

1986

Wayne Sandoval v. Ida Tsosie Smith : Brief of Petitioner

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

IN
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CKET NO. 860307-CA

IN THE SUPREME COURT OF THE STATE OF UTAH

WAYNE SANDOVAL, individually :
and as Guardian Ad Litem for :
his minor children, LAVATO :
SANDOVAL, SHAWNIELLE SANDOVAL, :
and DANIELLE SANDOVAL, :

Plaintiffs/ :
Appellants, :

vs. :

IDA TSOSIE SMITH, :

Defendant/ :
Respondent. :

Case No. 20648

860307-CA

BRIEF OF RESPONDENT

APPEAL FROM A JUDGMENT OF THE FOURTH JUDICIAL
DISTRICT COURT FOR UTAH COUNTY, STATE OF UTAH
HONORABLE DAVID SAM, DISTRICT JUDGE

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Clerk, Supreme Court, Utah

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and DANIELLE SANDOVAL, :

Plaintiffs/Appellants, :

vs. :

IDA TSOSIE SMITH, : Case No. 20648

Defendant/Respondent. :

BRIEF OF RESPONDENT

STATEMENT OF ISSUE PRESENTED ON APPEAL

Whether the trial judge ruled correctly in determining that as a matter of law the defendant was not negligent, that reasonable minds could not differ on the issue, and in directing a verdict for the defendant.

STATEMENT OF FACTS

This action was brought by the plaintiff/appellant, Wayne Sandoval, of behalf of himself personally and in his capacity as Guardian Ad Litem on behalf of his three minor children. Appellants are seeking damages from the defendant/respondent, Ida Tsosie Smith, for the wrongful death of their wife and mother, Virginia Sandoval.

When plaintiffs rested their case, the defendant moved for a directed verdict in compliance with Rule 50 of the Utah Rules of Civil Procedure. Counsel for the defendant based his motion upon the grounds that plaintiffs had not proven a prima facie case and specifically had failed to prove negligence as against the defendant.

The Court held that based upon the evidence presented by the plaintiffs, "as a matter of law the defendant was not negligent and reasonable minds cannot differ on the issue. Accordingly the defendant's Motion for a Directed Verdict is granted." (R. 151). Plaintiffs have now appealed from the granting of that motion.

The plaintiffs' decedent was killed in a pedestrian/auto accident which occurred at approximately 11:00 p.m. on the 29th day of May, 1982, on U.S. Highway 89, south and east of Kanab, Utah. (R. 5, 9).

The Sandovals originated their journey that day from their home in Castle Dale, Utah. (R. 201). During the hours prior to the collision, Mrs. Sandoval had been behaving in such a manner that her husband considered her confused and irrational. (R. 241, 242). At one point, Mrs. Sandoval indicated "she was about ready to leave Mr. Sandoval for good". (R. 241). During the trip, Mrs. Sandoval stated repeatedly that she was going to die. The Sandovals argued concerning her continual comments about dying. (R. 202, 203). Eventually,

Mr. Sandoval decided to let his wife drive, hoping that that would occupy her so she would stop talking about her death. (R. 203). They stopped to buy beer in Kanab, and Mrs. Sandoval drove from that location. (R. 201).

The highway at the point of the accident consists of two 12-foot traffic lanes with a dividing line down the center. A six-foot wide parking lane borders the right of each traffic lane with an approximate six-foot gravel shoulder. (R. 91, 92). The road is straight and relatively flat for a substantial distance in both directions from the point of the accident.

The Sandovals were traveling in a four-wheel drive Blazer headed for Page, Arizona. The driver was Virginia Sandoval. Mrs. Sandoval pulled her vehicle out of the travel lane and stopped in the emergency lane. When her husband, Wayne Sandoval, was asked whether the car was parked on the hard surface part of the roadway or upon the graveled shoulder, Mr. Sandoval responded, "It was about half and half, the shoulder and the gravel or dirt." (R. 28-29).

There was very little traffic on the roadway. Wayne Sandoval testified that he was at the accident scene for at least an hour, during which time only three or four vehicles passed the accident scene. (R. 64-65). Mr. Sandoval characterized the scene of the accident as being "out in the middle of nowhere." (R. 65).

Wayne Sandoval testified that the last time he saw his wife, Virginia Sandoval, prior to seeing her laying in the roadway after having been struck by the Smith automobile, she was in a safe position on the north side of the highway. At the same time he also noticed the lights of the Smith vehicle approaching from the west towards the spot where Virginia Sandoval was eventually struck. Wayne Sandoval estimated that the Smith vehicle was approximately 600 feet away. (R. 62).

Mrs. Sandoval was wearing a brown vest, a darkish beige blouse, and blue jeans at the time of the accident. (R. 290).

Leo Blatter, a passenger in the Sandoval vehicle told the investigating officers that Wayne and his wife, Virginia, had been drinking quite a bit, and from what he observed, it looked like Virginia walked out in front of the Smith vehicle. (Plaintiffs' Exhibit No. 31, introduced and accepted by stipulation of counsel.)

Mr. Phil Ellsworth, an eye witness to the incident, gave the following statement which was read into the record. (R. 81).

MR. ELLIS: Now, as you approached, can you tell us what you recall seeing.

MR. ELLSWORTH: Yes. I was heading down the highway and I noticed a vehicle with its light flashing on the side of the road and then I noticed the headlights of the other vehicle coming towards me and then, like I said, when I was between 200-300 yards away approximately

from the vehicle with the flashing lights, the car that was coming towards me moved out toward the middle of the highway to go around it, you know, giving it some clearance. And I was still a considerable distance away, and then it drove . . .

MR. IVIE: You mean it moved . . .

MR. ELLSWORTH: It moved towards the center line.

MR. IVIE: Away from the side of the road.

MR. ELLSWORTH: Correct, away from the side of the road where the vehicle had its lights flashing to give it some clearance, then, all of a sudden, just before the impact occurred, I saw a person standing in the, what looked like right in the middle of the road. And then quickly the vehicle that was coming towards me swerved back towards the right, towards the side of the road where the car was parked, because the person was standing right in the middle of the road and the car coming towards me wasn't centered on the highway, but it was giving it some berth.

MR. ELLIS: So the driver of the car appeared to you to have seen the pedestrian?

MR. ELLSWORTH: At the last second before impact . . .

MR. IVIE: And turned to the right.

MR. ELLSWORTH: And turned to the right, correct.

(R. 81 - Transcript of Recorded Statement of Phil Ellsworth, p. 3).

Mrs. Smith testified that she was driving east on U.S. 89, when some distance away, maybe a block or a block and a half, she saw a vehicle on her right when her headlights hit the reflection of the tail lights. (R. 97).

Mrs. Smith's travel speed was approximately 45 miles per hour prior to seeing the stopped vehicle on the side of the road. After seeing the parked vehicle, she slowed her car from 45 to 40 miles per hour. (R. 101).

