

1949

William E. French v. Utah Oil Refining Company : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

WILLIAM E. FRENCH, :

Appellant, :

-vs- :

CASE

UTAH OIL REFINING COM- :
PANY, a corporation, :

No. 7396

Respondent. :

:

BRIEF OF APPELLANT

FILED

OCT 24 1949

CLERK, SUPREME COURT, UTAH

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STATEMENT OF FACTS

This is a semaphore controlled intersectional case. It grows out of a collision between a tank wagon truck of the Utah Oil Refining Company, the defendant, and the automobile of the plaintiff, the appellant herein.

The collision took place in an intersection at 2nd West and 4th South Streets in Salt Lake City and County, State of Utah, on or about the 9th day of

August, 1948, at about the hour of one o'clock p.m. of the said day.

The plaintiff was driving his 1935 Ford V8 automobile in a Northerly direction on 2nd West Street (Record Page 33) and had made a left hand turn at 4th South Street on a yellow light, having entered the intersection on a green light, the semaphore directing the traffic being located overhead in the center of the intersection, when he was struck by the gasoline tank wagon truck of the defendant traveling in a Southerly direction on 2nd West Street at a point over his right rear wheel (Record Page 34).

At the time the plaintiff passed under the semaphore in the middle of the intersection, at which time the light turned yellow against the defendant, the tanker was one hundred to one hundred twenty feet North on 2nd West Street proceeding South (Record Page 35). The plaintiff was traveling about eight miles per hour and he was delayed on the West side of 2nd West Street by another car traveling in the same direction (Record

Page 36).

After he had passed to the West out of the path of the oncoming truck approximately three feet, the oncoming truck veered to its right or to the West approximately three feet and struck the right rear wheel of the plaintiff's car throwing it Southwesterly into another automobile (Record Page 37) and damaging the plaintiff's automobile and also injuring the plaintiff (Record Page 38).

ASSIGNMENT OF ERRORS

1. The evidence having been submitted for both sides the Court took the case from the jury and directed a verdict in favor of the defendant. From the order of the Court directing the verdict (Record Page 94) this appeal is taken.

ARGUMENTS

1. Did the defendant's negligence wholly and proximately cause the damage and injuries complained of?

The rights of the parties in this case are determined by the provisions of 57-7-91 of the Utah Code Annotated, 1943, as follows:

Traffic Control Signal—At Intersections.

Whenever traffic is controlled by a traffic-control signal exhibiting the words "Caution," or "Stop," "Go," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) "Green" alone or "Go."

(1) Vehicular traffic facing the signal, except when prohibited under Section 79, may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.

(2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) "Yellow" alone or "Caution" when showing following the "green" or "Go" signal.

(1) Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety, a vehicle may be driven cautiously through the intersection.

which situation is treated by Blashfield Cyclopedia of Automobile Law and Practice, Vol. 2, Paragraph 1005, Pages 169-170 as follows:

Traffic Lights or Signals at Intersections.

Under the common system of traffic regulation by lights, with a green light as a "go" signal, a red light as a "stop" signal, and, frequently, a yellow or amber intermediate light, or under any similar system of automatic traffic signals at intersections of streets, an automobile which enters an intersection in which such a system has been installed on the green light is entitled to

continue until it clears the intersection, even though the green changes to amber and the amber to red before he completes the crossing, while traffic, awaiting on intersecting streets the change of lights, must first ascertain whether the intersection is clear before starting to cross; (Ind.—Beard v. Ball, 182 N.E. 102, 96 Ind. App. 156) (La.—Harrison v. Loyocano, 125 So. 140, 12 La. App. 228;) (Crews v. Coogan, 7La. App. 691.) even the "go" signal confers no authority to proceed across the intersection, regardless of other persons or vehicles already within it. (Pa.—Galliano v. East Penn Electric Co., 154 A. 805, 303 Pa. 498.)

