

1978

# Larry N. Heath v. Sam L. Gallegos : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

LARRY N. HEATH,

Plaintiff and Respondent,

vs.

Case No.  
15569

SAM L. GALLEGOS,

Defendant and Appellant.

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BRIEF OF APPELLANT

---

Appeal from the judgment of the Second District Court  
for Davis County, Honorable J. Duffy Palmer presiding.

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

LARRY N. HEATH,

Plaintiff and Respondent,

vs.

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SAM L. GALLEGOS,

Defendant and Appellant.

---

BRIEF OF APPELLANT

---

STATEMENT OF THE NATURE OF THE CASE

Appellant, Sam L. Gallegos, appeals the Court decision that Respondent had no contributory or comparative negligence in the automobile accident between the two.

DISPOSITION IN LOWER COURT

The Honorable J. Duffy Palmer, sitting without a jury, found that the Appellant was solely negligent in causing the automobile accident between he and the Respondent. The Court found the Respondent to be without any contributory or comparative negligence and awarded damages to the Respondent, dismissing Appellant's counterclaim.

### RELIEF SOUGHT ON APPEAL

Appellant, Sam L. Gallegos, requests this Court to set aside the findings of the trial court that the Respondent was without contributory or comparative negligence and adjust damages awarded accordingly.

### STATEMENT OF FACTS

The Respondent was traveling west on a road known as 1750 North in Layton, Davis County, State of Utah. (T-4) This was a twenty-five mile per hour zone. (T-8)

The Respondent testified that he was traveling about fifteen to twenty miles per hour just prior to the accident. (T-29) He stated that he heard the Appellant honk once and he looked up to see what was happening. He heard the horn again and looked in his rearview mirror and saw the Appellant extremely close to him so he stopped. (T-30)

The Respondent admitted that the Appellant was too close to the rear of his vehicle for the speed that they were traveling, (T-43), yet he stopped right in his normal lane of traffic. (T-45) The Appellant ran into the rear of him.

The Appellant stated that the Respondent was

traveling between five and ten miles per hour and as he pulled in behind the Respondent, he honked twice to get him moving faster. (T-58) The Appellant stated that the Respondent then slammed on his brakes causing the collision. (T-59)

The Layton City police officer who investigated the accident testified that the Respondent told him the Appellant got so close behind that he put on his brakes and stopped. (T-8) The police officer stated that both cars were in the normal traveled portion of the road for westbound traffic. (T-10) The officer stated in his police report that the Respondent's vehicle stopped rapidly. (T-12) The police officer could not remember why he drew this conclusion, but was of the impression that the nature of the Respondent's stop was something more severe than an individual who was approaching an intersection and stopping. (T-13)

The police officer detected that there was an unusual amount of hostility between the parties. (T-9) The Respondent admitted that he knew it was the Appellant in the vehicle behind him at the time he stopped. (T-48)

#### ARGUMENT

THE COURT ERRORED IN HOLDING THAT THE RESPONDENT WAS FREE OF ANY NEGLIGENCE WHICH PROXIMATELY CONTRIBUTED TO THE ACCIDENT.

The transcript shows that there had been prior contact and resulting hostilities between the Appellant and Respondent before the date of the accident. (T-45 to 50) The Appellant is a Mexican and the Respondent is Black. Their respective ethnic backgrounds were obviously the subject of much of their discussion after this accident occurred. It is submitted that the Appellant knowingly pulled up behind the Respondent and honked, apparently as a sarcastic response to Respondent's slow speed. The Respondent, knowing who was in the vehicle behind him and as his means of retaliation, suddenly applied his brakes. As a result of the Appellant being too close and the Respondent suddenly stopping, there was a collision. Whether this is a correct interpretation of the motives involved, it is evident that the Court erred in failing to find that the Respondent negligently contributed to the accident.

Utah Code Annotated, 41-6-69 (c) states:

No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is an opportunity to give such signal.

The question as to the type of signal required to adequately notify the vehicle in the rear has been



interpreted to be dependant upon the circumstances.

It has been held that the brake lights may constitute sufficient warning if the stopping of the front vehicle occurs in a reasonably anticipated manner or in connection with other road requirements. See Flippen v. Millward, 234 P. 2d 1053 (1951) and United States v. First Security Bank, 208 F. 2d 424. The question here is whether an unexpected stop made when another vehicle is obviously too close to the rear end of the forward vehicle constitutes negligence per se.

It was held in Greyhound Cab, Inc. v. Sewell, 190 A. 814 (1937) that the ignorance of the defendant's driver of the presence of another vehicle behind his cab which was brought to a sudden stop without any warning or signal does not absolve driver of negligence since due care would require that he assure himself of the absence of any other vehicle.

In Crow v. Alesi, 55 So. 2d 16 (1951) the Court said that the rule requiring the driver of a following vehicle to keep his car in such control so as to be able to avoid a collision with the vehicle ahead is not to relieve the driver of the leading car of the obligation to drive carefully to avoid sudden and unexpected stops.

Where the plaintiff was injured when the

defendant's truck collided with the rear end of his stopped car, and there was evidence for the defendant that he was closely following the car, that there was no signal given of any intention to stop, and that the stop was made so abruptly in front of him as to render collision inescapable, the plaintiff testifying that the stopping was made gradually and had been probably signaled, it was held in Heck v. Henne, 213 NW 112 (1927) that the verdict for the defendant was justified. This was at a time that contributory negligence barred any recovery by the plaintiff.

Hardin v. Sutherland, 289 P. 900 (1930) rejected plaintiff's contention that her driver had no duty to keep a lookout for the safety of traffic in the rear.

It is undisputed that the Respondent was aware of the presence of the Appellant's vehicle behind him and it is undisputed that the Respondent knew the Appellant's vehicle was too close for safety and yet in spite of this, the Respondent stopped in the middle of the road. Presumably, the only warning given to the Appellant would have been the Respondent's brake lights. It is submitted that State law and case law require greater precaution on the part of the driver of the front vehicle under circumstances such as these.

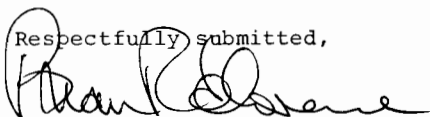
The violation of a statute regarding stopping and turning in safety has been held to be negligent per se. See Stearman v. Miranda, 396 P. 2d 622 (1964) and Olson v. Sutherland, 355 P. 2d 774 (1960).

Appellant is not trying to urge upon this Court that he was not negligent. He does urge, however, that the Respondent was also negligent.

#### CONCLUSION

Respondent's awareness of the presence and closeness of Appellant's vehicle and Respondent's sudden and unexpected stop constitutes negligence per se.

Respectfully submitted,



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MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the foregoing Brief of Appellant, postage prepaid, to David E. Bean, Attorney for Plaintiff-Respondent, 190 South Fort Lane, Layton, UT 84041, on this 15 day of February, 1978.

  
EILEEN BRONSON, Secretary