the crime, *Bone*, 429 N.W.2d at 127, a defendant in a civil case may also present evidence to explain his failure to stop or provide identifying information after an accident. *See Peterson*, 452 N.E.2d at 138 ("Naturally, a defendant may present evidence to explain his failure to stop. . . ."). We therefore reject the Juehrings' assertion that the prejudicial effect of this evidence substantially outweighs its probative value. *See Pexa*, 686 N.W.2d at 158-59 (noting the adverse effect of relevant evidence on a party's case due to its probative value is not unfair prejudice). We accordingly conclude the trial court abused its discretion in prohibiting Birch from introducing evidence and argument concerning Juehring's actions following the accident.

The Juehrings next argue exclusion of the evidence did not affect Birch's substantial rights because the prohibited evidence was presented to the jury despite the trial court's evidentiary ruling. *See* Iowa R. Evid. 5.103(*a*) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. . . ."). We do not agree. Although some of the witnesses at the trial testified that Juehring did not speak to law enforcement officials until the day after the accident, none of them provided any

[2] With this principle in mind, we caution against the use of pejorative language, such as "flight" or "flee," to describe a person's act of leaving the scene of an accident.

testimony about Juehring leaving the scene of the accident without providing identifying information to Birch or rendering her aid. Moreover, Birch was prohibited from presenting an argument to the jury about her theory regarding the significance of Juehring's actions in leaving the scene. The effect of excluding this evidence and argument was in all likelihood significant given that the jury was confronted with strongly conflicting stories from Birch and Juehring regarding the manner in which the accident occurred. We therefore conclude Birch was prejudiced by exclusion of this evidence. *Cf. Tucker v. Caterpillar, Inc.*, 564 N.W.2d 410, 414 (Iowa 1997) (concluding exclusion of evidence did not affect plaintiff's substantial rights because there was other substantial evidence from which the jury could have concluded defendant was negligent). Because the trial court abused its discretion in prohibiting Birch from presenting evidence and argument regarding Juehring's conduct following the accident, to her prejudice, we reverse and remand for a new trial.

IV. CONCLUSION.

Evidence regarding Juehring's failure to remain at the scene of the accident and provide identifying information or render assistance, like evidence of a defendant's flight from the scene of a crime in a criminal case, was relevant to show a "consciousness of responsibility." We reject the Juehrings' assertion that the prejudicial effect of this evidence outweighed its probative value. We also reject their assertion that exclusion of the evidence did not affect Birch's substantial rights. We conclude the trial court abused its discretion in prohibiting Birch from presenting evidence and argument concerning Juehring's conduct

following the accident. Because Birch was prejudiced by the trial court's evidentiary ruling, we reverse and remand for a new trial.

REVERSED AND REMANDED.