As Mrs. Smith proceeded to pass the parked vehicle, all of a sudden there was someone in front of her car. At the same instant, another car was approaching from the opposite direction with its' high beam headlights on which blinded Mrs. Smith. Upon seeing someone standing in the middle of the road, she immediately swerved her car to the right of avoid hitting the person in the road. (R. 97-98).

Mrs. Smith's car struck Mrs. Sandoval between the corner of the driver's side headlight and the side mirror. (R. 101). Mrs. Sandoval subsequently died as a result of her injuries.

SUMMARY OF ARGUMENT

1. The evidence presented at trial, viewed in the light most favorable to the plaintiffs, could not support a reasonable inference that defendant breached a duty of due care.
2. Defendant did not violate a statutory duty of care, and her conduct as supported by undisputed evidence was in conformance with the statutory standards of conduct.

ARGUMENT

POINT I

THE TRIAL JUDGE RULED CORRECTLY IN DETERMINING THAT AS A MATTER OF LAW THAT DEFENDANT/RESPONDENT WAS NOT NEGLIGENT, THAT REASONABLE MINDS COULD NOT DIFFER ON THE ISSUE, AND THEREFORE A DIRECTED VERDICT FOR THE DEFENDANT WAS PROPER.

In order for a plaintiff to have a negligence action submitted for consideration by the jury, a plaintiff must present sufficient evidence to establish a prima facie case against the defendant. If the plaintiff fails to do so, the defendant is entitled to have the verdict directed in his favor. Lindsay v. Gibbons and Reed, 497 P.2d 28 (Utah 1972).

The defendant's motion for a directed verdict was specifically grounded upon the plaintiffs' failure to establish a prima facie case of negligence as against the respondent. (R. 146). The standard governing a trial court's granting of a directed verdict is that "as a matter of law, reasonable minds would not differ on the fact to be determined from the evidence presented." Management Committee of Graystone Pine Homeowners on behalf of Owners of Condominiums v. Graystone Pines, Inc., 652 P.2d 896 (Utah 1982).

It is respectfully submitted that from the record on appeal, as well as from the evidence presented at trial, that reasonable minds could not differ on the question of the defendant's negligence.

Initially, it is important to make an observation concerning comparative negligence in the present case. It is respondent's contention, and apparently the position of the trial court, that the directed verdict was mandated by the failure to prove a breach of any duty by the defendant towards the plaintiffs. Quite simply, the evidence when viewed in the light most favorable to the plaintiffs fails to demonstrate that the defendant could have avoided this accident through the exercise of due care.

However, in addition to examining the evidence concerning defendant's conduct, it is also important to examine the conduct of plaintiffs' decedent. Respondent would contend that the trial court would have been justified in directing a verdict on the basis that reasonable minds could not differ that the negligence of plaintiffs' decedent was the primary if not the sole proximate cause of this collision. However, the trial court did not find it necessary to compare fault in the present case. Rather, the trial court clearly found that regardless of Mrs. Sandoval's acts in contributing to her own death, the plaintiffs had failed to demonstrate negligence on behalf of the defendant which may have in any way contributed to the accident.

However, it is important to note that the conduct of Virginia Sandoval is still critical in reviewing the trial court's decision concerning the conduct of defendant

Smith. Quite simply, if any negligence is to be attributed to the defendant, it must arise out of defendant's perception of and reaction to the danger created when Mrs. Sandoval walked in front of the defendant's oncoming vehicle.

The evidence in this regard is uncontroverted. In this respect, it should be noted that only one eye witness observed Virginia Sandoval from the time she was in her position of safety on the side of the roadway until the point of impact near the center of the road. Plaintiffs' counsel introduced the statement of Leo Blatter, a hitchhiker who was traveling with the Sandoval family. His statement observed that the decedent had been drinking quite a bit prior to the accident, and simply walked in front of Mrs. Smith's oncoming car.

The other witnesses at the scene, while not observing the decedent's progress from the side of the road to the point of impact, corroborated the statement of witness Blatter. The decedent's husband testified that he did not see the collision near the center of the highway, but saw the decedent seconds before standing in a safe position on the far shoulder of the road. Mr. Phil Ellsworth, the driver of a vehicle approaching from the opposite direction as defendant, did not see the decedent by the side of the road, but first saw her as her silhouette crossed in front of the headlights on the Smith

vehicle. Mrs. Smith, the defendant, testified that the decedent suddenly appeared in front of her vehicle, that she immediately swerved her car to the right to avoid the person in the road, but was unable at that time to successfully complete the evasive maneuver.

The evidence is therefore uncontroverted that Virginia Sandoval was at first in a position of safety off the side of the roadway as indicated by her husband and the hitchhiker, Leo Blatter. As Mr. Blatter further observed, she left that place of safety and walked in front of the defendant's vehicle where she was then observed an instant before impact by Mr. Ellsworth and Mrs. Smith.

Beyond the implications of comparative negligence, these facts demonstrate the emergency which confronted defendant. In this regard, the record is void of any evidence indicating that Mrs. Smith could have avoided the emergency through the exercise of due care.

In Point II below, the respondent answers appellants' contentions that the defendant had violated statutory duties of due care. It appears clear that Mrs. Smith at all times conducted herself in conformance with the statutory mandates. However, respondent goes further in this point, and contends that even in the absence of statutory violations the record demonstrates that plaintiffs failed to show a violation of any duty,

whether founded on statute or the traditional concept of reasonableness.

The uncontroverted evidence presented at trial clearly showed that Mrs. Sandoval did not enter the zone of danger until just before the collision occurred. The defendant testified that the moment she saw Mrs. Sandoval at her position directly in front of the defendant's oncoming vehicle, she initiated her evasive maneuver. Plaintiffs produced no evidence upon which a jury could speculate that Mrs. Smith could have observed the decedent in time for an evasive action to be successful.

Finally, the fact having been established that the decedent walked from her position of safety to in front of the defendant's vehicle, raises one further question. Should the defendant be charged with the duty of anticipating such conduct by others. It must first of all be reiterated that there is no evidence which would indicate the defendant could have observed the decedent prior to the time when she in fact did. The uncontroverted facts are that the decedent was wearing dark clothing on a dark night, that she had dark hair and skin, and that the defendant's ability to perceive was somewhat impaired by the lights of the oncoming vehicle driven by witness Ellsworth.

However, even assuming that the decedent could have been observed earlier, more must be shown to establish

negligence on behalf of the defendant. Surely, the law does not impose a duty upon motorists to reduce their speed to one or two miles per hour whenever a pedestrian is or may be in the area. The law of Utah assumes, as does the reasonable driver, that pedestrians and other individuals on or near our highways will conduct themselves in due regard for their own safety. (As respondent indicates in Point II of this brief, Utah law has long recognized such a presumption. See Bryant v. Bingham Stage Line, 208 P. 541 (Utah 1922); Mackey v. Harvey, 572 P.2d 382 (Utah 1977).) Rather, any duty imposed upon Mrs. Smith arises when it becomes clear that a party is acting without regard to personal safety, and appears to be placing themselves in a position of danger. Until such time, the reasonable person assumes, and the law recognizes, that individuals will act to prevent danger to themselves or others.

