STATE OF MICHIGAN

COURT OF APPEALS

FRANCYE ELAINE LOEPKE and GREGORY JOHN LOEPKE,

Plaintiffs-Appellees,

v

MEAD GROUP, INC., d/b/a LEXUS OF LAKESIDE, and REINHOLD OTTO OPPERMAN,

Defendants-Appellants.

UNPUBLISHED
March 20, 1998

No. 193295
Ingham Circuit Court
LC No. 94-076549 NI

Before: Fitzgerald, P.J., and Hood and Sawyer, JJ.

MEMORANDUM.

Defendants appeal by leave granted an order of the circuit court granting judgment notwithstanding the verdict in favor of plaintiffs on the issue of negligence and granting plaintiffs a new trial as to the remaining issues. We reverse and remand for reinstatement of the jury verdict.

The trial court erroneously determined that a violation of MCL 257.652(1); MSA 9.2352(1), constituted negligence per se. The violation of a penal statute creates only a prima facie case from which the jury may draw an inference of negligence. *Zeni v Anderson*, 397 Mich 117, 128-129, 143; 243 NW2d 270 (1976); *Gould v Atwell*, 205 Mich App 154, 158; 517 NW2d 283 (1994). Viewing the evidence and all legitimate inferences drawn therefrom in a light most favorable to the nonmoving party, the record contains evidence from which the jury could conclude that defendant Opperman was operating his vehicle in a reasonable and prudent manner immediately preceding the collision with plaintiffs' vehicle. *Orzel v Scott Drug Co*, 449 Mich 550, 557-558; 537 NW2d 208 (1995). Under such circumstances, a factual question to be resolved by the trier of fact existed with regard to whether defendant Opperman violated MCL 257.652(1); MSA 9.2352(1). *Zeni, supra*, 135.

Even assuming, but without deciding, that defendant Opperman violated MCL 257.652(1); MSA 9.2352(1), it would still be for the trier of fact to determine whether Opperman had a legally sufficient excuse under the circumstances of this case for operating his vehicle in the manner he did. *Zeni, supra*, 143; see also *Cebulak v Lewis*, 320 Mich 710, 718-720; 32 NW2d 21 (1948).

Finally, although plaintiff Francye Loepke may have had the right-of-way, she nevertheless was still required to exercise that degree of care and caution that a reasonably prudent and careful person would exercise under the same or similar circumstances. *Rhoades v Finn*, 288 Mich 262, 265; 284 NW 720 (1939). Whether a party's conduct was reasonable is a question for the jury, barring overriding concerns of public policy that are not present in this case. *Scott v Harper Recreation, Inc*, 444 Mich 441, 448; 506 NW2d 857 (1993). Viewed in a light most favorable to defendants, the evidence at trial created a factual question with regard to whether plaintiff was operating her vehicle in a reasonably prudent and careful manner immediately preceding the accident.

In sum, viewing the evidence in a light most favorable to defendants, there was evidence from which the jury could reasonably conclude that it was plaintiff Francye Loepke, and not defendant Opperman, who was negligently operating a motor vehicle at the time of the collision and, therefore, the evidence certainly created enough doubt as to defendant's negligence for the jury to find that plaintiff failed to prove actionable negligence by a preponderance of the evidence. Accordingly, because the record does not support a conclusion as a matter of law that defendant Opperman's negligence caused the collision, the trial court erroneously granted the judgment notwithstanding the verdict and the partial new trial.

Reversed and remanded for entry of judgment in accordance with the jury's verdict. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Harold Hood
/s/ David H. Sawyer