1977

# Dorothy Black v. Robert L. McKnight : Brief of Respondent

Utah Supreme Court


L. E. Midgley; Attorney for Respondent;
Donn E. Cassity; Roger T. Sharp; Attorney for Appellant;

# IN THE SUPREME COURT OF THE STATE OF UTAH

DOROTHY BLACK,

*Plaintiff and Appellant,*

vs.

ROBERT L. McKNIGHT,

*Defendants and Respondents.*

Case No. 14724

BRIEF OF RESPONDENT

Appeal from the judgment of the Third District Court in and for Salt Lake County, State of Utah, Honorable G. Hal Taylor, presiding

L. E. MIDGLEY
574 East 2nd South, #206
Salt Lake City, Utah
Attorney for Respondent

DONN E. CASSITY
ROGER T. SHARP
ROMNEY, NELSON & CASSITY
136 South Main Street
Suite 404 Kearns Building
Salt Lake City, Utah
Attorney for Appellant

TABLE OF CONTENTS

## TABLE OF CASES



## STATUTES

IN THE SUPREME COURT OF THE STATE OF UTAH

---

DOROTHY BLACK,

Plaintiff-Appellant

-vs-

ROBERT L. McKNIGHT,

Defendant-Respondent

Case No. 14724

BRIEF OF RESPONDENT

---

## NATURE OF THE CASE

This litigation arises out of an automobile accident occurring on March 5, 1970 on U. S. Highway 91, Davis County, Utah.

## DISPOSITION IN LOWER COURT

Jury trial was held on June 2 to June 4, 1976 inclusive, resulting in a verdict of No Cause for Action.

## STATEMENT OF FACTS

Appellant has recited facts based almost entirely on her own testimony and completely ignores the testimony of the Defendant, as well as the Highway Patrol officer, who was an eye-witness to the accident.

We therefore recite the facts.

The Defendant had completed his shift at Hill Air Force Base at approximately midnight March 5, 1970, and was driving his car alone south to his home in Salt Lake City. Traffic was light and after rounding a curve in the highway, he noticed the tail-lights of the Plaintiff's vehicle in the outside lane, some considerable distance ahead. He also noticed that a car was stopped on the west shoulder, or holding lane, with its backup lights on.

He noticed that he was gaining on the car ahead and therefore moved into the inside lane when he was approximately 8/10ths of a mile from where the stopped car was (T-62). His speed was about 60 to 65, and the speed limit was 70 m.p.h. (T-62).

When he was approximately 300 to 400 yards away he recognized the stopped car as a Highway Patrol car, but its red flasher signals were not on. He continued on, overtaking the vehicle in the right lane, and when he was in a position, with the front of his car near the rear of the Plaintiff's vehicle (T-62), the Plaintiff's car suddenly swerved in front of him. There was no signal of any kind, either blinker or hand signal (T-62-63).

The Defendant swerved to his left and applied brakes but the impact immediately occurred wherein the right front of the Defendant's vehicle struck the left rear of the Plaintiff's vehicle (T-63).

Officer Spadevechia had previously been driving south on the highway when he saw 2 horses standing in the emergency lane (T-23). He stopped and backed up to them, putting on his rear flasher lights, but he did not turn on his overhead revolving red lights, as he did not want to "spook" the horses (T-29). He stopped approximately 3 to 5 feet south of the 2 horses (T-32). The horses remained standing in the emergency lane while he radioed for assistance (T-32).

He had seen the lights of the Plaintiff's vehicle approaching. The horses never got on either of the travel lanes (T-32). As he turned to face forward, he states that the Plaintiff's vehicle made a turn to the inside lane, approximately where the

horses were (T-33) and immediately thereafter an accident occurred shortly ahead of the police vehicle.

## ARGUMENT

### POINT ONE

41-6-62 (a) IS INAPPLICABLE TO THE FACTS OF THIS CASE. AND THE TRIAL COURT PROPERLY REFUSED INSTRUCTIONS BASED THEREON.

There was absolutely no evidence, from any witness, that the Defendant was "following" the Plaintiff, by which term, of course, has reference to following cars, which are directly behind cars ahead and in the same lane, in which situation the following car must keep a reasonable distance between the vehicles.

Facts of the case at bar have to do with two vehicles, each in a different lane, with the rear vehicle overtaking and intending to pass the slower moving vehicle.

The Statute certainly has nothing to do with a fact situation, as here, where the jury had overwhelming evidence that established that the Plaintiff, without a signal of any kind, suddenly swerved from her outside lane to the inside lane, directly into the path of the Defendant, whose car was so close, that an accident immediately happened.

Fairbourn v. Lloyd (1968) 21 Ut.2d 62, 440 P.2d 257 discusses the above Statute in a factual situation where, in fact, the Defendant was following the Plaintiff's car, when a collision occurred as a result of Defendant's failure to see the Plaintiff stop, due to slush on the windshield.

Even in that case, the Supreme Court held it was a jury question as to whether Defendant was negligent, and a verdict for Defendant was upheld.

