

1957

Milton Winn v. William B. Reid : Brief of Appellant

Utah Supreme Court

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Recommended Citation

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In the Supreme Court
of the State of Utah

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Supreme Court, Utah

MILTON WINN,

Appellant,

— vs. —

WILLIAM B. REID,

Respondent.

Case No. 8575

APPELLANT'S BRIEF

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In the Supreme Court of the State of Utah

MILTON WINN,

Appellant,

—vs.—

WILLIAM B. REID,

Respondent.

Case No. 8575

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PRELIMINARY STATEMENT

This is an appeal from a judgment of the Honorable Lewis Jones, Judge, District Court of Cache County, Utah. The action was for personal injuries and damages to personality. The court sat without a jury.

The appellant and respondent were both traveling in the nighttime in the same direction, the appellant on horseback and the respondent by automobile. The appellant's horse was struck from behind by the respondent's automobile while respondent was riding along the left edge of the road in a northerly direction, facing traffic.

In finding for the respondent, the court held appellant should have been traveling on the right side of the roadway, that he was negligent as a matter of law in riding along the left side of the highway and that such negligence was a proximate cause of his damages. (R. 6, 7)

The appellant was plaintiff and the respondent the defendant in the court below. They will be referred to as plaintiff and defendant.

STATEMENT OF FACT

The accident happened on June 21, 1954, within the limits of Smithfield, Cache County, Utah, between 1st North and Center Streets on 3rd West Street, in the nighttime at about 8 o'clock P.M. (R.-13, 14). Plaintiff was riding a horse and defendant driving an automobile. Both were traveling North in the same direction on 3rd West Street in the town of Smithfield. The street had an oil surface 20 ft. wide with shoulders 4 to 6 ft. on each side (R.-13, 14, 16, 24, 36). The plaintiff, on turning on to 3rd West Street, traveled along the West edge of the oil surface or on the shoulder in a northerly direction for a distance of about 30 rods when he was struck from behind by an automobile driven by defendant (R. 11, 16-18, 24, 36, 39-43). The defendant applied his brakes and skidded approximately 48 ft. prior to the impact. The skid marks started about the center of the oil surface and veered to the West so that the left wheels were a foot or two east of the edge of the oil surface at the point of impact (R. 39-45). The left side of the car

was damaged (R. 26, 35-36). Defendant's lights were on and there was nothing to obstruct his view and he gave no warning of his approach (R. 17, 40). The horse was thrown into the bar pit on the West. Its left leg was broken and plaintiff sustained a broken foot and was otherwise injured (R. 17-20).

From the foregoing facts, the court found the following:

"That on the 21st day of June, 1955, within the corporate limits of Smithfield, Cache County, Utah, the plaintiff was riding horseback and at the same time the defendant was operating his car on the left hand side of the same road, both parties proceeding in the same direction.

"That as the parties moved northward in the same direction, the plaintiff caused his horse to move from the right hand side of the road to the left hand side of the road and had straightened out and proceeded parallel with the road for about 30 rods when the accident occurred. That the defendant operated his car into and against the rear end of the horse, then, there and thereby injuring said horse and the plaintiff himself. That the vehicle was also damaged.

"The Court finds that the plaintiff was negligent and that said negligence was a proximate cause of plaintiff's injury and damage by reason of the fact that the plaintiff directed his animal over to the wrong side of the road and along said side without just cause or excuse and that no signal or warning was given by the plaintiff to the defendant as he approached from the plaintiff's rear; that the defendant was negligent and such negligence was a proximate cause of the accident by reason of the fact that the said defendant was then and there operating, without

just cause and excuse, his vehicle on the left side of the road. The court further finds that the accident occurred in the nighttime and while the defendant had his head lights burning and that no light was displayed by the plaintiff (R. 6, 7).

POINTS RELIED ON

POINT I.

THE COURT ERRED IN FINDING THE DEFENDANT WAS NEGLIGENT AS A MATTER OF LAW IN TRAVELING ON THE LEFT SIDE OF THE ROADWAY IN THE FACE OF ONCOMING TRAFFIC.

POINT II.

THE COURT ERRED, IF IT FOUND AS A MATTER OF FACT, THAT PLAINTIFF WAS NEGLIGENT IN TRAVELING HORSEBACK ON THE LEFT SIDE OF THE ROADWAY IN THE FACE OF ONCOMING TRAFFIC.

POINT III.