In the present case, the only evidence presented on this question is the statement of the hitchhiker who observed the decedent walk out in front of the defendant's vehicle. The record is void of any evidence which would support an inference that the defendant had time to avoid the accident once it could be observed that the decedent was not only walking upon the roadway, but crossing directly in front of an oncoming vehicle. The trial court has a duty "to be guided by credible, uncontradicted evidence when all reasonable minds would accept it." DeVas

v. Noble, 369 P.2d 290 at 293 (Utah 1962). The trial court's granting of a directed verdict pursuant to the evidence therefore appears proper.

This Court has previously stated that they will sustain the granting of a motion for a directed verdict only if the evidence is such that reasonable men cannot arrive at a different conclusion. Anderson v. Gribble, 513 P.2d 432 (Utah 1973). In the case at bar, the trial judge examined the evidence presented by the plaintiff and ruled that as a matter of law that the defendant was not negligent. The judge summarized his findings of fact and law as follows:

Based upon the eye witness accounts of the accident which resulted in the death of the plaintiff's wife and the mother of the three children of the plaintiff which accounts are related by the defendant Mr. Phil Ellsworth driver of the oncoming vehicle and Mr. Leo Blatter, the hitch-hiker, the court finds that reasonable minds cannot differ on the issue of whether the defendant was negligent. The facts are that defendant was traveling about 45 miles per hour, had decelerated to 40 miles per hour, had taken precautions to clear the plaintiff's vehicle which was parked on the right shoulder of the road, that it was dark and that there was a vehicle approaching from the opposite direction when the decedent was struck near the center of the road by the vehicle driven by the defendant. The portion of the vehicle striking the decedent was the left front near the headlight and the left mirror. At or about the time of impact the defendant attempted to swerve to the right to avoid the collision. Based upon the foregoing and considering particularly the statement of Mr. Blatter, Plaintiff's Exhibit No. 31,

that it looked like the decedent walked out in front of the defendant's car, the court finds that as a matter of law the defendant was not negligent and reasonable minds cannot differ on this issue. Accordingly, the defendant's Motion for a Directed Verdict is granted.

(R. 150-151).

POINT II

THE EVIDENCE AT TRIAL FAILED TO ESTABLISH A BREACH OF STATUTORY DUTY BY DEFENDANT.

An action sounding in negligence is of course governed by the standard of reasonableness under the circumstances. A breach of the duty of reasonableness need not involve a violation of a statutory duty in order to impose liability upon the defendant. Defendant has attempted in Point I of this brief to establish that reasonable minds could not have differed upon reviewing the evidence at trial, in concluding that defendant at all times conducted herself reasonably. However, the thrust of plaintiffs' brief on appeal is that defendant violated various statutory duties which would permit the action to be submitted to the jury pursuant to a presumption. In Point II, defendant responds to plaintiffs' statutory arguments in the order presented on appeal. As is demonstrated below, defendant's conduct as established by uncontroverted evidence, either fails to fall within the statute cited by plaintiff, or is clearly controlled by statutory exceptions. However, it is defendant's position

that not only was she innocent of violating statutory duties, but at all times conducted herself in conformance with the more general standard of reasonableness under the circumstances.

- A. THE DEFENDANT'S/RESPONDENT'S ACTIONS FALL CLEARLY WITHIN THE EXCEPTION TO THE STATUTORY DUTY TO DRIVE ON THE RIGHT SIDE OF THE HIGHWAY UNDER SECTION 41-6-53 UTAH CODE ANNOTATED (1953), AS AMENDED.

Plaintiffs contend that the defendant violated a statutory duty to drive her vehicle on the right hand side of the roadway. It should be noted from the outset that competent evidence failed to establish that at any time defendant moved her vehicle left of center on the roadway where the accident occurred. Despite the presence of eye witnesses at the scene, the only suggestion of that possibility came from defendant. Her testimony indicates that while she moved to the left hand side of her lane to avoid the Sandoval vehicle parked on the side of the road, she could not state that at any time she crossed over the center of the highway. The sole basis for plaintiffs' contention is the defendant's admission that she may have possibly been as much as one single foot over the center line of the highway prior to making contact with the pedestrian decedent. The testimony of the oncoming driver further indicates that Mrs. Smith swerved to the right prior to impact. Defendant submits that the testimony

taken as a whole fails to provide evidence which would permit reasonable minds to speculate on defendant's possible breach of a duty of due care. However, it is also clear that defendant's conduct does not establish a violation of statute as alleged by plaintiffs.

Plaintiffs/appellants cite as a statutory duty Section 41-6-53, Utah Code Annotated. That statute provides:

Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows: . . .

Utah Code Ann. Section 41-6-53 (1953), as amended.

Plaintiffs' brief then dismisses all exceptions to the statute claiming that: "none of which have any application here." However, one of these exceptions is directly applicable:

(2) When an obstruction exists making it necessary to drive to the left of the center of the roadway; provided any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portions of the highway within such a distance as to constitute an immediate hazard;

Utah Code Ann. Section 41-6-53 (2) (1953), as amended.

The testimony at trial was uncontroverted concerning the obstruction on the side of the roadway caused by the Sandoval vehicle. Defendant's conduct in moving over within her lane, with the possibility that she may have crossed over into the oncoming lane by at most one

foot, is wholly consistent with the statutory exception outlined above. Surely, her actions are consistent with the concept of reasonableness under the circumstances. Where obstructions exist on the roadway, a driver is obviously not required by statute to proceed through the obstruction or not at all. Defendant conducted herself in accordance with the statutory mandate by avoiding the obstruction while avoiding danger to oncoming vehicles.

Furthermore, the pedestrian, plaintiffs' decedent, does not fall within the class of individuals protected by this statutory mandate. The duty owed to plaintiff, a pedestrian wearing dark clothing, who by the only eye witness report walked from the side of the roadway directly in front of the defendant's vehicle, was to avoid injuring the plaintiff once the danger could be reasonably perceived. That duty is dealt with elsewhere in this brief. However, it is sufficient at this point to indicate that statutory duty imposed by Section 41-6-53 was not violated.

B. THE DEFENDANT'S/RESPONDENT'S ACTIONS DID NOT VIOLATE THE STATUTORY DUTY ALLEGED BY PLAINTIFFS/APPELLANTS UNDER SECTION 41-6-54, UTAH CODE ANNOTATED (1953), AS AMENDED, WHICH IMPOSES A DUTY UPON DRIVERS OF VEHICLES PASSING IN OPPOSITE DIRECTIONS.

Plaintiffs also claim a violation of Section 41-6-54. That section provides:

Drivers of vehicles proceeding in opposite directions shall pass each other to the right and upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main traveled portion of the roadway as nearly as possible.

Utah Code Ann. Section 41-6-54 (1953), as amended.

