

STATE OF MICHIGAN
COURT OF APPEALS

ALBERT ARAUJO, Personal Representative
of the Estate of JASON ARAUJO,

UNPUBLISHED

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.

MacKENZIE, J. (dissenting).

I respectfully dissent.

I do not take issue with the proposition that favored drivers (drivers with the right of way), like all drivers, have a responsibility to exercise reasonable care under the circumstances when operating a vehicle. I cannot agree with the majority's apparent conclusion, however, that favored drivers have a separate legal duty to anticipate that approaching traffic will disobey a stop sign.

As a threshold matter, I disagree with the majority that this case involves a question of legal duty. The elements of an action for negligence are (1) duty, (2) general standard of care, (3) specific standard of care, (4) cause in fact, (5) legal or proximate cause, and (6) damage. *Moning v Alfano*, 400 Mich 425, 437; 254 NW2d 759 (1977). "[I]n negligence cases, the duty is always the same, to conform to the legal standard of reasonable conduct in light of the apparent risk. *What the defendant must do, or must not do, is a question of the standard of conduct required to satisfy the duty.*" *Id.*, pp 437-438, quoting Prosser, Torts (4th ed), § 53, p 324. (Emphasis in the original.) Thus, the element at issue here is not duty, but standard of care.

The general standard of care to which the favored driver must adhere is a standard of reasonable or due care under the circumstances. *Placek v Sterling Heights*, 405 Mich 638, 699; 275 NW2d 511 (1979). Reasonable or due care under the circumstances does *not* include anticipating whether approaching traffic will obey a traffic light or stop sign. As explained in *Placek*:

What is reasonable [care] on the part of the favored driver has been further refined:

“[T]he 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 the 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.” *Buchholz v Deitel*, 59 Mich App 349, 352; 229 NW2d 448 (1975).

[*Placek, supra*, p 669. Emphasis in the original; footnote omitted.]

Placek is not unique in its statement that reasonable care under the circumstances does not include anticipating whether approaching traffic will obey a traffic light or stop sign. In *DePriest v Kooiman*, 379 Mich 44, 46; 149 NW2d 449 (1967), the Court quoted *Churukian v LaGest*, 357 Mich 173, 182-183; 97 NW 2d 832 (1959) (concurring opinion of Smith, J.):

The driver, as we know, was under a duty to exercise due care. He must make reasonable allowance for traffic conditions, for fog, snow, or other adverse weather conditions, and for curves and road conditions. But due care for such a driver does not demand that he slacken his speed or prepare to stop at successive street intersections in the anticipation that side-street drivers will contest his right-of-way. Not only would such action impede the flow of arterial traffic but it would be hazardous to both the driver and those following him. Due care, then, for the arterial driver includes his right to assume that he will be accorded the right of way. This assumption may be relied upon by him until he is aware, or as a reasonably prudent driver should be aware, that his right of way is being challenged.

And in *Noyce v Ross*, 360 Mich 668, 677-678; 104 NW2d 736 (1960), the Court stated:

The favored driver has a right to assume that drivers on subordinate highways will yield him the right of way; he is not bound to anticipate negligent acts on the part of those approaching the arterial highway. However, he has the duty and obligation to exercise reasonable care for his own protection.

Accord: *Berk v Blaha*, 21 Mich App 83; 174 NW2d 870 (1969), *McGuire v Rabaut*, 354 Mich 230; 92 NW2d 299 (1958), *Edwards v Joblinski*, 108 Mich App 371; 310 NW2d 385 (1981).

The majority seemingly believes that a fact question exists as to whether defendant, by failing to anticipate that plaintiff's decedent would run the stop sign, breached the standard of due care. That reasoning is contrary to *Placek* and its predecessors. Defendant had the right of way, was driving at the posted speed limit, was not intoxicated, and “could justifiably rely on what all have come to expect – that traffic approaching a red light will stop,” *Placek, supra*, p 699, quoting *Buchholz, supra*, p 352.

Given the lack of evidence that defendant breached the standard of due care, I am of the opinion that the trial court did not err in granting a directed verdict in defendant's favor. Accordingly, I would affirm.

/s/ Barbara B. MacKenzie