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Walter G. Henderson v. Harry R. Meyer : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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OF THE
STATE OF UTAH

WALTER G. HENDERSON and
HELEN L. HENDERSON, his wife,
Plaintiffs and Appellants,

vs.

HARRY R. MEYER and RONALD
EUGENE MEYER,
Defendants and Respondents.

Case No.
13702

BRIEF OF APPELLANTS

Appeal from the Judgment of the
Second District Court for Davis County
Honorable Thornley K. Swan, District Judge

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"R" refers to Record.

"Tr." refers to Transcript.

IN THE
SUPREME COURT
OF THE
STATE OF UTAH

WALTER G. HENDERSON and
HELEN L. HENDERSON, his wife,
Plaintiffs and Appellants,

vs.

HARRY R. MEYER and RONALD
EUGENE MEYER,
Defendants and Respondents.

Case No.
13702

BRIEF OF APPELLANTS

STATEMENT OF THE CASE

This is an appeal from a judgment on a jury verdict in the Second Judicial District Court in and for Davis County, the Honorable Thornley K. Swan, District Judge. The verdict returned and judgment thereon found no cause of action by plaintiffs against either defendant.

DISPOSITION IN LOWER COURT

The matter came on regularly for jury trial before the Honorable Thornley K. Swan, District Judge, on March 21, 1974. Upon hearing, the jury returned a

verdict of no cause of action against either defendant, and judgment was duly entered by the trial court accordingly. Subsequently, plaintiffs, by and through counsel, filed a Motion for Judgment N. O. V. or in the Alternative for a New Trial. Said Motion was denied by the trial court after hearing on April 30, 1974. On May 30, 1974, plaintiffs filed Notice of Appeal in this action, and the case is now before this Honorable Court pursuant to that Notice of Appeal.

RELIEF SOUGHT ON APPEAL

Appellants seek reversal of the lower court's Verdict and Judgment.

STATEMENT OF FACTS

This action was brought to recover for personal injuries and property damage sustained by plaintiffs-appellants in a two-car accident which occurred on April 22, 1972, on Second West Street between Fourth and Fifth South Streets in Bountiful, Utah. The accident occurred when a northbound pickup truck, operated by defendant Ronald Eugene Meyer and owned by defendant Harry R. Meyer, collided with the rear-end of a northbound vehicle operated by plaintiff Helen L. Henderson and owned by plaintiff Walter G. Henderson.

At trial, substantial credible and uncontroverted evidence was adduced by plaintiffs, including testimony and admissions from defendant Ronald Eugene Meyer, requiring the clear conclusion that the above-described

accident directly and proximately resulted from the negligence of defendant Ronald Eugene Meyer (Tr. 52-60). Such evidence was not rebutted by defendant.

At the conclusion of presentation of evidence in this case, plaintiffs moved the trial court for a directed verdict in favor of plaintiffs and against defendants by submission of plaintiffs' Requested Jury Instruction No. 1, which instruction was not given by the court. (The full text of this proposed instruction is reproduced under Point I of the Argument portion of this Brief.) Plaintiffs duly excepted to the failure of the trial court to grant such Motion and provide such Instruction.

Subsequent to the giving of the court's instructions, the jury retired for deliberation and later returned a verdict of no cause of action, and judgment thereon was duly entered.

Subsequent to entry of judgment, plaintiffs moved the trial court, pursuant to the provisions of Rules 50(b) and 59(a), Utah Rules of Civil Procedure, for a judgment n. o. v. or in the alternative for a new trial. The trial court by order denied such motion after hearing on April 30, 1974. On May 30, 1974, plaintiffs filed Notice of Appeal in this action, and the case is now before this Honorable Court pursuant to that Notice of Appeal.

ARGUMENT

POINT I.

THE TRIAL COURT ERRED IN REFUSING TO GRANT PLAINTIFFS' MOTION

FOR DIRECTED VERDICT AND PLAINTIFFS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, OR IN THE ALTERNATIVE FOR A NEW TRIAL.

At the conclusion of evidence in the instant case, plaintiffs moved the trial court for a directed verdict in favor of plaintiffs and against defendants by and through the submission of plaintiffs' Requested Jury Instruction No. 1. Said instruction provided: "You are instructed to return a verdict in favor of plaintiff Helen L. Henderson and against the defendants on the issue of liability."