This provision is applicable only in situations when drivers of passing vehicles are going in opposite directions. The facts of this case clearly indicate that this was not the situation. Rather, the plaintiffs' vehicle was parked in the roadway heading the same direction as the defendant's vehicle in the same lane of traffic. The plaintiffs' vehicle and the defendant's vehicle were simply not "vehicles proceeding in opposite directions". Utah Code Ann. Section 41-6-54 (1953), as amended. Therefore, it is respectfully submitted that the statute relied upon by appellant was not intended to govern this particular factual setting.

Furthermore, it is important to note that the statutory section provides that the described conduct by drivers shall be carried out "as nearly as possible". Utah Code Ann. Section 41-6-54 (1953), as amended. Once again, the question relates to a duty of reasonableness. Under the circumstances as indicated by uncontroverted evidence, it is obvious that defendant's actions were reasonable in light of the hazard created by the Sandoval vehicle.

Furthermore, defendant's actions in attempting to avoid the pedestrian once the pedestrian became observable appear clearly in conformance with the statutory mandate, as well as the more general standard of reasonableness.

- C. THE DEFENDANT'S/RESPONDENT'S ACTIONS WERE REASONABLY WITHIN THE EXCEPTION TO THE STATUTORY DUTY ALLEGED BY THE PLAINTIFFS/APPELLANTS UNDER SECTION 41-6-61, UTAH CODE ANNOTATED, WHICH IMPOSES A DUTY TO DRIVE A VEHICLE AS NEARLY AS PRACTICABLE WITHIN A SINGLE LANE.

Plaintiffs' claim a statutory duty based upon Section 41-6-61, Utah Code Annotated. This section is concerned with driving a vehicle on the right-hand side of the roadway. The defendant would like to draw the court's attention to the language of subsection (1) which states: "A vehicle shall be driven as nearly as practical entirely within a single lane . . . (emphasis added). Utah Code Ann. Section 41-6-61 (1953), as amended. The highlighted language clearly imposes a standard of reasonableness under the circumstances.

The evidence presented at trial, even granting all inferences to the plaintiffs, fails to demonstrate a violation of this statutory duty or the general standard of reasonableness. Once again, the uncontroverted evidence concerning the position of the Sandoval vehicle would not permit reasonable minds to differ as to the wisdom of defendant's actions in moving her vehicle to the left side

of her lane of travel, or even moving as much as a foot over the center line of the highway.

Furthermore, there is no competent evidence in the record which would support an inference that defendant failed to perceive and react to the presence of plaintiffs' decedent until it was possible to do so. Indeed, the evidence concerning Mrs. Sandoval's dark clothing, the headlights of the oncoming vehicle, and Mrs. Smith's evasive maneuver immediately prior to impact, clearly indicates that the defendant conducted herself in a vigilant manner.

Furthermore, the uncontroverted evidence of the only eye witness who saw Mrs. Sandoval move from the side of the roadway to the eventual point of impact would further support the trial court's granting of a directed verdict in this regard. The statement of the hitchhiker indicated that Mrs. Sandoval walked directly in front of the defendant's vehicle. Because the decedent was moving from the side of the roadway during the moments prior to impact, she would not have reached her position in front of the defendant's vehicle until just shortly before the impact occurred. The uncontroverted evidence concerning the defendant's attempted and evasive maneuver would lead reasonable minds to one conclusion; that the defendant observed the decedent as she entered the zone of danger and reacted immediately to avoid the danger. Once again, there

are no facts in the record to establish a breach of the statutory duty, or the standard of reasonableness.

D. THE DEFENDANT/RESPONDENT WAS DRIVING
AT A SAFE AND APPROPRIATE SPEED UNDER
THE CIRCUMSTANCES.

Appellants cite Section 41-1-46, for the contention that the defendant was driving at an excessive rate of speed in light of actual or potential hazards then existing. The evidence in this case was uncontroverted that defendant was at all times operating her vehicle within the speed limit established for the highway. The evidence further established the traffic on the highway was sparse, but that defendant immediately decelerated upon observing the Sandoval vehicle.

Once again, the evidence related in the hitchhiker's statement, establishing that the decedent walked directly in front of the defendant's vehicle is important. The testimony is uncontroverted that plaintiffs' decedent was walking from the side of the roadway towards the point of impact immediately prior to the collision, and did not enter the zone of danger immediately in front of the defendant's vehicle until just before impact occurred. Under these circumstances, there can be no controversy that once plaintiffs' decedent had created the danger, the defendant had no time reduce her speed so drastically that the collision could have been avoided.

It is also important to note that had defendant been able to observe the decedent at her point of safety on the side of the roadway, the reasonable and prudent driver would not anticipate that the pedestrian would then disregard her own safety and step out in front of the moving vehicle. This fact, while appearing quite obvious, has long been recognized as the law in the State of Utah. Bryant v. Bingham Stage Line, 208 P. 541 (Utah 1922); Mackey v. Harvey, 572 P.2d 382 (Utah 1977).

The standard of conduct has been embodied in Utah's standard jury instructions as follows:

A person who is observing due care for his own safety, has a right to assume that another is possessed of normal faculties of sight and hearing and that they will use them in exercising ordinary care for their own safety and the safety of others; and he has the right to rely on that assumption unless, in the exercise of due care, he observes or should observe something to warn him to the contrary.


Jury Instruction Forms of Utah (J.I.F.U.), No. 16.10.

Therefore, it is clear that the statutory duty referred to here was not applicable in light of the undisputed facts. Defendant operated her vehicle within the speed limit, reduced the speed of her vehicle as soon as she observed the hazard presented by the Sandoval vehicle, and clearly observed Mrs. Sandoval as soon as it was possible to perceive that Mrs. Sandoval was placing herself in an area of obvious danger.

CONCLUSION

While respondent readily admits that a directed verdict in a negligence action is rare, it is equally clear that the evidence when viewed in the light most favorable to the plaintiff must demonstrate some factual basis upon which reasonable minds could find a violation of a duty owed to the plaintiff. It is clear that the trial court here applied the appropriate standard in granting a directed verdict, and upon a review of the evidence it is respectfully submitted that the present case presents just such an instance when a directed verdict should properly be granted. Defendant would therefore request that the directed verdict entered by the trial court be upheld.

RESPECTFULLY SUBMITTED this 6th day of
January, 1986.



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ADDENDUM

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375-3000

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

WAYNE SANDOVAL, individually	:	
and as guardian ad litem for	:	
his minor children, LAVATO	:	
SANDOVAL, SHAWNIELLE SANDOVAL	:	ENTRY OF DIRECTED VERDICT
and DANIELLE SANDOVAL,	:	NUNC PRO TUNC AND JUDGMENT
Plaintiffs,	:	
vs.	:	
IDA TSOSIE SMITH,	:	Civil No. 66,555
Defendant.	:	

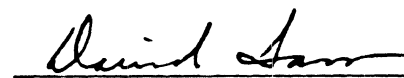
The above-entitled matter came on regularly and duly before the Court for trial on the 1st and 2nd days of April, 1985, the Honorable David Sam presiding. The parties were present and represented by counsel, Glen J. Ellis appearing on behalf of plaintiffs and Ray Harding Ivie appearing for defendant.

