

STATE OF MICHIGAN
COURT OF APPEALS

ALBERT ARAUJO, Personal Representative of the
ESTATE OF JASON ARAUJO,

UNPUBLISHED
January 20, 1998

Plaintiff-Appellant,

v

No. 198226
Wexford Circuit Court
LC No. 94-010740-NI

LUTHER DANIAL LOVELL and KEITH ROBERT
LOVELL,

Defendants-Appellees.

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

PER CURIAM.

Plaintiff Albert Araujo, personal representative of the estate of his minor son, Jason Araujo, deceased, appeals as of right from the trial court's judgment of no cause for action entered in favor of defendants. We reverse and remand.

Plaintiff brought a negligence action against defendants for the wrongful death of Jason as a result of a bicycle-motor vehicle collision. At trial, the evidence presented during plaintiff's case in chief indicated that on May 26, 1993, at approximately 7:40 p.m. in Manton, Michigan, Jason was riding his bicycle southbound on South Maple Street. Defendant Luther Danial Lovell (defendant driver) was driving westbound on East Maple Street within the speed limit in a truck owned by defendant Keith Robert Lovell (defendant owner). The truck and bicycle collided at approximately the northwest corner of the intersection of South Maple and East Main and Jason was thrown approximately twenty feet to the west of the intersection along the north side of East Main. At the intersection, East Main is a through street while a stop sign faces traffic southbound on South Maple.

The police officer who investigated the collision testified during plaintiff's case in chief that he observed damage to the truck in the area of the passenger door but that he did not observe any damage to the front of the truck. The officer testified that he had concluded as a result of his investigation that Jason ran the stop sign and struck the side of the truck in the area of the passenger door.

Plaintiff's expert in traffic accident reconstruction testified that the damage done to the truck's passenger door and the bicycle, as well as the fact that Jason was thrown to the west of the intersection, were consistent with a scenario in which (1) Jason was hit by the right front corner of the truck when he was stopped or almost stopped; (2) that as a result of the vehicle's velocity Jason rotated back and hit the truck's passenger door, and; (3) that as a result of picking up momentum from the westbound truck Jason was thrown west of the intersection. The expert testified that had Jason hit the passenger door of the truck he would have caused damage well back of the door area. The expert testified that if Jason had been traveling south with some velocity at the time of the collision he would have continued south on over the hood of the truck.

The expert, noting that defendant driver and his passenger had previously testified (apparently in a deposition) that they had not seen Jason until the collision, introduced a series of photographs showing that a driver proceeding westbound on East Main at approximately 7:40 p.m. in May would have had an unobstructed view of South Maple. The expert testified that such driver would not have been blinded by the sun and that Jason would have been clearly visible. The expert testified that he believed Jason was stopped or moving very slowly at or very close to the intersection, and that Jason, therefore, would have been within the typical cone of vision of a driver looking straight ahead while proceeding westbound on East Main. The expert testified that defendant driver "simply struck him failing to maintain a proper observation on the roadway" The expert testified that, assuming Jason was stopped or nearly stopped in the intersection and the truck was traveling twenty-five miles per hour,¹ defendant driver could have observed Jason at 109 feet (three seconds) before impact and stopped the truck before the impact point without locking up the truck's brakes.

After plaintiff rested his case, defendants moved for a directed verdict. Defendants contended that defendant driver was under no duty to anticipate or make an independent determination that traffic approaching the stop sign on South Maple would not stop. In so moving, defendants relied on the following passage from this Court's opinion in *Buchholtz v Deitel*, 59 Mich App 349; 229 NW2d 448 (1975):

It is clear, therefore, under these cases, that the operator of an automobile proceeding through an intersection controlled by a traffic signal is under no duty to make an independent determination as to whether traffic approaching a red light will stop. In such a situation the operator of an automobile is not required to observe traffic approaching a red light to determine whether it is safe to proceed. The driver can justifiably rely on what all have come to expect—that traffic approaching a red light will stop. [*Id.* at 352.]

The trial court granted the motion for directed verdict, stating as follows:

In order for a court to grant a motion for a directed verdict, it's incumbent upon that court to make the determination that there are no issues of fact for the jury to decide. Apparently, the only basis for the plaintiff's claim is that Mr. Bereza's testimony who is a traffic accident reconstructionist, and he has based, on the information available to him, reconstructed this crime.

There has been no testimony at all to show that the impact occurred other than in the traveled portion of Main Street. When the plaintiff states – plaintiff’s attorney Mr. Hubbell states – that apparently Jason was stopped when the impact occur [sic], that therefore he was not – would not have violated the stop sign is incorrect because he was out into the traveled portion. Whether he was stopped or not I don’t believe is imperative in this case. I believe that the accident did occur, the point of collision occurred in the traveled portion of Main Street. I don’t think it’s very important as to where on the pickup of Mr. . . . Lovell, . . . whether it was in the front right bumper or on the fender or on the door. I think the evidence so far shows that Jason did run passed [sic] the stop sign and did collide with the truck that was operated by the defendant.

The law is clear that a person operating a bicycle is under the same duty to observe traffic signs as anyone operating a motor vehicle. While I can sympathize with the family of Jason, it is a tragic accident, I can find no negligence on the part of the defendant. And based on the information that I have and the law in the matter and the testimony that has been presented thus far in this case, I have no alternative but to grant a motion for a directed verdict.

On appeal, plaintiff argues that the trial court erred in granting the motion for a directed verdict. We agree.

In reviewing a motion for a directed verdict, we consider the evidence adduced through the time of the motion in a light most favorable to the nonmoving party to determine whether a material issue of fact existed. *Dickerson v Raphael*, 222 Mich App 185, 195; 564 NW2d 85 (1997). Questions regarding the existence of a duty are for the court to decide as a matter of law. *Mason v Royal Dequindre, Inc*, 455 Mich 391, 397; 566 NW2d 199 (1997). The question whether, under the particular facts of the case, there was a breach of duty is a question of fact for the factfinder. *Murdock v Higgins*, 454 Mich 46, 53; 559 NW2d 639 (1997).

It is true that a driver proceeding on a through street has a right to presume that another driver approaching a stop sign will stop. See, e.g., *Edwards v Joblinski*, 108 Mich App 371, 383; 310 NW2d 385 (1981); *Buchholtz, supra*. However, this presumption does not absolve the favored driver (the driver with the right of way) from his duty to drive with due care for the safety of others under the circumstances. *Placek v Sterling Heights*, 405 Mich 638, 669-670; 275 NW2d 511 (1979). Thus, a favored driver does not have an absolute right to proceed blindly. *Id.* Rather, a favored driver has a duty to be fairly alert as to potential dangers that may be readily seen or heard. *Id.* at 672; *Edwards, supra*.

In this case, defendant driver, as the favored driver, was entitled to presume that a southbound bicyclist approaching the stop sign on South Maple would stop. However, this presumption did not absolve defendant driver of his duty to drive with due care for the safety of others under the circumstances. Viewing in a light most favorable to plaintiff the expert’s testimony that Jason was stopped or almost stopped in the intersection and that defendant driver could have seen him in time to

avoid the collision, we conclude that a question of fact was raised concerning whether defendant driver breached his duty of due care by failing to be fairly alert to potential dangers that may be readily seen and by proceeding blindly through the intersection. The trial court erred by resolving the question of defendant driver's negligence as well as the question of Jason's negligence because these were factual questions for the jury.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Janet T. Neff

¹ The expert's assumption that the truck was traveling twenty-five miles per hour was based on previous testimony by defendant driver, apparently in a deposition.