The trial court did *not* give plaintiffs' Requested Instruction No. 1, assigning no reason for its refusal. Upon the return of the jury verdict of no cause of action herein, plaintiffs again moved the trial court, pursuant to the provisions of Rule 59(a), Utah Rules of Civil Procedure, for a judgment n. o. v. or in the alternative a new trial. The trial court denied such motion upon hearing thereof on April 30, 1974.

It is clear, under the facts of this case, that the refusal by the trial court to give such instruction and to grant plaintiffs' Motion for a Directed Verdict and to grant plaintiffs' Motion for Judgment N. O. V., or in the Alternative for a New Trial, constituted clear error, and that the error is of such magnitude as to require a reversal and remand of this case to the trial court for a new trial or other appropriate action.

It is well established as a matter of law that a Mo-

tion for a Directed Verdict and a Motion for Judgment N. O. V. properly lie and should be granted by the trial court in a case where there are no controverted issues of fact upon which reasonable men could differ, and where, without weighing the credibility of the witnesses, there can be but one reasonable conclusion as to the verdict. *Brady v. Southern Railroad*, 320 U. S. 476, 64 S. Ct. 232, 88 L. Ed. 329 (1943); *Shafer v. Mountain States Tel. & Telegraph Co.*, 335 F. 2d 444 (9th Cir. 1964); *Ozark Air Lines, Inc. v. Larimer*, 352 F. 2d 9 (8th Cir. 1965); *Patterson v. Pizitz, Inc.*, 353 F. 2d 267 (5th Cir. 1965); *Jopek v. New Court Central Railroad*, 353 F. 2d 778 (3rd Cir. 1965); *Herron v. Maryland Gas Co.*, 3457 F. 2d 357 (5th Cir. 1965); *Adams v. Powell*, 351 F. 2d 213 (10th Cir. 1965); *Pinehurst, Inc. v. Schlamowitz*, 351 F. 2d 509 (4th Cir. 1965); 5A Moore's Federal Practice, § 50.02(1) et seq. See also, *Pence v. United States*, 316 U. S. 332, 62 S. Ct. 1080, 86 L. Ed. 1510 (1942) and *Pollesche v. TransAmerican Ins. Co.*, 27 Utah 2d 430, 497 P. 2d 236 (1972).

In the leading case of *Brady v. Southern Railroad*, *supra*, the United States Supreme Court had before it the question of when and under what circumstances a Motion for a Directed Verdict is properly granted. In that landmark case, the Supreme Court announced the standard in the following terms:

When the evidence is such that without weighing the credibility of the witnesses there can be but one reasonable conclusion as to the

verdict, the court should determine the proceedings by non-suit, directed verdict or otherwise in accordance with the applicable practice without submission to the jury, or by judgment notwithstanding the verdict. By such direction of the trial the result is saved from mischance of speculation over legally unfounded claims (320 U. S. at 479-480).

5A Moore's Federal Practice, § 50.02(1) states the above rule in somewhat more succinct fashion:

Although the language of the opinions concerning directed verdicts is extremely varied, it is now clear that a verdict will normally be directed where both the facts and the inferences to be drawn from the facts point so strongly in favor of one party that the court believes that reasonable men could not come to a different conclusion (At p. 2320).

It is now well established, in applying the above rule, that an appellate court, in reviewing the action of a lower court on a Motion for a Directed Verdict, must consider the evidence in its strongest light in favor of the party against whom the Motion for Directed Verdict was made, and give him the advantage of every fair and reasonable intendment that the evidence can justify. Upon such a consideration, if the appellate court concludes that the facts adduced in evidence and the inferences to be drawn from the facts point to any conclusion so strongly that the court concludes that reasonable men could not come to a different conclusion, the appellate court is justified in overturning any ruling by the trial

court on a Motion for a Directed Verdict which is adverse to or *contra* that required conclusion. *Continental Ore Co. v. Union Carbide Corp.*, 370 U. S. 690, 82 S. Ct. 1404, 8 L. Ed. 2d 777 (1962); *Webb v. Illinois Central Railroad*, 352 U. S. 512, 77 S. Ct. 451, 1 L. Ed. 503 (1957); *Girardi v. Gates Rubber Co.*, 325 F. 2d 196 (9th Cir. (1963)); *Schnee v. Southern Pacific Railroad*, 186 F. 2d 745 (9th Cir. 1951); *Austad v. Austad*, 2 Utah 2d 49, 269 P. 2d 284.