Following the close of plaintiffs' case and plaintiffs' having rested, defendant moved the Court for a directed verdict pursuant to Rule 50(a) of the Utah Rules of Civil Procedure. The Court having considered the evidence

presented in the light most favorable to plaintiffs in concluding that reasonable minds would not differ in their determination from the evidence presented that plaintiffs had failed to prove the prima facia element of negligence, the Court thereby ruled as a matter of law that defendant's motion pursuant to Rule 50(a) for a directed verdict must be granted. The Court having dismissed the jury prior to the formality of signing a verdict in favor of defendant, now hereby enters a verdict nunc pro tunc in favor of defendant and against plaintiffs, no cause for action.

DATED AND SIGNED this 3-4 day of April, 1985.

BY THE COURT:



DAVID SAM
District Judge

JUDGMENT

The Court having entered a verdict nunc pro tunc as above set forth now makes and enters the following judgment:

Defendant is hereby awarded a judgment as against plaintiffs, no cause for action.

DATED AND SIGNED this 3-4 day of April, 1985.

BY THE COURT:



DAVID SAM
District Judge

(2) Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than five days nor more than six months or by a fine of not less than \$25 nor more than \$299, or by both such fine and imprisonment. On a second or subsequent conviction, the person shall be punished by imprisonment for not less than ten days nor more than six months, or by a fine of not less than \$50 nor more than \$299 or by both such fine and imprisonment.

History: L. 1941, ch. 52, § 35; C. 1943, 57-7-112; L. 1978, ch. 33, § 9.

Compiler's Notes.

The 1978 amendment deleted "or on a conviction under this section subsequent to a conviction under an ordinance as provided in section 41-6-43(b)" after "subsequent conviction" near the beginning of the second sentence of subsec. (2); substituted "\$299" for "\$1,000" near the end of subsec. (2); deleted the last two sentences of subsec. (2) which provided that second violation had to occur within three years of the preceding violation and for suspension of license by department; and made minor changes in phraseology and style.

Former jeopardy.

Conviction of motorist for reckless driving held not bar to subsequent prosecution for involuntary manslaughter. *State v. Empey* (1925) 65 U 609, 239 P 25, 44 ALR 558, reviewed in *State v. Thatcher* (1945) 108 U 63, 157 P 2d 258.

Collateral References.

Automobiles ⇄ 330.
61A CJS Motor Vehicles §§ 609-624.
Reckless driving, 7A AmJur 2d 499 et seq.,
Automobiles and Highway Traffic § 312 et seq.

"Assured clear distance ahead" or "radius of lights" application of doctrine to accident involving pedestrian crossing street or highway, 31 ALR 2d 1424.

Excuse for exceeding speed limit for automobiles, 29 ALR 883.

Homicide or assault in connection with operation of automobile at unlawful speed, 99 ALR 756.

Liability of one fleeing police for injury resulting from collision of police vehicle with another vehicle, person, or object, 51 ALR 3d 1226.

"Residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 ALR 2d 343.

Statute prohibiting reckless driving; definiteness and certainty, 12 ALR 2d 580.

Validity, construction, and application of criminal statutes specifically directed against racing of automobiles on public streets or highways (drag racing), 24 ALR 3d 1286.

Validity of statute or ordinance forbidding running of automobile so as to inflict damage or injury, 47 ALR 255.

What amounts to reckless driving, 86 ALR 1273, 52 ALR 2d 1337.

When automobile is under control, 28 ALR 952.

ARTICLE 6

SPEED RESTRICTIONS

Section

- 41-6-46. Speed regulations — Safe and appropriate speeds at intersections, crossings, and curves — Prima facie speed limits — Emergency power of the governor.
- 41-6-47. Prima facie limit.
- 41-6-48. Speed Restrictions — Powers of local authorities.
- 41-6-49. Minimum speed regulations.
- 41-6-50. Special speed limit on bridges — Prima facie evidence.
- 41-6-51. Speed contest or exhibition on highway — Barricade or obstruction therefor.
- 41-6-52. Violation — Pleading.
- 41-6-52.1. Repealed.

41-6-46. Speed regulations — Safe and appropriate speeds at intersections, crossings, and curves — Prima facie speed limits — Emergency power of the governor. (1) No person shall drive a vehicle at a

speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(2) Where no special hazard exists the following speeds shall be lawful but any speed in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

(a) Twenty miles per hour.

When passing a school building or the grounds thereof during school recess or while children are going to or leaving school during opening or closing hours; provided, that local authorities may require a complete stop before passing a school building or grounds at any of said periods.

(b) Twenty-five miles per hour in any urban district.

(c) Fifty-five miles per hour in other locations.

The speed limits set forth in this section may be altered as authorized in subsection (3) and sections 41-6-47 and 41-6-48.

(3) The governor by proclamation, in time of war or emergency, may change the speed on the highways of the state.

History: C. 1953, 41-6-46, enacted by L. 1978 (2nd S.S.), ch. 9, § 1.

Compiler's Notes.

Laws 1978 (2nd S.S.), ch. 9, § 1 repealed old section 41-6-46 (L. 1941, ch. 52, § 36; C. 1943, 57-7-113; L. 1951, ch. 72, § 1; 1957, ch. 76, § 1; 1959, ch. 66, § 1; 1978, ch. 34, § 1), relating to speed regulations, and enacted new section 41-6-46.

Title of Act.

An act repealing and re-enacting section 41-6-46, Utah Code Annotated 1953, as amended by chapter 76, Laws of Utah 1957, as amended by chapter 66, Laws of Utah 1959, as amended by chapter 34, Laws of Utah 1978, and section 41-2-19, Utah Code Annotated 1953, as amended by chapter 85, Laws of Utah 1961, as amended by chapter 34, Laws of Utah 1978; relating to highway speeds and points for certain speeding offenses, providing for maximum speeds; providing for suspensions of licenses for certain offenses; providing for the assessment of points for certain violations and the basis for and effect of such points; providing for new licensure after suspension, and providing for hearings and re-examinations. — Laws 1978 (2nd S.S.), ch. 9.

Cross-References.

Municipal regulations, 10-8-30.

Reckless driving, 41-6-45.

Construction and application.

This section requires that driver shall not drive at speed greater than is reasonable and prudent in view of existing conditions and hazards on highway, that his speed shall be controlled so as to avoid colliding with other vehicles entering or upon highway in lawful manner, and that speed shall be appropriately reduced when special hazards exist with respect to other traffic or by reason of weather conditions. *Horsley v. Robinson* (1947) 112 U 227, 186 P 2d 592.

Constitutionality.

A former speed law was held constitutional as against contention that it violated Const. Art. VI, § 23. *State v. Brown* (1928) 75 U 37, 282 P 785.

