

1980

## Sharon Knight v. Daniel R. Leigh : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

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SHARON KNIGHT, :

Plaintiff/Appellant, :

vs. :

DANIEL R. LEIGH, :

Defendant/Respondent. :

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Case No. ~~69061~~ 16867

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BRIEF OF RESPONDENT

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Appeal from Judgment of the Second Judicial  
District Court of Weber County, State of Utah,  
the Honorable Calvin Gould presiding.

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MAY 13 1980

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Case No. ~~69061~~ 10867

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BRIEF OF RESPONDENT

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STATEMENT OF THE NATURE OF THE CASE

This is a personal injury action based upon the concept of negligence in that the plaintiff/appellant, while negligently operating her automobile in driving through an intersection in Ogden, Utah, on October 28, 1977, caused both property damage and personal injury to the defendant/respondent.

DISPOSITION IN THE LOWER COURT

The case was tried in the District Court of Weber County, the Honorable Calvin Gould presiding, sitting without a jury, on the 4th day of December, 1979. The court found the appellant 100% negligent and the proximate cause of the accident giving rise to this suit, denying her recovery against the respondent and granting judgment against the appellant and in favor of the respondent in the sum of \$7,048.55. Said judgment included property damage and special and general damages for personal injury.

RELIEF SOUGHT ON APPEAL

Respondent seeks a dismissal of appellant's appeal

and an affirmation of the trial court.

STATEMENT OF THE FACTS

In the early evening of October 28, 1977, appellant was traveling south on Washington Boulevard in Ogden, Weber County, Utah, in a 1965 Chevrolet. She approached the intersection of Washington Boulevard, 2nd Street and Harrisville Road, commonly known as 5-Points. It was appellant's intention to execute a left hand turn from Washington Boulevard and then travel east-bound on 2nd Street. At approximately the same time, respondent's vehicle was traveling north-bound on Washington Boulevard intending to proceed through the intersection and continue north on Washington Boulevard. As the respondent proceeded through the intersection heading north, appellant executed a left hand turn to go east and the vehicles collided causing damage to both vehicles and injury to each party. At the trial on December 4, 1979, the appellant testified that she was in the left turn lane behind one other vehicle preparing to execute a left turn when the light at the intersection was green. She did not see the light turn to amber or red, but apparently, at some point, after she observed the light was green, she began to execute her turn. At the time she executed her turn, she collided with respondent's vehicle. She further testified that she did not see the respondent's vehicle until it was in the intersection, claiming, that apparently, there was heavy traffic north-bound on Washington Boulevard, and that he had been traveling behind another vehicle some distance from the intersection and had

come out from behind that vehicle and, therefore, she did not see him. The respondent testified along with his passenger, Rick Bushman, that they were traveling in the inside lane of traffic going north (Washington Boulevard, in this area, has two lanes of traffic going north and south on each side of a divider), and that as he approached the intersection the light was green; that as he entered the intersection, the light turned yellow; that he did not speed up, and that as he continued on through the intersection, he was struck by appellant's vehicle. The appellant called other witnesses, Doreen Halacy and James Barnes, who were at various places near the intersection at the time the accident occurred, to testify about the status of the semaphore light. Both witnesses were confused about the sequence of the lights and, in fact, each gave testimony that was different from the others and not accurate. Halacy testified that the light was red for the respondent's vehicle when he entered the intersection, but green for the appellant's vehicle because she was coming from Harrisville Road and the light was green for Harrisville Road. This was not the case. Witness Barnes testified that the light was green for the south-bound vehicles on Washington, but red for north-bound at the same time. This was also not the case. The respondent called Harry Moore from the State of Utah Traffic Engineer's office who testified as to the sequence of the lights at 5-Points. The critical part of his testimony was that the light was the same for north and south-bound traffic on Washington Boulevard

Therefore, if the light was green for the appellant, it was green for the respondent. If the light was yellow for the appellant, it was yellow for the respondent, and red and red, and so forth for the appellant. The court held that the respondent entered the intersection traveling in the through lane of traffic nearest the center of the roadway, and that he entered the intersection in a lawful and prudent manner intending to proceed through the intersection traveling north-bound. That the appellant attempted a left turn at the time that respondent's automobile was so close to the intersection, that the automobile constituted an immediate hazard to the intersection. That a resulting collision proximately caused injuries and damages to the respondent to the extent of \$7,048.55 and that the appellant was 100% negligent. The court found that the testimony of Halacy and Barnes was not reliable because of their confusion as to the sequence of the lights. The court entered judgment accordingly, and from that judgment, appellant appealed and defendant/respondent now requests that the appeal be dismissed.