THE COURT ERRED IN FINDING, ASSUMING PLAINTIFF WAS NEGLIGENT IN TRAVELING ON THE LEFT SIDE OF THE ROADWAY, THAT SUCH NEGLIGENCE WAS A PROXIMATE CAUSE OF PLAINTIFF'S INJURIES AND DAMAGE.

ARGUMENT

Point I

The plaintiff was not negligent as a matter of law in traveling on horseback on the left hand side of the road in the face of oncoming traffic.

The court's findings of fact indicates the court was of the opinion and it so held that it was the duty of a horseman, in the nighttime, to travel on the right hand side of the road, his back to traffic, as a matter of law, and that in traveling on the left edge of the roadway in the face of oncoming traffic he was negligent as a matter of law, for in its findings it said:

"The court finds that the plaintiff was negligent and that said negligence was a proximate cause of plaintiff's injuries and damage by reason of the fact that the plaintiff directed his animal over to the wrong side of the road and along said side without just cause and excuse."

Apparently the court was under a misapprehension as to the correct rule of law in this respect and that accounts for the result reached.

The common law did not impose a requirement that the rider of a horse travel on the right side of the road, especially in the nighttime, and if there is such a requirement it would have to be imposed by statute.

A horseman's and motorist's rights upon the highway are equal and reciprocal each being restricted in the exercise of his rights by the corresponding rights of the other, and the rider of a well broken horse is entitled to ride it anywhere on the street that he chooses

in the absence of statute. It has been stated by a learned author as follows:

“The rights of a driver of a horse and the driver of a motor vehicle to use the highway are equal and reciprocal, each being restricted in the exercise of his rights by the current rights of the other. Accordingly, the driver of a well broken horse is entitled to drive it anywhere in the street he may choose, and, when he sees an automobile approaching it, it is not negligence to drive close to the curb he may choose . . .” *Cyclopedia of Automobile Law and Practice*, Blashfield 3 permanent Edition, page 48, Section 1672. And see Elliott on Roads and Streets, Section 834.

We have been unable to find where any courts have laid down a rule that a horseman must travel on the right facing traffic or a matter of law and the statutes of this State do not. Our statutes are silent on the matter, merely saying:

“Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be subject to the provisions of the Act applicable to the driver of a vehicle, except those provisions of the Act which by their nature can have no application.” 41-6-15, U.C.A. 1953.

The only vehicles the statutes enjoin to travel on the right side of the road are those that can be equipped with rear-end warning lights and reflectors, such as bicycles, automobiles, tractors, etc. (41-6-90, 41-6-117 to 41-6-175, U.C.A. 1953) and as a horseman cannot as a practical matter be equipped with either tail lights or

reflectors, it would be illogical to say that the statutes requiring vehicles to travel on the right side of the road in the nighttime are applicable to him.

As the court was under a misunderstanding, believing that a horseman was required as a matter of law to travel on the right side of the road with his back to traffic, it undoubtedly misapplied the law and reached the result it would not have done if it had correctly understood the correct rule, and for this reason the plaintiff is entitled to a new trial unless the court should hold the plaintiff was riding on the proper side of the road, not negligent, or if negligent, it was not a proximate cause of his injuries, in which event we submit that it should direct the trial court to enter judgment for the plaintiff. This latter position, we believe, is the one the court should take.

Walker vs. Peterson, 278 Pac. (2nd) 291,
3 Utah (2d) 54.

Point II

In riding on the left side of the road plaintiff was on the proper side of the road and not negligent.

As we have pointed out, our statutes are silent as to which side of the road a horseman should travel, especially while traveling in the nighttime; thus the rule of equal rights applies. Under this rule, nighttime or daytime, as long as he surrenders one-half of the road, either left or right, to the driver of an automobile, he is not negligent.

“Under the rule that a horseman’s and a motorist’s rights upon the highway are equal, the rider of a horse who is approached from the rear by a motorist has a right to continue to use at least one-half of the beaten track, and, if he surrenders the right side of the beaten track for the use of the motorist, that is all that he is required to do. The fact that the parties are going in the same direction instead of in opposite directions imposes no greater obligation upon the horseback rider to leave the beaten track, *is not guilty of contributory negligence by traveling on the left side of such beaten track.*” (Italics added.)

Cyclopedia of Automobile Law and Practice;
Blashfield 3 Permanent Edition, page 50, Sec.
1672;

Traeger vs. Wasson, 163 Ill. App. 572.

