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Keith North v. C. H. Cartwright : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

KEITH NORTH, By and through his
Guardian Ad Litem, C. E. NORTH.

Plaintiff and Appellant.

vs.

C. H. CARTWRIGHT,

Defendant and Respondent.

} Case No.
7457

Brief of Appellant

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Clerk, Supreme Court, Utah

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Brief of Appellant

NATURE OF CASE

This suit was brought by the appellant, Keith North, by and through his guardian ad litem, C. E. North, against the respondent, C. H. Cartwright, to recover damages for personal injuries sustained by the appellant as a result of the respondent's driving an automobile against the appellant and the motor scooter he was operating, the collision occurring on First South Street below the intersection of Regent Street. At the close of the trial the court directed a verdict of no cause of action, and this appeal was taken.

STATEMENT OF FACTS

At the outset we desire to call the court's attention to the fact that this case does not involve an intersection accident, although it was so regarded by the trial court. The undisputed evidence discloses that the collision occurred at a point on First South Street 21 feet west of the west curb line of Regent Street. (R. 108).

Appellant, a boy 17, was operating a small motor scooter (Exhibit A) in a westerly direction on First South Street (R. 48) at a speed of about 10 miles per hour (R. 46). Seated behind him on the scooter was Robert Cox, 14, (R. 33-34). As they passed through the intersection of Regent Street and First South Robert Cox saw the respondent approaching from the left and noted that the respondent was not looking in the scooter's direction. Cox jumped off the scooter shouting, "Look out, Keith!" The impact followed immediately after the Cox boy jumped (R. 35). Prior to the impact, the appellant got a fleeting glimpse of the respondent's automobile through his rear view mirror (R. 59.) The act of the Cox boy in jumping off affected the motor scooter. The Cox boy knew that it "pushed a little" when he jumped (R. 40). The motor scooter was going straight forward in a westerly direction when the Cox boy jumped off, (R. 45) and the scooter was close to and on the north side of the center lines (R. 92). The appellant explained his presence on the south side of the white lines at the point of impact in the following manner:

"Q. How did you get over on the south side of the white lines?

“A. Well, I don’t actually know, but I think this could have happened: When Bob jumped off, which he did, because I remember he jumped off, and it’s a small motor; it doesn’t weigh very much ,and it can be pushed real—a slight shove can send it anywheres and at that time it was just that quick.” (R. 93)

The position of the Cox boy behind appellant on the scooter did not interfere at all with the operation of the scooter (R. 34, 49, 50).

The respondent told Officer Price that he stopped for the stop sign on Regent Street and First South, that traffic was heavy and he did not notice the boy on the motor scooter until the time of impact.. He did not know where the appellant came from or how he managed to get in front of him (R. 137). The respondent asserted that he looked twice to the west and once to the east as he started up from the stop sign making his left turn, but he did not see anything of the motor scooter at that time. He heard the impact and his car automatically disengaged and stopped instantly. He saw the Cox boy jump off shouting and that was the first time he was aware of the situation (R. 154, 155). At the time he started up from the stop sign his eyes were pretty much focused on a Salt Lake City Lines bus going west on First South, and he considered that it was safe for him to turn as far as the bus was concerned. He did not see any other vehicles at all on the highway east of the intersection (R. 160). The first inkling he got that a boy was operating a scooter in the vicinity was after he heard the impact. He sort of

saw the boy jump back out of the right hand side of his eye. Hardly a second passed from the time the boy jumped back and the time he heard the impact. He was not quite headed west when the impact occurred and the front of the car was about four feet from the center line at the time of impact (R. 163). Despite the skid marks shown on Exhibit "A" the respondent said he did not apply his brakes, but that the car just stopped on its own accord when it hit the boy. (R. 165) After the collision he backed his car up about four feet, (R. 155) dragging the appellant, whose leg was caught (R. 57, 81).

The right front bumper of respondent's car contacted the motor scooter (R. 41) on the left rear side (R. 35, 56). There were gouge marks indicating where the scooter had been dragged by the backing operation, which marks were located 21 feet west of the west side of Regent Street and approximately 8 feet south of the double line (R. 108). There were also skid marks made by the Chrysler near that point extending for four feet (R. 133, Exhibit "A"). Newly painted white lines, four in number, ran down the center of First South and First South is 90 feet from curb to curb. (R. 104-105) There were marks of paint on the right front bumper of the Chrysler (R. 116). At the time Exhibit "A" was taken the car had been moved from the point of impact, except for the four-foot backing operation when the appellant was dragged (R. 168). The extent and nature of appellant's injuries are not material here.

