

1977

Thomas Wayne Mccloud v. Maxine Lowe Baum : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

THOMAS WAYNE McCLOUD,)
Plaintiff-Appellant,)
vs.) Case No. 14,817
MAXINE LOWE BAUM,)
Defendant-Respondent.)

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE FOURTH JUDICIAL
DISTRICT COURT IN AND FOR UTAH COUNTY, STATE
OF UTAH, HONORABLE GEORGE E. BALLIF, PRESIDING

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CASE CITED

Walker v. Peterson, 278 P.2d 291 (1954)

STATUTES CITED

41-6-56, Utah Code Annotated, (1953)

41-6-73, Utah Code Annotated, (1953)

IN THE SUPREME COURT OF THE STATE OF UTAH

THOMAS WAYNE McCLOUD,)	
plaintiff-Appellant,)	
vs.)	Case No. 14,817
MAXINE LOWE BAUM,)	
Defendant-Respondent.)	

BRIEF OF RESPONDENT

NATURE OF THE CASE

Respondent agrees with appellant's statement as to the nature of the case.

DISPOSITION IN THE LOWER COURT

Respondent agrees with appellant's statement as to the disposition of the case in the lower court.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the court affirm the lower court's judgment.

STATEMENT OF FACTS

Prior to the collision plaintiff was proceeding east and defendant was proceeding west on Center Street. The collision occurred in the intersection of 16000 West.

As the plaintiff, Thomas Wayne McCloud, approached the intersection he was following behind a truck/camper. (R 296) The truck/camper signaled to turn left. (R 297) The truck/camper stopped in the middle of the intersection. (R 297-298)

Mrs. Baum arrived at 16000 West, stopped before making a left

turn, and observed the truck/camper. Mrs. Baum observed the truck/camper signal for a left turn. (R 342) Mrs. Baum activated her left turn signal and commenced the turn. (R 182-183)

From the time the plaintiff saw the defendant's vehicle the defendant's vehicle moved about 10 feet until the point of impact. (R 302) At the point of impact the truck/camper was blocking the eastbound traffic lane. (R 303) As the motorcycle skidded east past the truck/camper he was approximately four feet south of the truck/camper. (R 305).

The motorcycle skidded 50 feet prior to impact (R 211) and was still going at the rate of 10 m.p.h. at impact. (R 303) The defendant's car came to rest 12 feet after impact without laying down skid marks. (R 228-229)

ARGUMENT

POINT I

THE RESPONDENT WAS NOT NEGLIGENT AS A MATTER OF LAW IN FAILING TO YIELD THE RIGHT OF WAY AND THE TRIAL COURT DID NOT ERROR IN DENYING APPELLANT'S MOTION FOR DIRECTED VERDICT.

A complete reading of the transcript shows that the defendant and a truck/camper approached the intersection in question at approximately the same time. Plaintiff, Thomas Wayne McCloud, was behind the truck/camper and if he had continued straight ahead he would have ran into the back of the truck/camper. Prior to McCloud turning to the right to go around the truck/camper, in or near the intersection, neither plaintiff nor defendant could see the other. The defendant was proceeding slowly in the intersection making a left turn simultaneously with the truck/camper. At the

time the plaintiff, McCloud, observed the defendant, Baum, the Baum vehicle was substantially in the same position where the collision occurred, and the plaintiff was west of the point of impact at least 94 feet, (the distance he skidded plus the distance that he perceived and reacted.) Assuming that it would take approximately one second to perceive and react, plaintiff would be 94 feet from the point of impact. (R 223) (30 miles per hour equals 44.1 feet per second)

In Walker v. Peterson, 278 P.2d 291, it reads as follows:

Where motorist making left turn was in intersection substantially ahead of motorist approaching from opposite direction, and was making left turn when other motorist was far enough away that ordinary reasonable care would require that approaching motorist not insist upon right of way, approaching motorist could not race into intersection and rely on right of way rule to exculpate himself from wrong.

There is a fact question for the jury as to the relative position of the plaintiff and defendant to the intersection.

ARGUMENT

POINT II

RESPONDENT WAS NOT NEGLIGENT AS A MATTER OF LAW IN FAILING TO KEEP A PROPER LOOKOUT IN ATTEMPTING TO EXECUTE A LEFT TURN. THE TRIAL COURT DID NOT ERROR IN DENYING THE APPELLANT'S MOTION FOR A DIRECTED VERDICT.

The record shows that both parties saw each other at substantially the same time, except plaintiff was traveling much faster than defendant. The lookout would be a proper question to submit to the jury which the court did in this case. (R 48-49) Utah Code Annotated, 1953, Section 41-6-56, provides as follows:

The driver of a vehicle may overtake and pass upon the right when the vehicle overtaken is making or is about to make a left turn. When a driver does overtake and pass under such circumstances, the overtaking vehicle shall allow sufficient clearance and pass upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

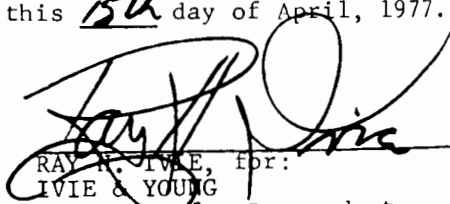
The court in this case substantially instructed the jury on the duty of each party as they approached the intersection in regard to lookout, control, and right of way, taking into consideration the various statutes applicable.

CONCLUSION

Section 41-6-73, U.C.A., 1953, must be construed in connection with other statutes regulating traffic and Section 41-6-56, U.C.A., 1953. The court took into consideration the various duties of the parties, correctly instructed the jury, and the jury returned a finding as to the facts submitted to them.

The judgment should be sustained.

Respectfully submitted this 15th day of April, 1977.


RAY A. IVIE, for:
IVIE & YOUNG
Attorneys for Respondent

MAILING CERTIFICATE

I certify that on the 15th day of April, 1977, I mailed two (2) true and correct copies of the foregoing Brief of Respondent to Don R. Petersen, Attorney for Appellant, 120 East 300 North, Provo, Utah 84601.