A horseman has as much right to the use of the roadways as any other traveler, and this court has held that as it is impossible to equip a horse with tail lights it is not necessary for him to do so. This court in *Dalley vs. Mid-Western Dairy Products Company*, 80 Utah 331, 15 Pac. (2nd) 309, said:

“... He knew he was traveling upon a highway that was used by pedestrians, and persons traveling on horseback and in horse-drawn vehicles, none of whom are required to disclose a light to warn others of their presence upon the highway.”

Should this court, however, not be inclined to follow the doctrine of equal rights, preferring the reasonable, prudent man test, we nevertheless urge that the plaintiff,

in riding on the left in the face of oncoming traffic, was not negligent and that as to this the minds of reasonable men cannot differ, and if this be true, the court should direct the trial court to enter judgment in favor of the plaintiff and fix the amount of judgment.

Walker vs. Peterson, 278 Pac. (2nd) 291, 3 Utah (2nd) 54, *supra*;
Continental Bank and Trust Company vs. Stewart, 291 Pac. (2nd) 890, 4 Utah (2nd) 228.

Where else should the plaintiff have been riding in the nighttime? To hold that a reasonable, prudent person would ride on the right in the front of traffic is to say that such a person would deliberately expose himself to danger, for a rider on the right encounters more danger from the rear than from the front and a horseman on the left encounters more danger from the front than from the rear, and facing the danger to the front he is in a position to take steps to protect himself and to avoid colliding with users of the road.

Kessel vs. Hunt, 244 N.W. 714;
Pixler vs. Clemuns, 191 NW 375.

There is an analogy between a pedestrian and a horseman using the highway. The statute requires a pedestrian to, whenever practical, walk on the left in the face of oncoming traffic. (41-6-82, U.C.A. 1953). Why should this not be the rule as to a horseman? The same reasons are present, namely that as neither can, as a practical matter, be equipped with warning lights and reflectors, he is in less danger in facing oncoming traffic

on the left than he would be in having traffic approach him from the rear on the right, and while on the left he is in a position to see approaching traffic and take steps to prevent colliding with oncoming traffic.

In the light of the court's finding that plaintiff had "moved from the right side of the road to the left side of the road and had straightened out and proceeded parallel with the road for about 30 rods before the accident occurred," we urge that he was not only traveling on the proper side and not negligent and that as to this the minds of reasonable men cannot differ.

In the event this Court believes under its common law making powers that it should lay down a rule regarding where a horseman should travel in the nighttime whenever practicable, neither adopting the equal rights doctrine or the reasonable man test, for the guidance of travelers, we submit that under the present traffic conditions that logic and common sense would require that it adopt the rule the legislature has adopted pertaining to pedestrians, namely that whenever practicable he shall travel on the left side of the road.

Point III

Assuming plaintiff was negligent, nevertheless such negligence was not a proximate cause of his injuries.

The court having found that plaintiff had traveled parallel approximately 30 rods on the left side of the street when struck from the rear by defendant's auto-

mobile, it is our position that plaintiff's riding on the left side of the road could not be a proximate cause of his injuries, the sole cause being defendant's negligence.

It is well settled that for plaintiff's negligence to bar recovery, it must be a proximate cause of his injuries and that the same rules apply in determining the proximate cause in contributory negligence as in the negligence of the defendant. *Devine vs. Cook*, 279 Pac. (2nd) 1073, 3 Utah (2nd) 134.

The most widely used definition of proximate cause is:

"The proximate cause of an injury is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred."

38 Am. Jur. page 695, Sec. 50.

And this court has said that causes which are merely incidental to a superior or controlling agency are not efficient causes or proximate causes.

"The proximate cause is the efficient cause, the one that necessarily sets the other causes in operation. The causes that are merely instrumental to a superior or controlling agency are not the proximate cause and the responsible one."

Edgar vs. Rio Grande Western Railroad Company, 32 Utah 330, 90 Pac. 475.

There must not only be an efficient cause but negligence which furnishes the condition or an occasion upon which the injuries are received is not a proximate cause.

“Negligence which merely furnishes the condition or occasion upon which injuries are received but does not put in motion the agency by which the injuries are inflicted is not the proximate cause thereof.”

38 Am. Jur. Sec. 54, page 702;

Chatterton vs. Pocatello Post, 223 Pac. (2nd) 389.

And the injuries must have been reasonably foreseen or anticipated for an act of negligence to be a proximate cause.