It was stipulated at the trial that the following ordinance of Salt Lake City was in full force and effect,

Section 6128 (c)3, Revised Ordinances of Salt Lake City, 1944:

“The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.”

To summarize the facts, it is clear that appellant was traveling close to and on the north side of the center lines at a speed of about 10 miles per hour in a straight westerly course. He had crossed through the intersection when the respondent, operating his vehicle without observing appellant, cut the corner making a left turn. The turning automobile came into fleeting view of appellant's rear view mirror the instant before the impact which occurred 21 feet west of the west curb line of the intersection. The respondent admits that he at no time saw appellant until after the impact.

STATEMENT OF POINTS UPON WHICH
APPELLANT RELIES.

Point I. The respondent's negligence was clear and undisputed.

Point II. The appellant was not contributorily negligent as a matter of law.

ARGUMENT

Point I. The respondent's negligence was clear and undisputed.

The failure of the respondent to observe the appellant on his motor scooter prior to the impact was negligence. The failure of the respondent to yield the right-of-way to the appellant was negligence. The conduct of the respondent in cutting the corner and hitting the appellant at a point 21 feet west of the west curb line of Regent Street was negligence—respondent should have been on the north side of the center line prior to that point in the reasonable operation of his car. It is likewise clear that the negligent acts and omissions of the respondent were the proximate cause of the collision.

Point II. The appellant was not contributorily negligent as a matter of law.

We do not think that the evidence discloses that appellant was contributorily negligent at all, much less contributorily negligent as a matter of law. If, as he approached the intersection of First South and Regent Street at a speed of approximately 10 miles per hour, he had looked to the left and had observed that the respondent was stopped at the stop sign, the appellant would have been reasonably justified in assuming that the respondent would not enter the intersection, having stopped, until it became safe for him to do so. If, as the appellant entered the intersection from the east, he had looked and observed that the respondent was pro-

ceeding into the intersection on a turn to the west, the appellant would still be reasonably justified in assuming that the respondent would continue to yield the right-of-way, particularly in view of the evidence that the respondent was proceeding slowly. After appellant had completely negotiated the intersection, it would be unreasonable to require him to continue to be apprehensive of traffic approaching from his left rear, particularly in view of the fact that he was proceeding very close to the center line, and after having passed the intersection it was not reasonably foreseeable that traffic would endanger him from the left rear. Certainly by the time appellant arrived at the point of the impact which was 21 feet west of the west curblin of the intersection, he would have been reasonably justified in divorcing his attention from any traffic that could have proceeded out of Regent Street, including the automobile driven by the respondent. The traffic was heavy and ordinary prudence would require that the appellant give considerable attention to the road ahead and to his right. It does not, therefore, appear under what conceivable interpretation of the evidence the trial court was justified in holding as a matter of law that the appellant was contributorily negligent in permitting himself to be struck from the left rear by the respondent under the circumstances of this case. The case at bar is much stronger from the appellant's standpoint than that of *Hess v. Robinson*, 109 Utah 60, 163 P. 2d 510. In that case the appellant was driving at 15 miles per hour southward on Grant Avenue, which was a through highway. The respondents were driving an ambulance eastward on 31st Street at a speed variously described

as from 25 to 50 miles per hour, as it approached the intersection with Grant Avenue. The point of collision was three feet west of the center point of the intersection. We quote the following from the decision commencing on page 64 of the Utah Reports:

