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Dennis Ray Edwards v. Ann Beard Didericksen : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

DENNIS RAY EDWARDS, A Minor,)
by and through his Guardian)
Ad Litem, EDWARD EDWARDS,)

Plaintiff-Appellant)

Case No. 15780

vs.)

ANN BEARD DIDERICKSEN,)

Defendant-Respondent)

BRIEF OF APPELLANT

Appeal from the First Judicial District in and for Box Elder County, State of Utah, the Honorable VeNoy Christofferson, Presiding.

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FILE

SEP 1

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: :
Plaintiff-Appellant : Case No. 15780
: :
vs. : :
: :
ANN BEARD DIDERICKSEN, :
: :
Defendant-Respondent:

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a civil proceeding brought by the Appellant, Dennis Ray Edwards, a Minor, by and through his Guardian Ad Litem, Edward Edwards, to recover damages from Defendant-Respondent for injuries inflicted upon his person in an automobile accident which occurred on the 24th day of January, 1976.

DISPOSITION IN THE LOWER COURT

In the District Court of the First Judicial District in and for Box Elder County, State of Utah, on March 9, 1978, after a jury trial, the defendant was found by an 8-person jury, voting 2 to 6, not to be negligent. Judgment was duly entered and recorded against the appellant, no cause of action, on the 27th day of March, 1978.

RELIEF SOUGHT ON APPEAL

Appellant seeks an order of this Court reversing the judgment rendered at the trial of this case, and a ruling remanding the case to the trial court for a new trial.

STATEMENT OF FACTS

On January 24, 1976, the Appellant and his brother, Danny, left their parents' residence in Honeyville, Utah, to pick up Danny's girlfriend, Devon Taylor Peters, who lived near Thatcher in Box Elder County. Danny was the owner and driver of the vehicle at all times relevant to this case. The Appellant and Devon were passengers. After picking up Devon, the three youths proceeded north on State Route 102, and approximately one and one-half (1-1/2) miles south of the Thatcher church on State Route 102, the Edwards vehicle was involved in a collision with another vehicle driven by the Respondent, Ann Beard Didericksen, while Respondent was attempting to negotiate a left turn from the highway into the driveway of her residence.

Conflicting evidence was presented at the trial as to the cause of the accident. The Appellant contended that the accident was caused by the respondent negligently making a left turn directly in front of the Appellant's vehicle. Respondent contended that the accident was caused by the negligence of Danny Edwards, the driver of the vehicle, and by faulty equipment on the Edwards

vehicle. All of the evidence was basically presented in the form of observations by the Appellant, his brother, the passenger, the Respondent, and two other lay witnesses who lived in the area. Only one witness testified at the trial who thoroughly investigated the accident, performed tests, took measurements, and evaluated data in an attempt to determine the cause of the accident. This was Officer Larry Forsgren of the Utah Highway Patrol, who was qualified by the Appellant, without objection by the Respondent, as an expert in accident reconstruction. Following lengthy examination by counsel, Forsgren was asked what the cause of the accident was. Respondent's counsel objected and the objection was sustained by the court. In an in camera conference, the trial judge was advised by the Appellant that the officer's testimony was vital to the Appellant's case in that it was anticipated that he would testify that the Respondent's actions were the proximate cause of the accident. The court, however, continued to refuse to allow the testimony. No other evidence was presented by the Respondent in an attempt to refute any of the officer's calculations, but the jury was never allowed to hear his ultimate conclusion as to the cause of the accident. The jury voted, 6 to 2, that the Respondent was not negligent, and therefore Appellant had no cause of action.

ARGUMENT

THE TRIAL COURT'S FAILURE TO ALLOW INTO EVIDENCE THE OPINION OF THE INVESTIGATING OFFICER AS TO THE CAUSE OF THE ACCIDENT WAS AN ABUSE OF DISCRETION AND PREJUDICIAL ERROR.