Former jeopardy.

Conviction of motorist charged with speeding under this section does not bar subsequent prosecution for involuntary manslaughter. *State v. Thatcher* (1945) 108 U 63, 157 P 2d 258.

Instructions.

In action arising out of car-pedestrian accident in California, evidence did not justify

instruction that defendant had duty to drive car in conformity with California statute providing that no person shall drive vehicle at speed greater than is reasonable and prudent, where there was no evidence that defendant's speed of 20 to 25 miles per hour was excessive or unreasonable. (*Deering's Cal. Vehicle Code § 510.*) *Hunter v. Michaelis* (1948) 114 U 242, 198 P 2d 245.

Where defendant failed to see small child in the street until it was too late to avoid striking him, the trial court should have instructed jury that driver is charged with duty of seeing what he would have seen had he been exercising reasonable care, since evidence showed motorist should have seen the child much sooner; instructing jury on right to assume others will perform their legal duties and on sudden or unexpected situation arising without fault on defendant's part was reversible error. *Solt v. Godfrey* (1971) 25 U 2d 210, 479 P 2d 474.

Motor carriers and buses.

Driver of vehicle carrying passengers for hire owes them duty to operate vehicle within such rate of speed as reasonably prudent person would operate under existing conditions, and, where road and weather conditions make driving hazardous, reasonable prudence requires proportionate increase in care of driver to avoid injury to passengers. *Horsley v. Robinson* (1947) 112 U 227, 186 P 2d 592.

Where bus, while traveling between 20 and 50 miles per hour under very hazardous conditions on outside lane of main highway which was covered with ice and slush, collided with automobile approaching from opposite direction which went out of control and skidded into path of bus, and distance between bus and automobile, when it first became discernible that latter was out of control, was between 30 and 330 feet, evidence was sufficient to sustain verdict in favor of injured bus passenger for hire as against bus company, in that jury could conclude therefrom that bus driver was negligent in operating bus at excessive rate of speed under such circumstances, which was proximate cause of collision. *Horsley v. Robinson* (1947) 112 U 227, 186 P 2d 592.

Negligence.

Ordinarily it is not negligence to operate a motor vehicle within the speed limit prescribed by statute or ordinance, although a jury may say in some instances, dependent upon the particular attendant facts and circumstances, that the operation of an automobile within prescribed limit is nevertheless

negligence. *Lochhead v. Jensen* (1912) 42 U 99, 129 P 347.

Violation of speed regulations may constitute negligence per se. *Jensen v. Utah Light & Railway Co.* (1913) 42 U 415, 132 P 8.

Operating a motor vehicle at less than the lawful maximum speed may constitute negligence under given circumstances. *Fowkes v. J. I. Case Threshing Mach. Co.* (1915) 46 U 502, 151 P 53.

It has long been the rule in this state that it is negligence as a matter of law to drive an automobile upon a traveled public highway at such rate of speed that said automobile cannot be stopped within distance at which operator of said car is able to see objects upon highway in front of him. *Dalley v. Midwestern Dairy Products Co.* (1932) 80 U 331, 15 P 2d 309.

When a driver upon a public highway with his light equipment cannot see more than 50 feet ahead of him, it is his duty to drive at such speed as will enable him to stop within that distance. *Hansen v. Clyde* (1936) 89 U 31, 56 P 2d 1366, 104 ALR 943.

For general discussion as to speed and civil liability with respect thereto, see opinions by Wade, Wolfe and Pratt, JJ., in *Horsley v. Robinson* (1947) 112 U 227, 186 P 2d 592.

Where fog was so great that visibility was limited to 20 or 25 feet and a safe speed under those conditions was about five miles per hour, the court cannot say as a matter of law that the plaintiff was not negligent in operating his car at the rate of 25 miles per hour. *Shields v. Ramon* (1952) 122 U 474, 251 P 2d 671.

What is a reasonable and prudent speed under the conditions and having regard to the actual and potential hazards then existing is a matter about which there is room for reasonable disagreement and such being the case, a jury question is presented. *Lodder v. Western Pac. R. Co.* (1953) 123 U 316, 259 P 2d 589.

Driving in excess of speed limit may constitute prima facie evidence of negligence, but does not constitute conclusive evidence. *Cardon v. Brenchley* (1978) 575 P 2d 184.

Pleadings and proceedings.

If the complaint is fatally defective in its allegations when viewed as an attempt to bring defendant within the provisions of this section, judgment for plaintiff will be reversed. *Woodward v. Spring Canyon Coal Co.* (1936) 90 U 578, 63 P 2d 267.

Questions of law and fact.

Whether the speed at which the vehicle was going at the time was the proximate cause of the accident is a question of fact.

Sweet v. Salt Lake City (1913) 43 U 306, 134 P 1167.

In action arising out of intersection collision, evidence sufficiently established prima facie case of negligence on part of defendant in failing to yield right-of-way and in traveling at excessive rate of speed, and contributory negligence on part of plaintiff in failing to keep proper lookout and in traveling at excessive rate of speed was for jury. *Martin v. Sheffield* (1948) 112 U 478, 189 P 2d 127.

In action against motorist for death of decedent, who was killed while hitching small tractor to rear of an automobile, it was a question of fact for the jury whether motorist was negligent in failing to reduce her speed below 50 miles per hour when she saw wrecker ahead of her on the highway. *Taylor v. Johnson* (1964) 15 U 2d 342, 393 P 2d 382.

Collateral References.

Automobiles ⇄ 331.

61A CJS Motor Vehicles §§ 641-650.

Speed, 7A AmJur 2d 394 et seq., Automobiles and Highway Traffic § 218 et seq.

Application of "assured clear distance ahead" or "radius of lights" doctrine to accident involving pedestrian crossing street or highway, 31 ALR 2d 1424.

"Assured clear distance" statute or rule as applied at hill or curve, 133 ALR 967.

Competency of nonexpert's testimony based on sound alone as to speed of motor vehicle involved in accident, 33 ALR 3d 1405.

Conflict between statutes and local regulations as to speed, 21 ALR 1187, 64 ALR 994, 147 ALR 529.

Criminal or penal responsibility of public officer or employee for violating speed regulations, 9 ALR 367.

Driving at illegal speed as reckless driving within statute making reckless driving a

criminal offense, 86 ALR 1281, 52 ALR 2d 1337.

Driving automobile at a speed which prevents stopping within length of vision as negligence, 44 ALR 1403, 58 ALR 1493, 87 ALR 900, 97 ALR 546.

Excuse for exceeding speed limit for automobiles, 29 ALR 883.

Expert opinion evidence of speed not based upon view of vehicle, 156 ALR 382.

Homicide or assault in connection with operation of automobile at unlawful speed, 99 ALR 756.

Indefiniteness of automobile speed regulations as affecting validity, 6 ALR 3d 1326.

Indictment or information which charges offense as to speed in language of statute, 115 ALR 357.