Applying the above cases and authority to the case at bar, it is clear that the trial court erred in refusing to grant plaintiffs' Motion for a Directed Verdict and plaintiffs' Motion for Judgment N. O. V. In this case, the facts adduced at trial and the inferences appropriately drawn from those facts, point so strongly in favor of the plaintiffs that it is inconceivable that reasonable men, in considering those facts, could conclude other than that plaintiffs were entitled to a verdict and judgment against defendants.

In the instant case, the undisputed facts disclosed at trial reveal that the accident which is the subject matter of this lawsuit occurred on Second West Street between Fourth and Fifth South Streets in Bountiful, Utah, when a northbound pickup truck, operated by defendant Ronald Eugene Meyer and owned by defendant Harry R. Meyer, collided with the rear-end of a northbound vehicle operated by plaintiff Helen R. Henderson and owned by plaintiff Walter G. Henderson. Upon trial, the defendant Ronald Eugene Meyer made what is tan-

tamount to a clear admission of liability and culpability in the events surrounding the accident. Upon the witness stand he testified that immediately prior to the accident and while proceeding northward on Second West Street he observed a vehicle approaching the roadway on which he was proceeding. He testified that he observed such vehicle up to and until he reached its location, thinking that it was going to pull out onto Second West Street where he was proceeding. After passing such vehicle he testified that he turned his head and looked out the rear window of his truck for some time prior to his collision with plaintiffs' vehicle.

FROM THE TESTIMONY OF RONALD EUGENE MEYER:

Q. Do you recall stating to the investigating officer in the presence of Mrs. Henderson in the officer's car that you speeded up when it appeared to you that this white car was perhaps coming onto the roadway?

A. No. I don't recall that.

Q. Do you believe that you did make such a statement?

A. No.

Q. And you don't have a present recollection of having speeded up?

A. I am sure that I didn't.

Q. All right. As you passed the driveway, did you make any observation to the side or to the rear of this stopped white Rambler?

A. Yes. I looked over my shoulder after out the rear window.

Q. All right. This is the rear window of the pickup?

A. Yes.

Q. Pickup truck?

A. Yes.

Q. And the rear window is right behind your shoulder in the pickup truck?

A. Just like that (indicating).

Q. Did you turn your head to do that?

A. Yes.

Q. Of course, during that time you were unable to observe forward on Second West then to the north of your position. Do you have a recollection how long a period of time you spent with your head turned looking at this stopped Rambler?

A. Oh, it was a time, just a few seconds I guess.

Q. Do you think maybe three seconds, four seconds?

A. Oh, I wouldn't know.

Q. Give us your best recollection of the number of seconds.

A. It was just mainly as I passed him.

Q. Was there any reason to look at him in view of the fact that you knew that he was stopped and no danger to you as you passed?

A. Just to see what — I don't know.

Q. You were curious?

A. I guess.

Q. Did you recognize him or the driver of this car?

A. No.

Q. All right. Let's take it from the time that your head is turned looking out the back window at this white Rambler, tell us in your own words what happened from that point up to the time of the impact?

A. Well, when I looked around I seen the car stopped, so I just applied my brakes and turned the wheel to the one side.

Q. All right. Now, how far were you from the Henderson vehicle when you first observed it?

A. I couldn't say for sure.

Q. Obviously not far enough to stop?

A. Well, yes.

Q. And you made no observation of it previous to that time?

A. No.

Q. Did you at that time observe the turn signal or brake lights on that vehicle?

A. Well, no. I was too busy stopping. I didn't — I couldn't see.

Q. Were you able to change the direction of your truck at all before the impact?

A. No. It just slid kind of sideways.

Q. Did the Henderson vehicle appear to be stopped when you first observed it?

A. Yes.

Q. What did it appear that it was doing or attempting to do?

A. Just as I can recall, it appeared like it was just coming to a stop. The back bumper of it was just a little high.

Q. You are not sure whether it was actually stopped or stopping?

A. I couldn't say.

Q. All right. Did you have any conversation with Mrs. Henderson after this impact occurred?

A. Well, I got out and went and asked her if she was all right, and if the girl was all right, and she said after a while, "I think I'm all right," but she was rubbing her neck.

