STATE OF MICHIGAN

COURT OF APPEALS

DEANNE FAY FELLOWS and FREDERICK FELLOWS,

Plaintiffs-Appellants,

v

WAYNE DALE SNOEYINK,

Defendant-Appellee.

UNPUBLISHED
October 26, 1999

No. 205291
Ottawa Circuit Court
LC No. 95-023079 NI

Before: Bandstra, C.J., and Markman and Meter, JJ.

PER CURIAM.

Plaintiffs, who allegedly incurred damages after defendant's vehicle collided with the rear of plaintiff DeAnne Fellows' vehicle, appeal by right from a judgment for defendant that the trial court entered following a jury trial. We reverse.

Plaintiffs argue that the trial court erred by instructing the jury on the "sudden emergency" defense, which allows a jury to excuse a person's violation of certain motor vehicle safety statutes if he used ordinary care but was unable to avoid a collision because of a sudden emergency not resulting from his own misconduct. See *Vander Laan v Miedema*, 385 Mich 226, 231; 188 NW2d 564 (1971). We review claims of instructional error for an abuse of discretion. *Ellsworth v Hotel Corp of America*, ___ Mich App ___; ___ NW2d ___ (Docket No. 203893, issued 6/11/99), slip op, p 4. An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, could find no justification for the ruling. *Carpenter v Consumers Power Co*, 230 Mich App 547, 562; 485 NW2d 375 (1998). In deciding whether the sudden emergency instruction should have been given, we view the facts of the case in the light most favorable to the defendant. *Amick v Baller*, 102 Mich App 339, 342; 301 NW2d 530 (1980). An instruction on sudden emergency was warranted if there was any evidence from which the jury could have concluded that an emergency existed within the meaning of the doctrine. *Young v Flood*, 182 Mich App 538, 544; 452 NW2d 869 (1990).

The sudden emergency doctrine applies if the circumstances surrounding the accident were "unusual" or "unsuspected." *Vander Laan, supra* at 232. The term "unusual" refers to circumstances,

typically associated with bad weather, that "var[y] from the everyday traffic routine confronting the motorist." *Id*. Here, defendant, who was traveling west in the outer lane, i.e., the "curb lane," of a two-way, four-lane highway, collided with plaintiff DeAnne Fellows' vehicle after swerving into the inner lane to avoid a van illegally parked in the curb lane (while parking in the curb lane was allowed on Sundays, the accident took place on a Saturday). Defendant testified that the weather on the day of the accident was "good" and that the accident occurred during daylight hours. The good weather conditions and good visibility preclude a finding that the circumstances surrounding the accident were "unusual" within the meaning of the sudden emergency doctrine. *Id.* at 232-233; *Moore v Spangler*, 401 Mich 360, 383; 258 NW2d 34 (1977). See also *Vsetula v Whitmyer*, 187 Mich App 675, 681; 468 NW2d 53 (1991), quoting *Amick, supra* at 341-342 ("'*a blizzard or other extreme weather condition* may cause such an unusual driving environment that the normal expectations of due and ordinary care are modified by the attenuating factual conditions'" [emphasis added]).

"Unsuspected" refers to a "potential peril [that] had not been in clear view for any significant length of time, and was totally unexpected." *Vander Laan, supra* at 232. The *Vander Laan* Court cited the situation in *McKinney v Anderson*, 373 Mich 414; 129 NW2d 851 (1964), as a good example of an "unsuspected" emergency. *Vander Laan, supra* at 232. In *McKinney*, the defendant's vehicle, traveling at approximately forty-five miles per hour, crashed into the rear of the plaintiff's vehicle, which was pushing a third, disabled vehicle on a highway. *McKinney, supra* at 417-418. The defendant came over the crest of a hill and did not clearly see the peril of the plaintiff's slow movement until a collision was unavoidable. *Id.* The *Vander Laan* Court noted that the *McKinney* plaintiff's failure to signal his slow movement, coupled with the surrounding darkness, made the peril totally unexpected to the defendant. *Vander Laan, supra* at 232.

In the instant case, unlike in *McKinney*, the accident took place during daylight hours, and defendant admitted that the weather was good. Moreover, defendant, who was traveling approximately thirty miles per hour, did not crest a hill or navigate a curve just prior to the accident. He turned onto the street where the accident occurred approximately one-half mile from the site of the van, and he admitted that when he first saw the van, he could have safely changed lanes. Defendant further admitted that the van was parked "right next to the curb," an area in which moving vehicles normally are not located. This factual situation precludes a finding that the danger posed by the van was "unexpected," since the potential peril had been in defendant's clear view for a significant length of time. See *Vander Laan, supra* at 232. Indeed, although defendant claimed that he did not notice that the van was parked until it was too late to avoid an accident, there was no evidence that this unawareness was caused by a "sudden emergency."

The circumstances of this case are simply not analogous to the situations deemed potential "sudden emergencies" in *Brown v Spitza*, 45 Mich App 97, 108; 206 NW2d 260 (1973) (the plaintiff's vehicle "stopped suddenly and without reason or signal" in front of the defendant's vehicle), *Amick, supra* at 342 (the plaintiff's vehicle unexpectedly slid toward the defendant's vehicle), *Hackley Union National Bank & Trust Co v Warren Radio Co*, 5 Mich App 64, 72-73; 145 NW2d 831 (1966) (the vehicle traveling in front of the defendant's vehicle stopped abruptly, without signaling), and *Labumbard v Plouff*, 56 Mich App 495, 498-499; 224 NW2d 118 (1974) (the defendant rounded a

curve and, because of snow and darkness, could not see the plaintiff's stopped vehicle). See also *Moore, supra* at 365-366 (where the plaintiff's vehicle stopped suddenly and was rear-ended by the defendant's vehicle, sudden emergency instruction not warranted because the defendant had a clear view of the scene), and *Vander Laan, supra* at 299, 233 (where the defendant, after glancing in his rear-view mirror, crashed into the plaintiff's suddenly-stopped vehicle, sudden emergency instruction not warranted because the defendant had a clear view of the scene).

Here, defendant had a clear view of the van parked next to the curb for a significant length of time. Accordingly, even viewing the evidence in the light most favorable to defendant, and despite the deference owed the trial court, see *Carpenter, supra* at 557, we nonetheless conclude that the trial court abused its discretion by giving the sudden emergency instruction in the instant case. Furthermore, because the jury rendered only a *general verdict* of no negligence and thus may have found that defendant violated a motor vehicle safety statute but was excused by virtue of the sudden emergency doctrine, we must reverse this case and remand it for a new trial. *Vander Laan, supra* at 233-234.

Reversed and remanded. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Patrick M. Meter

Markman, J. did not participate.