#### ARGUMENT

DECISIONS OF THE TRIAL COURT WILL NOT BE  
OVERTURNED ON APPEAL UNLESS CLEARLY ERRONEOUS  
AND MUST BE AFFIRMED IF SUPPORTED BY ANY  
SUBSTANTIAL EVIDENCE.

This court has consistently enunciated its doctrine for review of trial court decisions in numerous cases. In Utah, the findings of the trier of fact will not be disturbed on appeal unless clearly erroneous or arbitrary and capricious.

Where no error of law is asserted, but only a different view of the facts, the facts will be reviewed on appeal in the light most favorable to sustaining the decision of the trial court, and if there exists any substantial evidence and reasonable inferences drawn therefrom to support the trial court's conclusions, then the decision will not be disturbed on appeal. See Jensen v. Eddy, 30 Utah 2d 154, 514 P.2d 1142 (1953), reaffirmed in Town & Country Inn v. Martin, 563 P.2d 195 (1977), and more recently Osuala v. Olsen, case no. 16492, filed March 24, 1980. It is abundantly clear in this case that appellant is concerned, not with any errors of law or procedure, but has a difference of opinion as to the trial court's factual conclusions covering responsibility for the accident. The court should specifically take note of the fact that the appellant does not argue with the judge's application of the rule that if the appellant attempted a left turn at a time when respondent's automobile was so close to the intersection, that respondent's automobile constituted an immediate hazard to the intersection, then appellant would be the negligent party. There was also no disagreement by appellant that the trier of fact has great discretion pursuant to Utah's comparative negligence doctrine in assessing responsibility for an accident between parties. Appellant does not disagree that in Utah in an intersection situation, a vehicle passing through the intersection would have the right-of-way over a vehicle executing a turn in the intersection. The driver going

through the intersection has the right to do so without interference from a turning vehicle, and that vehicle is not allowed to proceed with a turn if the vehicle with the right-of-way constitutes an immediate hazard to the intersection. In essence, appellant does not find fault with the judge's application of the law to this particular kind of accident. What appellant seems to be saying is that the judge should not have discounted the testimony of the witnesses Halacy and Barnes because of certain errors they made in the sequence of the lights, and had he not discounted the testimony, he could have found that the respondent entered the intersection on a yellow or red light and, that, therefore, the negligence of the respondent was either equal to or greater than that of the appellant. It is critical to note that the appellant never argued at any time in her brief, that the court could not have found the facts as it did from the testimony adduced but, that considering appellant's view of the testimony of Halacy, Barnes and the respondent, that the court could also find that their testimony was reliable and that the facts indicated that the respondent's negligence was greater than appellant's. This admission in the brief that the court could have found for either position from the facts, in effect, renders the appellant's position on appeal without merit.

The trial court is the sole judge of the credibility of the witnesses. Both Halacy and Barnes made critical errors in their testimony which affected their credibility.

While both maintained that the respondent had entered the intersection on a red light, they each indicated that the appellant had made her turn on a green light; according to Halacy, from Harrisville Road; according to Barnes, from Washington Boulevard. Appellant admits that these statements were erroneous, but discounts their impact in the trial. The point is, that whether or not these particular statements were, in and of themselves conclusive as to what happened at that intersection, they cast doubt as to the credibility of the witnesses' statements or other observations that they made. While it is true that they were both independent witnesses and unknown to each party, they also, as many individuals do, came upon a situation and observed it differently. It is because of these kinds of problems that a trier of fact must sit as an independent judge weighing all of the testimony and make his independent evaluation. Judge Gould, in this case, evaluated the credibility of the witnesses and made his decision that their statements were not reliable, particularly, when viewed in the light of Harry Moore's (State Traffic Engineer) testimony. The interesting thing about this case is that Moore's testimony supported that of both appellant and respondent. That is, that the light would be the same color for both of the parties. If the light was red for the appellant, it would have been red for the respondent. Yellow for the appellant, yellow for the respondent, green and green. That it would not have been different for one or the other. Based upon this testimony, the impact of the