Ordinarily, one entering on the yellow, which changes to the red before he has cleared the intersection, is not to be regarded as having entered under such circumstances as to confer upon him the right of way, (La.—Lorraine Transfer Co. v. Foster (App.) 144 So. 281.) although it is otherwise where he is so close to the intersection at the time of the change from green to yellow that he cannot with safety stop his car. (Conn.—Rose v. Campitello, 159 A. 887, 114 Conn, 637.)

Taking the facts most favorable to the plaintiff

the defendant was one hundred to one hundred twenty feet away from the semaphore when it turned yellow and when the plaintiff following his stream of traffic passed under the intersection and into the path of the defendant's tanker truck under the statute the defendant was required to stop if he could do so safely and he had at least one hundred to one hundred twenty feet

in which to stop for the intersection in front of his was, even at that point, congested of the automobile in front of the plaintiff's car and which car the plaintiff was following.

We think that the sole and proximate cause of the collision and resulting damage was the defendant's failure to bring its tanker truck to a stop as required by the statute.

At the very least we feel that the case should be submitted to the jury on the question of proximate cause.

Hess v. Robinson, 109 Utah 60, 163 P.2d, 510, referred to in the opinion of Justice Wolfe in the case of Hickok v. Skinner, 190 P.2d 514, at page 519, is as follows:

"In that case plaintiff was driving on a through highway and did not see defendant's ambulance approaching from the right. The ambulance went through the stop sign and crashed into plaintiff's automobile. The trial court held both parties negligent as a matter of law, but submitted the case to the jury on the question of whether or not plaintiff's contributory negligence was a proximate cause of the damage. From a verdict and judgment for plaintiff, defendants appealed. We affirmed. Although this court divided on the question of whether or not plaintiff was guilty

of contributory negligence as a matter of law, we agreed unanimously that the question of proximate cause was one for the jury."

and from which opinion we also quote the following from Page 518-519.

"Where an intersection is controlled by a semaphore, the rights of various streams of traffic to proceed and the duties of other streams of traffic to halt are clearly indicated by the various colored lights of the signal. Little or nothing is left to human judgment. But where an intersection is controlled only by stop signs, or is uncontrolled, the rights of drivers to proceed and their duties to halt are to a large extent determined by human judgment. Where a stop sign requires a driver to stop before entering the intersection, such driver must halt and yield to all traffic "within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed." Sec. 57-7-138(b), U.C.A. 1943. Whether an approaching driver is so close to the intersection as to constitute an immediate hazard is largely a question of human judgment, and will depend upon a number of factors, e. g. width of intersection, speed of approaching automobile, visibility conditions, whether the road is dry or slippery, and many other factors. And since the relative rights and duties of drivers approaching an intersection such as this depend to a large extent upon the exercise of human judgment, I am inclined to the opinion that the question of whether or not the judgment exercised by the drivers was reasonable, is a question of fact for the jury."

Even construing the circumstances most strictly against the plaintiff we think that the defendant had the last clear chance to avoid the accident and that

the doctrine announced in the case of *Graham v.*

Johnson, 109 Utah 346, 166 P.2d 230, should be invoked against the defendant.

"A defendant is exceeding the lawful restricted speed limit; another driver, the plaintiff, fails to keep a proper lookout and crosses the path of the oncoming car and gets stalled on its path. Both up to that point might be guilty of negligence and neither be able to recover against the other. But if the oncoming driver, realizing the situation of the plaintiff, had a clear opportunity to avoid the accident and failed to utilize it, that counts just as if the plaintiff has not been negligent and the defendant had been. An incorrect but rather dramatic way of putting it is that defendant's first negligence and plaintiff negligence cancel out leaving only the defendant's failure to utilize his opportunity to avoid the accident as the negligence. The first and only negligence which is the basis of recovery under the clear chance doctrine is this failure of the defendant to avoid the harm, having the knowledge and ability to do so."

Respectfully submitted,

Horace J. Knowlton
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