Appellant's Requested Instructions on the cited statute, therefore, were clearly erroneous as applying the law as it applies to entirely different facts than were present here.

The Honorable Trial Court was clearly correct in its ruling denying the requests.

## POINT TWO

THE TRIAL COURT'S INSTRUCTION 12 FULLY COVERED THE LANGUAGE OF 41-6-46 (1).

The Court's Instruction No. 12 to the jury advised them that it was the Defendant's duty (a) to keep a proper lookout; (b) to keep his vehicle under reasonably safe control; (c) to drive at such a speed as was reasonable and prudent under the circumstances; (d) to sound a horn if circumstances required it.

Appellant complains that a jury should have been further instructed that "in every event" motorists are required to drive at such a speed that accidents will be avoided.

Again, Appellant is citing cases in her Brief which embody entirely different factual situations than the facts of the case at bar.

In Dalley v. Midwestern Dairy Products, 80 Ut. 331, 15 P.2d 309 (1932) a truck was parked encroaching upon the travel portion of the highway, and of course, this Court upheld the doctrine that motorists must drive, in the nighttime, at such a speed that they can stop or avoid objects on the highway ahead which are illuminated by the headlights.

In O'Brien v. Alston, 61 Ut. 368, 213 P. 791 (1923), and the case cited therein in Appellant's Brief, again was based on facts clearly unimportant to the case at bar.

In this case, the Defendant, Mr. McKnight did not need

his headlights to see the Plaintiff's vehicle. He had seen her taillights when he was practically a mile away. After he moved into the inside lane and was then in the process of overtaking and intending to pass the Plaintiff, on Plaintiff's left, with no obstacles or vehicles ahead, the holdings in the Dalley and O'Brien cases simply are inapplicable.

We do not have, here, a case where the Defendant failed to see an object, or obstruction in the highway ahead. He, in fact, saw everything that was there to be seen, excepting the presence of the horses on the shoulder of the road, but even had he seen the horses, standing on the shoulder of the road, and not obstructing either lane of travel, as testified to by the Highway Patrol officer, he would have been justified in continuing on, as he did.

There is nothing in the law that requires a passing motorist to stop "on a dime", when the driver of the car being passed suddenly and unexpectedly swerves into his lane at a time when it is impossible for the passing motorist to stop, swerve, or otherwise avoid an accident.

## POINT THREE

### THE JURY VERDICT, CONSIDERED IN THE LIGHT FAVORABLE TO THE DEFENDANT, SHOULD BE AFFIRMED.

This Honorable Court, in a myriad of cases, has repeatedly announced that the jury verdict will be upheld where justified by the evidence considered in a light most favorable to the prevailing party. For example:

> Utah 1964. Supreme Court was required to view evidence in light most favorable to the verdict winner.--Taylor v. Johnson, 393 P.2d 382, 15 Utah 2d 343, appeal after remand 414 P.2d 575, 18 Utah 2d 16.

> Utah 1964. Evidence and all reasonable inferences that could be drawn therefrom were to be viewed in light most

favorable to jury's findings.--Gordon v. Provo City, 391 P.2d 430, 15 Utah 2d 287.

When trial court has given approval to determination by jury by refusing to grant new trial, judgment should be looked upon with some degree of verity, presumption is in favor of its validity, and burden is upon appellant to show some persuasive reason for upsetting it.--Id.

Utah 1963. Facts must be viewed in light most favorable to party who prevails below.--Ortega v. Thomas, 383 P.2d 406, 14 Utah 2d 296.

Utah 1963. On appeal of defendant, evidence must be viewed in light most favorable to plaintiff.--Powers v. Taylor, 379 P.2d 380, 14 Utah 2d 152.

The investigating officer, who was also an eye-witness, directly contrary to the testimony of the Plaintiff. substantiated the version of the accident testified to by Defendant.

The Plaintiff's version that the horses were walking on travel portion of the highway was refuted by both the officer and the Defendant. The Plaintiff's statement that she signaled before changing lanes was refuted both by the Defendant and the investigating officer. In addition, the Plaintiff admitted she had never seen the lights of the Defendant's vehicle before she changed lanes, but quite surprisingly, saw the lights immediately before the impact. She never looked in her outside rear-view mirror before making the lane change.

Indeed the evidence of the Plaintiff's contributory negligence was, in fact, overwhelming, and the verdict of the jury should be affirmed.

Respectfully submitted,

L. E. MIDGLEY
574 East 2nd South, #206
Salt Lake City, Utah
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I filed ten (10) copies of Respondent's Brief with the Clerk of the Supreme Court and mailed two (2) copies to:

Donn E. Cassity and
Roger T. Sharp
of Romney, Nelson & Cassity
136 South Main Street
Suite 404 Kearns Building
Salt Lake City, Utah
Attorney for Plaintiff-Appellant

this _____ day of November, 1976.

_____
L. E. M[illegible]

TABLE OF CONTENTS



AUTHORITIES CITED

CASES

CASES (Continued)



STATUTES



GENERAL AUTHORITIES