“... It is generally held that in order to warrant a finding that negligence, or an act not amounting to a wanton wrong, is the proximate cause of the injury, it must appear that the injury was the natural and probable consequence of the negligence or wrongful act and that it ought to have been foreseen in the light of attending circumstances.”

Edgar vs. Rio Grande Western Railroad Company, 32 Utah 330, 90 Pac. 745, Supra.

And Judge Sanborn of the 8th Circuit in a well reasoned case said:

“An injury that is a natural and probable consequence of an act of negligence is actionable, and such an act is the proximate cause of the injury. But an injury which could not have been foreseen or reasonably anticipated as the probable result of an act of negligence is not the proximate cause of it.”

Shellabarger vs. Fisher, 143 Fed. 937.

From the court's finding, although it did not specifically say, it is apparent that the defendant was negli-

gent in at least three particulars: (1) Failure to keep a proper lookout, (2) failure to keep his car under proper control, and (3) driving on the wrong side of the road. (41-6-53, U.C.A. 1953). As to the latter the court found:

“That the said defendant was then and there operating, without just cause or excuse, his vehicle on the left side of the road” (R-6).

These acts were the sole cause of plaintiff's injuries.

The plaintiff's negligence, if any, on being on the left side of the road was at most a remote cause. By being there he merely furnished the condition or occasion upon which the defendant's act of negligence acted. Had the defendant kept a proper lookout, his car under control, and had he driven on the right side of the road there would have been no collision.

Plaintiff being on the left side of the road did not put in motion the agency which inflicted the injury for that agency was the defendant. In every respect the efficient cause was the acts of the defendant. The defendant directed the force, the agency that caused the damage. Had he not released this force, there would have been no injury. How could the plaintiff, traveling in the same direction and being struck from behind, be a controlling agency? How could he have put in motion an agency by which his injuries were inflicted? The plaintiff being there merely furnished the condition or occasion to be acted upon.

The Supreme Court of Idaho in *Chatterton vs. Pocatello Post*, supra, said:

“ . . . that negligence which merely furnishes the condition or occasion upon which injuries are received but does not put in motion the agency by which the injury is inflicted is not the proximate cause thereof.”

And in applying the final test of whether or not the plaintiff could reasonably foresee that his negligence, if any, would result in injury, we ask how could he have reasonably anticipated that he would have been struck by an automobile while he was traveling on the left side of the road either from the front or from behind? Would it not be reasonably anticipated that as to vehicles coming from the front and on their proper side of the road, he could see them and act for his safety and that as to vehicles coming from the rear they would travel on the right hand side of the road, as enjoined by statute?

The plaintiff would no more anticipate the approach of an automobile from behind on the side of the street which the automobile was not expected to use than would a pedestrian. And if this court should say that a pedestrian should anticipate that injuries would result from an automobile striking from behind while walking on the left side of the road facing oncoming traffic, then a pedestrian would not be free of negligence and his negligence would be a proximate cause of his injuries, notwithstanding that he was enjoined by statute to walk on the left side of the road facing oncoming traffic.

We agree that ordinarily the question of proximate cause is a matter of fact for the determination of the

jury or the court, as the case may be. However, where reasonable minds cannot differ, then it becomes a matter of law for this court to determine, and should it determine as a matter of law that plaintiff's negligence, if any, did not contribute to the collision, then the trial court should be directed to enter judgment in favor of the plaintiff and fix the damages.

Walker vs. Peterson, 278 Pac. (2nd) 291, 3
Utah (2nd) 54.

CONCLUSION

In conclusion, plaintiff submits:

(1) That a horseman is not required, as a matter of law, to travel in the nighttime on the right side of a roadway.

(2) That the plaintiff was not negligent in riding on the left hand side of the road, for under the doctrine of equal rights he had an equal right to use the road with the defendant and that when he chose to use the left hand side of the road, leaving the right side clear for the defendant, he was within his rights, and as to this the minds of reasonable men cannot differ.

(3) That in any event, a reasonable and prudent man under like conditions would have ridden where he did, and as to this the minds of reasonable men cannot differ.

(4) That his negligence, if any, could not have been a proximate cause of his injuries, and as to this the minds of reasonable men cannot differ.

That this court should direct the trial court to enter judgment in favor of the plaintiff and against the defendant, fixing the damages, or in the alternate, direct a new trial inasmuch as the trial court was under a misunderstanding in believing that plaintiff was required, as a matter of law, to travel on the right side of the road.

Respectfully submitted,

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