Q. Did you hear her complain of any pain in her neck, back or head at the scene of the accident?

A. She complained of headache in the patrol car.

Q. Are you personally familiar at all with the progress of her injuries since the date of the accident and until the present time, do you have any personal knowledge how she's coming along?

A. Just what I heard from the lawyers.

From the above, it should be abundantly clear that

defendant Ronald Eugene Meyer's negligence was clearly established as a matter of fact and law merely from his own testimony and admissions. Moreover, when the other evidence in the case is considered, there is such a mass of credible and uncontroverted evidence that no other reasonable conclusion is possible. Certainly no appreciable or legally-sufficient evidence was adduced requiring the conclusion that plaintiff Helen L. Henderson was sufficiently negligent or contributorily negligent to justify the verdict returned by the jury in this matter and the subsequent judgment entered thereon by the trial court, or that any other appreciable legal defense for said defendant's actions exists. Thus, the trial court committed clear error in denying plaintiffs' Motion for a Directed Verdict and thereby permitting this case to go to the jury on the liability issue. Further, the trial court committed clear error, for substantially the same reason, is denying plaintiffs' Motion for Judgment N. O. V., or in the Alternative for a New Trial. This Court should reverse the judgment of the trial court and remand the case for appropriate proceedings.

POINT II.

THE FACTUAL DETERMINATIONS MADE BY THE JURY IN THIS CASE WERE AGAINST THE WEIGHT AND PREPONDERANCE OF THE EVIDENCE AND CLEARLY ERRONEOUS.

Even assuming, *arguendo* that the trial court did not

err in refusing to grant plaintiffs' Motion for a Directed Verdict and plaintiffs' Motion for Judgment N. O. V., it is clear that the factual determinations made by the jury in the instant case were clearly and manifestly erroneous and inconsistent with the weight of evidence adduced at trial. As a result, this Court should reverse the judgment of the trial court and remand this case for a new trial or other appropriate proceedings.

It is clear that an appellate court, in considering and reviewing the correctness and propriety of a ruling by a lower court on a Motion for a Directed Verdict and Motion for Judgment N. O. V. is required to view the evidence in the light most favorable to the party against whom the Motion was made. An appellate court also possesses, however, power to review the evidence generally to determine whether there in any substantial evidence supportive of the verdict of the trier of fact or whether the determinations made by the trier of fact are so manifestly against the weight and preponderance of the evidence adduced at trial as to require reversal. See cases cited *supra*. See also, *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 59 S. Ct. 266, 83 L. Ed. 126 (1938); *Riggs v. U. S.*, 280 F. 2d 949 (5th Cir. 1960); *Terminal Railroad Assoc. v. Fitzjohn*, 165 F. 2d 473 (8th Cir. 1948).

In the instant case, even the most cursory review of the evidence adduced at trial discloses that the verdict of the jury was manifestly against the weight and preponderance of the evidence. (See the discussion of

the evidence provided in Point I of the Argument portion of this Brief.) The verdict of the jury in this case so flies in the face of all the evidence adduced and is so plainly inexplicable and unjustifiable that it should astound even the most experienced judge. Appellants can only conclude that the verdict was a product of passion or prejudice against the plaintiffs. This Court should reverse the judgment of the trial court and remand this case to the trial court for appropriate proceedings.

CONCLUSION

The trial court erred in refusing to grant plaintiffs-appellants' Motion for a Directed Verdict and plaintiffs-appellants' Motion for Judgment N. O. V., or in the Alternative for a New Trial. Moreover, the verdict of the jury in the instant case was against the weight and preponderance of the evidence and clearly erroneous. This Court should reverse the judgment of the trial court and remand this case to the district court for appropriate proceedings.

Respectfully submitted,

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ANTHONY M. THURBER

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief of Appellants was served on counsel for the appellees, David K. Winder, Esq. of Strong & Hanni, Suite 604 Boston Building, Salt Lake City, Utah 84111, by mailing three copies thereof in a postage prepaid envelope on the 4th day of November, 1974.

...../s/ Anthony M. Thurber.....