Halacy and Barnes statements, is even less significant. What is apparent is a situation where two individuals are entering an intersection where the light is changing in the same manner for both. One is making a turn and the other is going straight. It is clear that the car that is going straight has the right-of-way under any circumstances. It is further clear that the person executing the turn must not execute the turn if the automobile with the right-of-way is so close to the intersection as to constitute an immediate hazard. There is also no question from the testimony of the appellant and respondent, that respondent's vehicle was close enough to the intersection to constitute a hazard, regardless of the dispute as to what color the light was. The evidence is in dispute concerning what the condition of the light was when the respondent actually entered the intersection. Discounting the Halacy and Barnes testimony, the only other testimony bearing on that issue comes from the appellant and the respondent. The appellant states that she was in the intersection on a green light and turned before the light was red. She was under the semaphore light, however, and did not see how it changed. The respondent testified that upon approaching the intersection, when he looked the light was green, but that he believed it changed to yellow as he entered the intersection. In any event, the evidence strongly suggests that both parties were in the intersection on a yellow light. At least the court could find that to be the fact from the evidence adduced. Even if they were both

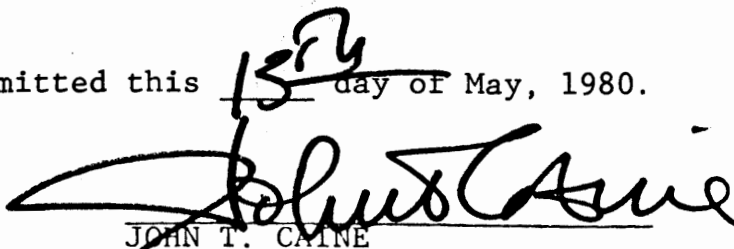
there on a red light, if the respondent's vehicle was close enough to the intersection to constitute an immediate hazard, he still has the right-of-way and the other car must yield. There is absolutely no showing from any of the evidence that the light changed red before the respondent entered the intersection. Had this happened, the appellant would have been through her turn and the accident would never have taken place. What is apparent from the overall testimony, is that an intersection accident took place with one vehicle having the right-of-way to go straight ahead, and another attempting to make a left turn to go through that right-of-way path. The court, having the ultimate responsibility to judge the credibility of the witnesses, what facts to accept and not accept, to make decisions as to what to believe, believed that the respondent entered the intersection appropriately and that he was close enough to constitute a hazard so that the appellant should have yielded. Because of that finding, he properly assessed 100% of the negligence on the part of the appellant. Interestingly enough, many of the arguments raised by the appellant in her brief were not raised at the trial court. Assuming that the court took all of the facts into consideration and giving the court's findings the presumption to which they are entitled in viewing the facts, there is no question that the court could have found as it did based on substantial evidence. The respondent is not required to prove that the court must have found as it did, excluding any other possible

findings, in order to sustain the verdict. The appellant, on the other hand, must demonstrate that there was no rational basis for the court's decision, no substantial facts upon which the decision can be sustained, or that the court acted arbitrarily and capriciously and clearly erroneously. The appellant has failed to demonstrate any of these requisites. The appellant's own brief admits that the court could have found as it did, but also could have found that the appellant's view of the facts was the accurate view. She takes great issue with the fact that the court found two witnesses unreliable, but this is the court's prerogative and any finder of fact's prerogative, and cannot be overturned unless clearly erroneous. The appellant has failed to meet the burden required by this court to reverse a trial court's findings and, as such, the appeal should be dismissed.

#### CONCLUSION

Judgments of the trial court will not be disturbed unless clearly erroneous. The trial court's findings must be sustained if there is any rational basis for such findings supported by substantial evidence. In this case, the trial court had a rational basis for its findings, which are supported by substantial evidence and, therefore, its judgment should be affirmed.

RESPECTFULLY submitted this 13<sup>th</sup> day of May, 1980.

  
JOHN T. CAINE

Attorney for Respondent

CERTIFICATE OF MAILING

Mailed a true and correct copy of the above and foregoing Brief of Respondent to attorney for appellant, Timothy W. Blackburn, Bank of Utah, Suite 320, 2605 Washington Boulevard, Ogden, Utah 84401, postage prepaid, on this 13<sup>th</sup> day of May, 1980.

  
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LINDA MOORE, Secretary