Liability of public authority for injury arising out of automobile race conducted on street or highway, 80 ALR 3d 1192.

Meaning of "residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 ALR 2d 343.

Opinion testimony as to speed of motor vehicle based on skid marks and other facts, 29 ALR 3d 248.

Proof, by radar or other mechanical or electronic devices, of violation of speed regulations, 47 ALR 3d 822.

Public officers or employees as bound by speed regulations, 19 ALR 459, 23 ALR 418.

Speeding prosecution based on observation from aircraft, 23 ALR 3d 1446.

Validity, construction, and application of criminal statutes specifically directed against racing of automobiles on public streets or highways (drag racing), 24 ALR 3d 1286.

Violation of speed law as affecting violator's right to recover for negligence, 12 ALR 463.

Violation of speed regulations as affecting rights to recover for injuries due to collision with streetcar, 28 ALR 228, 46 ALR 1008.

DECISIONS UNDER FORMER LAW

National emergency.

"National emergency" as used in former provision authorizing governor to change speed limit by proclamation meant an unforeseen combination of circumstances calling for immediate action by national leaders and support from citizens for the safety, peace, health and general welfare of the nation; the 1973 Arab oil embargo was such an emergency and governor could validly reduce state-wide speed limit to 55

miles per hour by proclamation. *State v. Foukas* (1977) 560 P 2d 312.

Validly issued proclamation by governor setting speed limit could be terminated by governor's proclamation, by legislative action, or by judicial holding that the circumstances had so changed that the proclamation could no longer serve any useful purpose; governor's proclamation limiting speed limit to 55 miles per hour had not been terminated as of December 2, 1976. In re *Prisbrey* (1978) 576 P 2d 1278.

41-6-52. Violation — Pleading. (a) In every charge of violation of any speed regulation in this act the complaint, also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the prima facie speed applicable within the district or at the location.

(b) The provisions of this act declaring prima facie speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

History: L. 1941, ch. 52, § 42; C. 1943, 57-7-119.

61A CJS Motor Vehicles § 588.
7A AmJur 2d 406, Automobiles and Highway Traffic § 231.

Collateral References.

Automobiles ⇌ 351.

41-6-52.1. Repealed.

Repeal.

Section 41-6-52.1 (L. 1957, ch. 77, § 2), relating to resume speed road signs, was repealed by Laws 1975, ch. 207, § 61.

ARTICLE 7

**REGULATIONS APPLICABLE TO DRIVING ON
RIGHT SIDE OF HIGHWAY, OVERTAKING, PASSING
AND OTHER RULES OF THE ROAD**

Section

- 41-6-53. Duty to drive on right side of highway — Exceptions.
- 41-6-54. Passing vehicles proceeding in opposite directions.
- 41-6-55. Overtaking and passing vehicles proceeding in same direction.
- 41-6-56. Passing upon right — When permissible.
- 41-6-57. Limitation on passing.
- 41-6-58. Limitations on driving on left side of road — Exceptions.
- 41-6-59. Signs and markings on roadway — No passing zones — Exceptions.
- 41-6-60. One-way traffic — Signs.
- 41-6-61. Roadway divided into marked lanes — Rules — Traffic-control devices.
- 41-6-62. Following another vehicle — Proximity and distance — Caravan or motorcade — Exception for funeral procession.
- 41-6-63. Repealed.
- 41-6-63.10. Highway divided into two separate roadways by dividing section — Unlawful actions of drivers — Dividing section defined and described.
- 41-6-64. Controlled-access highways — Driving upon and from highways.
- 41-6-65. Controlled-access highways — Prohibiting use by class or kind of traffic — Traffic-control devices.

41-6-53. Duty to drive on right side of highway — Exceptions.

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

- (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
- (2) When an obstruction exists making it necessary to drive to the left of the center of the roadway; provided any person so doing shall yield the

right-of-way to all vehicles traveling in the proper direction upon the unobstructed portions of the highway within such distance as to constitute an immediate hazard;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designed and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

History: L. 1941, ch. 52, § 43; C. 1943, 57-7-120; L. 1949, ch. 65, § 1; 1975, ch. 207, § 14.

Compiler's Notes.

The 1949 amendment added subsec. (b).

The 1975 amendment rewrote subd. (a)(2) which read: "When the right half of a roadway is closed to traffic while under construction or repair."

Construction and application.

Where this section refers to "half the roadways," the reasonable interpretation of the meaning of this term is that it means half of the roadway as it exists at the time it is being traveled and not half the roadway as it may have been laid out originally. To this effect see *Dixon v. Alabam Freight Co.* (1941) 57 Ariz 173, 112 P 2d 584, in which the Arizona court construed sections similar to ours as quoted above. *Patton v. Kirkman* (1946) 109 U 487, 167 P 2d 282.

Backing.

Statutes requiring that vehicles keep to right have no application to backing. *Naisbitt v. Eggett* (1956) 5 U 2d 5, 295 P 2d 832.

Bicycle and truck.

Driver of autotruck who was on right side of street and was not on, near to, or approaching crossing where both vehicles and pedestrians might pass either or both ways, had right to relax his vigilance and was not required to do more than to maintain such lookout as would prevent his colliding or coming in contact with anyone on his side of street. *Richards v. Palace Laundry Co.* (1919) 55 U 409, 186 P 439.

Effect of passing from right to center.

While in case street or highway is not used by others one may drive on any part thereof,

yet, when motorist or bicyclist passes from right to left of center of street, he loses some of his rights, and may not be heard to complain of conduct of those who are on proper side of street to same extent as though he also were on proper side. *Richards v. Palace Laundry Co.* (1919) 55 U 409, 186 P 439.

Instruction.

In action by bicyclist for personal injuries sustained as result of collision with automobile at intersection, instruction that motorist had right to presume that every other person would obey law by traveling on right-hand side of road, and that no duty rested upon motorist to stop or change course of automobile until he had reason to believe that plaintiff was traveling on wrong side of street, was properly refused where it was disputed question as to whether bicyclist was on wrong side of roadway. *Cheney v. Buck* (1920) 56 U 29, 189 P 81.

Where collision takes place upon street having four traffic lanes, it is proper to instruct as to duty of defendant to use right traffic lane, and as to duty of the respective parties to use lane 4 rather than lane 3, where the evidence warrants such instruction. *Thomas v. Sadleir* (1945) 108 U 552, 162 P 2d 112, setting out instruction, embodying this section of the Motor Vehicle Law and the exceptions, and held to be nonprejudicial and not objectionable as stating the last clear chance doctrine.

Negligence.

The strongest kind of presumption of negligence prevails against party driving on wrong side of road. *Staton v. Western Macaroni Mfg. Co.* (1918) 52 U 426, 174 P 821.

Where one who is operating his vehicle on right-hand side of street makes survey of condition of street ahead of him, and in

doing so he observes no one coming on his side of street, but sees one or more coming towards him on opposite side of street, he has right to assume that such person will continue onward on opposite side of street, and not encroach upon his side. *Richards v. Palace Laundry Co.* (1919) 55 U 409, 186 P 439.