“... The trial court instructed the jury that the plaintiff was negligent in not so looking. But does it follow as beyond dispute that had plaintiff looked and seen the ambulance approaching, reasonable and prudent conduct would have dictated that he stop until the ambulance had crossed the intersection? Are the facts revealed by the evidence so clear and certain that the court could say that for plaintiff to drive into the intersection without stopping was not the act of an ordinarily prudent and careful man? Since such question must be answered from the circumstances existing at the time, we are immediately confronted with the question as to the speed of the ambulance. If the ambulance was coming at 50 miles per hour, as one witness testified, it might suggest to a reasonable man that the ambulance probably would not stop, or at least raise a reasonable apprehension of danger. If on the other hand, as defendants testified, the ambulance was coming only 25 miles per hour, (the course being upgrade) an ordinarily prudent man may conclude that the driver had his car under control and would stop as required by law at the stop sign. As to what the circumstances were at the time plaintiff entered the intersection and as to whether entering under such circumstances was an act from which a person of ordinary prudence and caution would have foreseen that some injury would likely result, are matters upon which minds may differ. As such they are properly for the jury. Proximate cause and contributory negligence are ordinarily

questions of fact for the jury to determine under all the circumstances. *Great N. R. Co. v. Thompson*, 9 Cir., 199 F. 395, 118 C.C.A. 79, 47 L.R.A., N.S. 506; *Hales v. Michigan Cent. R. Co.* 6 Cir., 200 F. 533, 118 C.C.A. 627. Questions of negligence do not become questions of law for the court except where the facts are such that all reasonable men draw the same conclusions . . . ”

In the case just cited the collision occurred near the center of the intersection and the ambulance was approaching the intersection at a speed of from 25 to 50 miles per hour and yet the court held that it was a jury question as to whether or not the plaintiff, had he looked, could have assumed that the ambulance would have honored the stop sign. In the case at bar the collision occurred 21 feet west of the westernmost line of the intersection, and the respondent had stopped at the stop sign and was proceeding slowly into the intersection on a left turn. The conclusion is irresistible that the trial court did violence to the principles established by the *Hess* case supra. This case is distinguishable on its facts from the more recent case of *Hickok v. Skinner*, 190 P. 2d 514 (Utah 1948). In that case the evidence showed that the defendant's vehicle was approaching the intersection at a distance of 400 or 500 feet at a rate of 45 miles per hour when first observed by the plaintiff, who had stopped 20 feet back from the intersection. The appellant didn't pay any further attention to the respondent's fast approaching vehicle during any of that time that he traversed a distance of 65 feet and for a period of approximately six or seven seconds. The accident occurred within the intersection. The court held that the appellant was guilty of

contributory negligence as a matter of law in not looking again to evaluate the speed of the respondent's car and reappraise the relative position of the two cars. In the case at bar this speed was not involved and a reappraisal of the relative position of the vehicle prior to the impact would not have required the appellant, in the exercise of ordinary prudence, to assume that the respondent would not continue to honor his superior right within and beyond the intersection. The respondent, having stopped, proceeded slowly (though blindly) on his left turn, and was apparently yielding the right-of-way to the appellant or at least to traffic proceeding in the appellant's direction.

The case of *Hess v. Robinson*, supra, was referred to in the opinion of this court in the case of *Conklin v. Walsh*, (Utah 1948) 193 P. 2d 437, in which later case the court, referring to the *Hess* case, made the following statement on page 439:

“The driver of the car travelling the through street, even though he should have seen the ambulance, which according to the evidence, was traveling between 25 and 50 miles per hour, could not know it would not stop for the stop sign until the vehicles were so close together that he would have no chance to avoid the collision.”

In the *Conklin v. Walsh* case, the operator of the truck approaching the intersection from the west on South Temple had observed the approach of the plaintiff's car on the left but paid no further regard to it during the time that he travelled a quarter of a block (165 feet), and at the time he first saw the other vehicle,

that vehicle was much nearer the intersection than was his. Again the truck was travelling between 30 and 45 miles per hour and the collision occurred within the intersection. None of the circumstances upon which this court predicated its decision in that case is presented by the evidence in the case at bar.

CONCLUSION

The trial court, in directing the verdict against the appellant, has ruled that as a matter of law there was no reasonable view of the evidence which would have permitted the appellant to recover. Nevertheless, in the review and discussion of the evidence in this brief we have not just seized upon that portion of the evidence most favorable to the position of the appellant, but we have considered the evidence as a whole; and we respectfully conclude that, under any reasonable view of the evidence that can be taken in this case, the appellant was entitled to have the question of his contributory negligence determined by the jury, and the trial court was altogether unjustified in holding as a matter of law that the appellant was guilty of contributory negligence.

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