

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JEFFERY COPELAND and)	No. 27725-9-III
LISA COPELAND, his wife,)	
)	
Appellants,)	
)	
v.)	Division Three
)	
CITY OF KENNEWICK, a municipal)	
corporation,)	
)	
Respondent and)	
Cross-Appellant.)	UNPUBLISHED OPINION

Korsmo, J. — Jeffery and Lisa Copeland appeal from a jury verdict against them, arguing that the trial court should have granted judgment to them as a matter of law. We affirm.

FACTS

Jeffery Copeland was driving a scooter northbound on Fruitland Avenue (Fruitland) in Kennewick approaching the intersection at Canal Drive (Canal). The light turned green and Mr. Copeland continued toward the intersection. Slightly ahead of him

in the lane to his left was a van driven by Merrell Ayers. Kennewick Police Department Officer Christopher Bennett was driving southbound on Fruitland. As the light turned green for Fruitland traffic, a Cadillac ran the red light for traffic on Canal and nearly hit the officer. The Cadillac turned left onto northbound Fruitland.

Officer Bennett turned left in order to make a U-turn onto northbound Fruitland in pursuit of the Cadillac. He turned on his emergency lights and very briefly toggled his sirens on and off. Mr. Ayers stopped his van and waved the officer through. Mr. Copeland did not see the officer and thought that the van was stopping to turn left. The officer did not see any traffic beside the van. Mr. Copeland collided with Officer Bennett.

The Copelands sued the City of Kennewick (City). Eventually the matter proceeded to jury trial. The three drivers testified to the noted facts at trial. Two other witnesses also described the collision from their viewpoints. During trial, the Copelands sought a directed verdict against the City for negligence, and also asked the trial judge to rule as a matter of law that Mr. Copeland was not contributorily negligent. The City also moved for a directed verdict on negligence, arguing that Officer Bennett had the right of way.

The trial court denied all motions and the matter ultimately was submitted to the

jury. The jury returned a verdict finding the City not negligent. After judgment was entered against the Copelands, they appealed to this court. The City cross-appealed.

ANALYSIS

The Copelands challenge the trial court's rulings on their two motions for directed verdicts. The City cross-appeals the language used in three instructions. In light of our disposition of the appeal, we do not address the claims raised in the cross-appeal.

Directed Verdict on Negligence

The Copelands first contend that the trial court erred by not granting their motion for a directed verdict that the City was negligent. This court reviews motions for judgment as a matter of law *de novo*, "applying the same standard as the trial court." *Davis v. Microsoft Corp.*, 149 Wn.2d 521, 531, 70 P.3d 126 (2003). The court must view the evidence, and all inferences therefrom, in a light most favorable to the nonmoving party. If, so viewed, substantial evidence does not exist to support the nonmoving party, judgment as a matter of law is appropriate. *Schmidt v. Coogan*, 162 Wn.2d 488, 491, 173 P.3d 273 (2007). Substantial evidence is the quantum of evidence sufficient to persuade a rational, fair-minded person the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

The Copelands argue that Officer Bennett was negligent in attempting his U-turn

without seeing that Mr. Copeland was driving at him. The City contends that the evidence of negligence was in dispute, requiring that the jury reach a decision. We agree.

The elements of a negligence action are (1) duty, (2) breach, (3) causation, and (4) damages. *Hansen v. Friend*, 118 Wn.2d 476, 479, 824 P.2d 483 (1992). Whether a duty has been breached is measured by the conduct of a reasonable person facing similar circumstances. *Keller v. City of Spokane*, 146 Wn.2d 237, 243, 44 P.3d 845 (2002).

Negligence typically is a question of fact because it presents the issue of what a reasonable person would do. *Hertog v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400 (1999).

The Copelands argue here that Officer Bennett was negligent as a matter of law because he attempted the U-turn without seeing Mr. Copeland approaching in the far lane. They point out that a statute prohibits U-turns unless they can be accomplished safely. RCW 46.61.295(1). Violation of a statute can be evidence of negligence.

Martini v. State, 121 Wn. App. 150, 160, 89 P.3d 250 (2004), *review denied*, 153 Wn.2d 1023 (2005). Everyone must use reasonable care in the operation of a motor vehicle. *Id.*

The City notes that officers are privileged to disregard traffic rules when pursuing a violator. RCW 46.61.035. The officer, however, must still drive with due regard for the safety of others. RCW 46.61.035(4). Because the officer, viewing the evidence most

favorably to him, used his lights and (briefly) siren, and looked for oncoming traffic, the City contends that he safely attempted the turn.

We think these are quintessential questions of fact and the trial court properly denied the motion for a directed verdict. What the officer could (or should have been able to) see, and whether he acted carefully enough in attempting his turn, were questions that could only be answered by the jury. Would a reasonable officer have attempted the turn with the van partially blocking the view of oncoming traffic? Did he give enough notice of his intention that any unseen oncoming traffic should have had the opportunity to yield? These are questions of reasonable conduct left for the jury. *Hertog*, 138 Wn.2d at 275.

The trial court did not err by denying the motion. Factual questions existed for the jury to resolve.

Directed Verdict on Contributory Negligence

“Ordinarily, the existence of contributory negligence is a factual question to be resolved by the jury.” *Young v. Caravan Corp.*, 99 Wn.2d 655, 661, 663 P.2d 834, 672 P.2d 1267 (1983). The same legal standards apply on this issue as with the previous argument.

An appeal is moot where the court cannot grant effective relief. *In re Detention of*

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LaBelle, 107 Wn.2d 196, 200, 728 P.2d 138 (1986). Given the jury's unchallenged determination that the City was not negligent and our conclusion that the trial court properly denied a directed verdict on that issue, whether or not contributory negligence existed is of no moment. Nonetheless, we will simply note that the appellants' argument that the officer should have seen Mr. Copeland approaching was equally valid for the City to assert with respect to whether Mr. Copeland should have seen the officer turning. This too was a factual question for the jury.

The judgment is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Kulik, C.J.

Brown, J.