Presumption.

In action by bicyclist for injuries sustained in collision with autotruck when plaintiff was thrown in front of defendant's oncoming vehicle, held driver of autotruck had legal right to presume that plaintiff would not encroach upon his side of street, and to hold defendant liable, plaintiff was required to prove more than mere fact that autotruck could have been stopped or turned aside in distance of 10 or 15 feet. *Richards v. Palace Laundry Co.* (1919) 55 U 409, 186 P 439.

Questions of law and fact.

In action by bicyclist for personal injuries sustained as result of collision with automobile at intersection, whether bicyclist was on right side of traveled road held for jury. *Cheney v. Buck* (1920) 56 U 29, 189 P 81.

In personal-injury action arising out of automobile-truck collision on highway, ulti-

mate question of fact as to which of two drivers failed to keep his vehicle upon proper side of road was for jury. *Moser v. Zion's Co-op. Mercantile Institution* (1948) 114 U 58, 197 P 2d 136.

Violation as prima facie evidence of negligence.

Violations of standards of safety set by statute are regarded as prima facie evidence of negligence subject only to justification or excuse. *Platis v. United States* (1968) 288 F Supp 254.

Collateral References.

Automobiles \Leftrightarrow 153.

60A CJS Motor Vehicles § 268.

Portion of highway to be used; following, approaching, and passing other vehicles, 7A AmJur 2d 434 et seq., Automobiles and Highway Traffic § 260 et seq.

Duties imposed by statute where motor vehicle, passing on left of other vehicle proceeding in same direction, cuts back to the right, 48 ALR 2d 233.

Right or duty to turn in violation of law of road to avoid traveler or obstacle, 24 ALR 1304, 63 ALR 277, 113 ALR 1328.

Validity of regulations as to part of street to be used by moving vehicles, 29 ALR 1348.

41-6-54. Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right and upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main traveled portion of the roadway as nearly as possible.

History: L. 1941, ch. 52, § 44; C. 1943, 57-7-121.

construing similar section of the statutes of that state.

Construction and application.

Where this section refers to half the roadway, it means half of the roadway as it exists at the time it is being traveled, and not half the roadway as it may have been laid out originally. *Patton v. Kirkman* (1946) 109 U 487, 167 P 2d 282, following *Dixon v. Alabam Freight Co.* (1941) 57 Ariz 173, 112 P 2d 584,

Collateral References.

Automobiles \Leftrightarrow 170(2).

60A CJS Motor Vehicles § 306.

Vehicles proceeding in opposite directions, 7A AmJur 2d 442, Automobiles and Highway Traffic § 265; 7A AmJur 2d 1100 et seq., Automobiles and Highway Traffic § 839 et seq.

41-6-55. Overtaking and passing vehicles proceeding in same direction. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

41-6-60. One-way traffic — Signs. (a) The department of transportation and local authorities may designate any highway, roadway, part of a roadway or specific lanes under their respective jurisdictions upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic-control devices.

(b) Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction indicated by official traffic-control devices.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

History: L. 1941, ch. 52, § 50; C. 1943, 57-7-127; L. 1969, ch. 109, § 1; 1979, ch. 242, § 15.

Compiler's Notes.

The 1969 amendment rewrote this section which read: "(a) The state road commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof. (b) Upon a roadway

designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated."

The 1979 amendment substituted "department of transportation" for "state road commission" in subsec. (a).

Collateral References.

Automobiles ⇄ 14.

60 CJS Motor Vehicles § 16.

41-6-61. Roadway divided into marked lanes — Rules — Traffic-control devices. Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation of making or completing a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.

History: L. 1941, ch. 52, § 51; C. 1943, 57-7-128; L. 1949, ch. 65, § 1; 1975, ch. 207, § 18; 1978, ch. 33, § 14.

Compiler's Notes.

The 1949 amendment substituted "two or more" for "three or more" in the preliminary paragraph.

The 1975 amendment inserted "and provides for two-way movement of traffic" in subd. (b); substituted "traveling in the same

direction when such center lane is clear of traffic within a safe distance" in subd. (b) for "where the roadway is clearly visible and such center lane is clear of traffic within a safe distance"; substituted "such allocation is designated by official traffic-control devices" in subd. (b) for "is signposted to give notice of such allocation"; rewrote subd. (c) which read: "Official signs may be erected directing slow-moving traffic to use a designated lane

or allocating specified lanes to traffic moving in the same direction and drivers of vehicles shall obey the directions of every such sign"; and made minor changes in phraseology.

The 1978 amendment redesignated subds. (a) to (c) as (1) to (3); and inserted "or completing" near the middle of subd. (2).

Violation as prima facie evidence of negligence.

Violations of standards of safety set by statute are regarded as prima facie evidence of negligence subject only to justification or excuse. *Platis v. United States* (1968) 288 F Supp 254, affirmed in 409 F 2d 1009.

Collateral References.

Automobiles ⇌ 153.

60A CJS Motor Vehicles § 274.

41-6-62. Following another vehicle — Proximity and distance — Caravan or motorcade — Exception for funeral procession. (1) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck or motor vehicle drawing another vehicle from overtaking and passing any vehicle or combinations of vehicles.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

History: L. 1941, ch. 52, § 52; C. 1943, 57-7-129; L. 1949, ch. 65, § 1; 1975, ch. 207, § 19; 1978, ch. 33, § 15.

Compiler's Notes.

The 1949 amendment inserted "or motor vehicle" after "any truck" in subsec. (b); and added subsec. (c).

The 1975 amendment rewrote subsec. (b) which provided a distance requirement of 150 feet between truck or motor vehicle except when passing.

The 1978 amendment redesignated subsecs. (a) to (c) as (1) to (3); inserted "so that an overtaking vehicle may enter and occupy such space" in subsec. (2); and inserted "drawing another vehicle" near the end of subsec. (2).

Violation as prima facie evidence of negligence.

Violations of standards of safety set by statute are regarded as prima facie evidence of negligence subject only to justification or excuse. *Platis v. United States* (1968) 288 F Supp 254, affirmed in 409 F 2d 1009.

Collateral References.

Automobiles ⇌ 172(2).

60A CJS Motor Vehicles § 326.

7A AmJur 2d 434-442, Automobiles and Highway Traffic §§ 260-265.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 104 ALR 485.

41-6-63. Repealed.

Repeal.

Section 41-6-63 (C. 1943, 57-7-129.10, enacted by L. 1949, ch. 65, § 1; L. 1957, ch. 78, § 3; 1959, ch. 67, § 1), relating to distinctive

roadway markings and prohibiting driving to the left thereof, was repealed by Laws 1975, ch. 207, § 61. For present provisions, see 41-6-59.

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing Brief of Respondent has been made on counsel for the Plaintiffs/Appellants by mailing four copies thereof, with postage prepaid thereon, this 6th day of January, 1986, properly addressed as follows:

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