The Utah rule regarding admissibility of the opinions of expert witnesses has been clearly and conclusively set forth in a number of Utah Supreme Court decisions. Two cases decided by the Court in the 1950s are generally cited as the controlling authority in the area. In the 1953 case, Hooper vs. General Motors Corporation, 260 P.2d 549, 123 U.515 (1953), a case involving damage sustained by the plaintiff and plaintiff's automobile allegedly due to a defective rear tire, the Court stated the following general rule:

"Opinions as to the cause of a particular occurrence or accident given by witnesses possessing peculiar skill or knowledge that is, experts, are admissible where the subject matter is not one of common observation or knowledge, or in other words, where witnesses because of peculiar knowledge are competent to reach an intelligent conclusion and inexperienced persons are likely to prove incapable of forming a correct judgment without skilled assistance." Id. at 552.

In the Hooper case, the Court found that an expert witness can give his opinion as to causation if he is properly qualified as an expert, regardless of whether the opinion goes to the ultimate fact and issue in the case.

In Joseph vs. W. H. Groves Latter Day Saints Hospital 318 P.2d 330, 7 U.2d 39 (1957), the Court considered a wrongful death action against the LDS Hospital arising from an allegedly incompatible blood transfusion which created a kidney infection and caused death. In considering the opinion of an expert witness in the case, the Court made the following observation:

"Whether the testimony of an expert is as to the very issue before the jury, is not a proper test as to its admissibility. Where the subject of inquiry is in a field beyond the knowledge generally possessed by laymen, one properly qualified therein may be permitted to testify to his opinion as an expert. If the opinion evidence is such that it will aid the jury in understanding their problems and lead them to the truth as to disputed issues of fact, it is competent and admissible, irrespective of whether it bears directly upon the ultimate fact the jury is to determine." Id. at 334.

Later cases have incorporated and reaffirmed standards set by Hooper and Joseph. In Stagmeyer vs. Leatham Bros., Inc., 439 P.2d 279, 20 U.2d 421 (1968), the Court determined that if an opinion of an expert is otherwise competent and admissible, the fact that it bears directly upon the ultimate fact the jury must determine does not make it any less admissible. Id. at 281.

Rule 56 of the Utah Rules of Evidence, Part 2, states:

"If a witness is testifying as an expert, testimony of the witness in the form of opinions or inferences is limited to such opinions as the judge finds are (a) based on facts or data perceived by or personally known or made known to the witness at the hearing; and (b) within the scope of special knowledge, skill, experience or training possessed by the witness."

Subpart 4, Rule 56, states:

"Testimony in the form of opinions or inferences otherwise admissible under these Rules is not objectionable because it embraces the ultimate issue or issues to be decided by the trier of fact."

Thus, both Utah case law and the Rules of Evidence clearly establish that if an individual is properly qualified as an expert, and if that expert has had the opportunity to personally observe data or physical evidence that would be difficult, if not impossible, for a layman to thoroughly understand, then that expert may give his opinion regarding the evidence, and that opinion may be given even though it embraces the ultimate issue before the court or the jury for determination.

As noted earlier in the Statement of Facts, the primary investigation of the collision which is the subject matter of this action was performed by Officer Larry Forsgren of the Utah Highway Patrol. Officer Forsgren was called as a witness on behalf of the plaintiff in this action. (Tr. 139-216.) Officer Forsgren was questioned in some detail regarding his experience and his qualifications as an expert in the field of accident investigation. (Tr. 139-141.) These qualifications and Officer Forsgren's ability to properly investigate and interpret the physical evidence found at the scene of an accident were not challenged by Respondent's counsel. While Officer Forsgren was not personally present at the

time of the accident, he arrived shortly thereafter and performed a number of tests and measurements as a part of his investigation. After explaining the various procedures used to investigate and evaluate the accident and the accident scene, Officer Forsgren (Tr. 189) was asked if he had an opinion as to what was the cause of the accident. His response was yes. (Tr. 190) When asked to give that opinion to the jury, counsel for Respondent objected to the answer and the objection was sustained. The objection was directed towards Officer Forsgren giving an opinion on a matter that went to the ultimate issue and fact in the case. In chambers, both counsel argued the point further, and the judge clearly ruled that it would be inadmissible in this situation for the Officer to give his opinion as to the cause of the accident, as it was the ultimate issue and fact in the case, and therefore solely the province of the jury.

