

1950

# Keith North v. C. H. Cartwright : Brief of Respondent

Utah Supreme Court

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Shields & Shields; John T. Vernier; Attorneys for Respondent;

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# In the Supreme Court of the State of Utah

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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

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## RESPONDENT'S BRIEF

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**FILED**

AUG 25 1950

SHIELDS & SHIELDS  
JOHN T. VERNIER

Clerk, Supreme Court, Utah

*Attorneys for Respondent*

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KEITH NORTH, by and through his  
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*Plaintiff and Appellant,*

vs.

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*Defendant and Respondent.*

Case No. 7457

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## RESPONDENT'S BRIEF

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### NATURE OF THE 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 the result of the respondent's driving an automobile against the appellant and the motor scooter he, with another person, was operating the collision occurring on First South Street immediately west of

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

Appellant in his brief has asserted that this case does not involve an intersection accident. We submit to the court at the outset that the actual collision occurred at a point twenty-one (21) feet west on First South Street from the west curb line of Regent Street (R. 108), yet it is our position that this fact notwithstanding, the rights, duties, and liabilities of the parties arise out of their relative positions at the intersection of First South Street and Regent Street. At said place in the center of First South Street the center lines were broken to the west of Regent Street so that an automobile turning west could take a northwest direction from Regent Street entering First South Street, Regent Street being a narrow street. At the time defendant was well within his traffic lane and would have crossed the center of First South east of where the line was broken and in his proper traffic position. Appellant, a boy of seventeen (17), was operating a small motor scooter commonly known as a "doodle bug" (Exhibit A) in a westerly direction on First South Street at a speed of about ten miles per hour (R. 46). Seated behind him on the scooter was Robert Cox, age fourteen (14) (R. 33-34). Respondent was operating a Chrysler sedan motor vehicle in a northerly direction on Regent Street. Respondent stopped at a stop sign on Regent Street and First South Street (R. -51) and after having look twice to the left and once to

the right to observe approaching traffic, he proceeded slowly and cautiously (R. 145) out into the intersection at a speed of between five and eight miles per hour in order to make a left turn down First South Street (R. 154). When respondent had reached a point twenty-one (21) feet west of the west curb line of Regent Street and approximately four (4) feet south of the center line of First South Street he collided with appellant.

Appellant contends in his statement of facts that at the time the parties were in the positions outlined above, traffic on First South was heavy, however, the testimony at the trial below indicated that the only traffic upon said street was a Salt Lake City Lines bus proceeding west on First South Street (R. 154).

Appellant in his brief contends that the appellant was driving his vehicle close to the center of the white middle line on First South Street and on the north side of said center line (R. 92). Yet the testimony offered and received at the trial below abundantly showed that at the point of impact appellant's position was approximately four (4) feet south of the center line of said street (R. 127, R. 108). Further, the testimony below showed that only a second or so before the impact occurred the Cox boy, who was the first to observe the respondent, shouted to the appellant, "look out, Keith," whereupon he jumped off the vehicle (R. 35). At this time the appellant's motor scooter was traveling straight forward in a westerly direction (R. 45). The collision followed instantaneously after the Cox boy jumped off the appellant's vehicle (R. 35). Appellant testified in an attempt to explain his position on the

south side of the center line at the point of impact that when Cox jumped off his scooter his movement in leaving the vehicle caused it to be "pushed a little" (R. 40) and that thereafter sufficient time elapsed to enable his vehicle to travel across the center line at an angle to the point of impact (R. 93). Prior to the impact the appellant got a fleeting glimpse of the respondent through his rear view mirror (R. 59).

After the impact the respondent's vehicle stopped instantaneously of its own accord (R. 165), whereupon, the Cox boy shouted to the respondent to "back up" (R. 155). Respondent backed his vehicle approximately three to four feet (R. 155) dragging appellant and his vehicle which had somehow become engaged with the front bumper of respondent's car.

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 twenty-one (21) feet west of the west side of Regent Street and eight (8) feet south of the double line (R. 108). 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

obligated to stop which are within the intersection or are approaching so closely as to constitute an immediate hazard, but may then proceed."

In summary, it is clear that the appellant was traveling on the south side of the center line of First South Street in a straight southwesterly course. The respondent came slowly and cautiously out into the intersection, and while the respondent was executing a left turn a collision occurred between the vehicles.

## 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.

No argument submitted.

Point II. The appellant was contributorily negligent as a matter of law.

We submit to the court that the evidence abundantly shows that the appellant was guilty of contributory negligence, that



the negligent acts and omissions of the appellant were the proximate cause of the collision, and that the cumulative weight of the testimony justified the trial court in holding as a matter of law that the appellant's own negligence barred his recovery.

The conclusion must surely follow from the facts established at the trial that the appellant's motor vehicle was being driven at least four (4) feet south of the center line of the street. First, the impact occurred at this point. Second, by appellant's own admission, and that of his passenger, Cox, the vehicle was traveling in a straight westerly direction at the time Cox jumped off. He jumped only a split second before the collision occurred. It appears impossible of belief by any reasonable mind that the appellant's vehicle, while traveling only ten miles per hour could have, with the space of a second, crossed over the white center line of the street and traveled four (4) feet south to the point of impact, if in fact the appellant had been traveling on the north side of the street.

Respondent, after stopping for the stop sign on Regent Street, looked twice to the left and once to the right before proceeding out into the intersection. He observed an approaching Salt Lake City Lines bus and yielded to it, and he then proceeded slowly and cautiously into the intersection after it had passed. We submit that any reasonable view of the evidence indicates that respondent would have likewise yielded to the appellant had the appellant been in a position where respondent could reasonably be expected to observe him.

Having looked twice to the left and having observed no traffic approaching from the south side of the line, and after

yielding to traffic approaching from the right on the north side of the line, it is unreasonable to require the respondent to likewise search the south side of the street on respondent's right to observe approaching traffic coming down the wrong side of the street.

Title 57, Chapter 7, Section 120 of the Utah Code Annotated, 1934 provides that:

"Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway."

In construing this statute the Supreme Court of Utah has held in several cases, *Staton vs. Western Macaroni Mfg. Co.*, 174 Pac. 821, being only one that:

"The strongest kind of a presumption of negligence prevails against the party driving on the wrong side of the road."

The explanation offered by the appellant as to his presence on the south side of the line at the point of impact in no way destroys the weight of this presumption. Rather, his conduct in permitting the passenger Cox to ride the vehicle at all and in permitting a chain of forces to be set in motion forcing the vehicle over to the south side of the street when Cox jumped off, assuming that these were the facts, constitutes further negligence on his part.

Section 57-7-169.11 and section 57-7-169.12 of Utah Session Laws of 1949 provide as follows:

"A person operating a motor vehicle or a motor driven vehicle shall ride only upon the permanent and regular seat attached thereto, and such operator shall

not carry any other person, nor shall any other person ride on a motor vehicle unless such vehicle is designed to carry more than one person."

"No person shall ride and no person driving a motor vehicle shall knowingly permit any person to ride upon any portion of any vehicle not designed or intended for the use of passengers."

We submit that the violation of any one or both of the above statutes by the appellant constitutes further and additional negligence upon his part.

Appellant in his brief has called to the Court's attention the recent case of Conklin vs. Walsh, 193 P. 2d 436, and the recent case of Hickok vs. Skinner, 190 P. 2d 514, and has attempted to distinguish these cases and their holdings from the case at bar. It is admitted that the factual situations presented by these two cases differ somewhat from the case at bar, but we submit to the Court that the fundamental governing rules of law established by these cases apply likewise in this case.

In each of the above cited cases, this Court held that the appellant, favored driver, was guilty of contributory negligence as a matter of law for failing to reappraise his position upon the highway with respect to that of the disfavored driver and to govern himself accordingly as a reasonable man. The court in the Conklin case, *supra*, in holding that the appellant was guilty of contributory negligence as a matter of law said:

"The duty to keep a proper lookout applies as well to the favored as to the disfavored driver. Neither driver can excuse his own failure to observe because the other driver failed in his duty. Neither driver is at any time to be excused for want of vigilance or failure to

see what is plain to be seen. Drivers are permitted to cross over arterial highways after having stopped. True, they must yield the right-of-way to cars which are close enough to constitute an immediate hazard. This rule, however, requires the exercise of some judgment. It is still the duty on the part of the driver traveling the arterial highway to remain reasonably alert to the proximity of the disfavored driver starting across the intersection in the belief that he can cross in safety. The duty of keeping a proper lookout attends all those operating motor vehicles and other rules of the road do not relieve any driver of the necessity of complying with this requirement."

In *Hickok vs. Skinner*, *supra*, this Court quoted with approval the case of *Driefus vs. Levy*, La., App., 140 So. 259, 263, and announced the governing rule of law to be that:

"The mere fact that the truck driver entered the intersection first did not justify him in proceeding without caution and care, totally disregarding the oncoming car which he had seen, and he could have easily discovered by looking that whatever rights he had by virtue of entering the intersection first were not going to be respected by the other car. He should not have advanced into the pathway of the other car, and by doing so, was guilty of negligence." Huddy's Enc. of Automobile law, (9th Ed.) Vol. 3-4, p. 278; *Buckner v. Powers*, 125 So. 774.

We submit that in the case at bar we have an even stronger application of the rules announced in the *Conklin* and *Hickok* cases, for the reason that while in those cases the appellant traveling at a fairly rapid rate of speed, maintained sufficient lookout to observe the position of the disfavored driver at some distance from the point of impact; in the case at bar, the

appellant was traveling at a very slow rate of speed and yet did not maintain sufficient lookout to observe the respondent at the stop sign until the collision was unavoidable. The appellant's total failure to maintain a proper lookout which would enable him to observe the respondent and to govern his movements in relation thereto, though he had more than ample opportunity to do as brings him well within the purview of the Conklin and Hickok cases.

### CONCLUSION

It is well settled that negligence as a matter of law exists when the conduct of the party in question causes all reasonable minds to conclude that said conduct has fallen below the standard established by law to protect against unreasonable risks of harm. This Court has announced the governing standard of reasonable conduct as to the factual situation at hand. We submit that the conduct of the appellant surely causes all reasonable minds to conclude that the appellant was negligent, and justified the trial court in holding that said negligence was established as a matter of law barring his recovery.

Respectfully submitted,

SHIELDS & SHIELDS

JOHN T. VERNIER

*Attorneys for Respondent*