The Court should take careful note that there was no issue raised as to whether the tests and procedures used by the Officer in investigating the accident were correct or accurate. Apparently, counsel for the Respondent agreed that the investigation of the accident was thorough and comprehensive. There was also no objection made to Officer Forsgren's qualifications as an expert in accident reconstruction. No other expert testimony was presented concerning the data that was gathered at

the time of the accident. Therefore, the only issue for decision in this case is whether an expert witness who formulates an opinion as to the cause of an accident after conducting a thorough investigation of the situation, should be allowed to give that opinion to the jury.

The only possible argument against admissibility in this case in lieu of the great weight of case authority is whether this is a situation that a layman or a juror would find it difficult to understanding all of the calculations and computations necessary in formulating a conclusion as to causation.

It is clear that accident investigation is a very specialized field. Police officers and highway patrolmen go through extensive training in order to learn the proper methods of evaluating stress points, measuring and evaluating the skid marks, measuring and evaluating points of impact, and measuring and evaluating contusions and concussions created on the various cars indicating points of impact and speed. These are areas that are difficult for layment to understand, therefore the opinion of an expert regarding his overall evaluation of all of these items would be extremely helpful to a jury in arriving at a decision as to who was at fault in an automobile accident.

The court's failure to let the expert witness give his opinion as to causation in this case was extremely prejudicial to Appellant's case. Obviously, the jury

was divided as to Respondent's negligence. It is highly probable that the expert witness' opinion that Respondent caused the accident would have resulted in a verdict in Appellant's favor. This was the most critical testimony of Appellant's case and nothing could have been more prejudicial to Appellant's case than its exclusion.

CONCLUSION

The law in Utah regarding the admissibility of the opinion of an expert witness regarding issues that go to the ultimate decision that must be made by the jury has been clearly set forth by case law and by the Utah Rules of evidence. In this case, Judge Christofferson did not allow Officer Larry Forsgren to give his expert opinion as to the cause of the accident. Mr. Forsgren was established as an expert, his qualifications were outlined for the jury's consideration, no objection was made to these qualifications, no attempt was made by Respondent to put on independent experts that disagreed with Officer Forsgren's findings, no challenge was made as to the type of tests, analyses, or computations made by Officer Forsgren. The only objection came at the point that Officer Forsgren was asked to give his opinion as to the cause of the accident. Utah law clearly indicates that an expert, once qualified as an expert, is entitled to give his opinion in areas where it would be helpful to the jury to receive such an opinion, even though that

opinion may indicate who was ultimately at fault in the case.

The exclusion of the officer's opinion was clearly prejudicial to Appellant's case. The judge committed prejudicial error in not permitting the Officer's opinion as to causation to be received by the jury. In light of the weight of case authority to the contrary, the decision was a breach of judicial discretion.

For these reasons, Appellant respectfully requests that the judgment of the court below be reversed and the case be remanded to the First Judicial District for a new trial.

Respectfully submitted,



REED M. RICHARDS

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

Comes now DONNA CZEKALA, being first duly sworn upon her oath, and deposes and states that she mailed a true and correct copy of the foregoing Appellant's Brief to the following persons:

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on this 19th day of September, 1978.


DONNA CZEKALA

SUBSCRIBED AND SWORN to before me this 19th day of
September, 1978.


NOTARY PUBLIC
Residing at: Ogden, Utah

My Commission Expires:

10-8-80