

1957

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

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

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AUG 13 1957

Clerk, Supreme Court, Utah

MILTON WINN,

Appellant,

— vs. —

WILLIAM B. REID,

Respondent.

Case
No. 8575

Respondent's Brief

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MILTON WINN,

Appellant,

— vs. —

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} Case
No. 8575

Respondent's Brief

PRELIMINARY STATEMENT

The Respondent accepts the Appellant's statement of the facts except that Respondent throughout the brief, will at more appropriate times add to, and supplement said Appellant's statement.

POINTS RELIED UPON

POINT ONE

THAT THE COURT COMMITTED NO ERROR IN FINDING THE PLAINTIFF (APPELLANT) NEGLIGENT AND THAT SUCH NEGLIGENCE PROXIMATELY CAUSED OR CONTRIBUTED TO THE APPELLANT'S INJURIES.

POINT TWO

THE COURT COMMITTED NO ERROR IN FINDING THAT THE APPELLANT WAS NEGLIGENT AND IN VIOLATION OF LAW, AND PARTICULARLY FOR THE REASON SAID PLAINTIFF WAS RIDING AND DIRECTING HIS HORSE ON THE LEFT SIDE OF THE HIGHWAY, TRAVELING AGAINST AND TOWARD ONCOMING TRAFFIC AND THAT PERSONS RIDING HORSEBACK ARE SUBJECT TO THE SAME RULES ON THE HIGHWAY, SO FAR AS IS POSSIBLE, AS VEHICULAR TRAFFIC AND THAT THE APPELLANT PROXIMATELY CAUSED OR CONTRIBUTED TO HIS OWN INJURY BY SO RIDING AND DRIVING ON THE HIGHWAY.

ARGUMENT

POINTS ONE and TWO

The Court made findings that 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 . . . the Plaintiff directed his animal over to the wrong side and along said left side . . .”

The further findings merely say the Plaintiff, his horse and the Defendant's vehicle were injured and damaged, and that both the Plaintiff and Defendant were negligent and that the negligence of each was the proximate cause of the resulting accident, injuries and damage.

It is apparent the Court intended to rule that a horse and rider using a highway must use the right side

of the road the same as vehicular traffic and the Court undoubtedly relied on Section 41-6-15, Utah Code Annotated, 1953, which section reads as follows:

“41-6-15. PERSONS RIDING OR DRIVING ANIMALS TO OBEY REGULATIONS.—Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be subject to the provisions of this act applicable to the driver of a vehicle, except those provisions of this act which by their nature can have no application.”

The respondent feels that the Court was entirely correct in holding the Appellant negligent and in violation of law for traveling on the left side of the highway. The Appellant of course claims that a horse and rider must travel in the left lane against traffic as required of pedestrians, and that is one of the issues being presented to the Court.

Every person has a right to use the highway with any means of travel he desires not prohibited by law. Each traveler, regardless of the means being used, must exercise ordinary care so as not to endanger or injure themselves or others. (Butler vs. Cabe (Ark.), 171 S.W. 1190-1.) In our Utah Motor Vehicle Code the legislature has quite completely regulated all types of two to four wheel vehicles whether motor driven or not. Our Code provides specially for pedestrians in Section 41-6-82 (b), Utah Code Annotated, 1953, if of necessity they have to use the highways. But under no pretense could it even be suggested that this section applies to horses and riders. Especially is this so when we note our legislature specially classed all situations of horses being ridden or

driven, with vehicles. This is in the Section 41-6-15 quoted above. Therefore, all persons' rights are equal on the highway, subject of course to the statutory regulations duly imposed by the legislature.

The Appellant on page 8 of his brief quotes our Supreme Court in the case of Dalley vs. Midwestern Dairy Products Company, 15 Pac. 2nd 309, as *suggesting* that the trial court in this case was wrong merely because the court said that men on horseback and in horse drawn vehicles *at that time* were not *required* to disclose a light. That is not our problem but may we point out that that case was decided in 1932 and the section of law in issue was passed in 1941.

The State of California (Sec. 452 in California Vehicle Code) and the State of Oregon (Sec. 115-305 Ore. Comp. Laws) have identical statutes with Utah except that they include bicycles with horses and use the same conditions and restrictions. (See Sec. 275, Calif. Jurisprudence 2nd on Automobiles.) Many cases from these two states repeat the rule that in nearly all requirements, like, using the right side of road, signaling, care and many others, bicycles must be regulated by the same rules as automobiles. It is to be noted that horseback riders are in the same section of, and put in the same class by, the law. (See Flury vs. Beeshau (Calif.), 33 Pac. 2nd 1033; 172 A.L.R. 736, 752, 755.) In the case of Wright vs. Sniffen (Calif.), 181 Pac. 2nd 675-77 the California Supreme Court in interpreting its statute, Section 452, which includes horses and bicycles without distinguishing between them says that a "vehicle" is

“that in or on which a person or thing is or may be carried.”

The Respondent is unable to find a case actually in point, but has found the following cases which we hope will be helpful to the Court. We feel that they summarize the law into the following points:

1. A man on horseback is not a pedestrian and should travel on the right side of the highway instead of the left side.

2. Under the rule of reasonable caution and equal rights on the highway a person riding a horse should be controlled by, and be able to meet, any variance in the many circumstances and situations that are possible so as to always act in the greatest of safety.

3. Horseback riders don't usually require lights, but depending on the circumstances, such as light, darkness, curves, sight obstructions, etc., care should always be exercised even if the rider had to use partially or exclusively the right shoulder of the highway.

As indicated above, Oregon has a law similar to our Utah law. In the case of *Sertic vs. McCullough* (Ore.), 63 Pac. 2nd 884, 887, we have a person walking and leading two horses on the left side of the road. The Court said that they would not find him contributorily negligent merely because he was leading the horses on the *left* side of the road. The Court said this Plaintiff was a *pedestrian*, he was not riding a horse or in any

vehicle, therefore he didn't have to be on the right side of the road. We realize it is not exactly in point but we suggest it because it at least discusses the problem and does make the point that only a pedestrian must travel on the left side. This case is quoted and followed in other later cases.

A very lengthy opinion, written in 1945, goes into the problem in the case of *Lawson vs. Fordyce* (Iowa), 21 N.W. 2nd 69. This was a case of a person leading a cow on the *right* side of the road. This court refused to apply the pedestrian rule and said the person leading the cow belonged on the right side. The Court's reasons as to why are interesting. The Court said:

“(Pge. 83) . . . it is a matter of common knowledge that the safest place for a pedestrian to travel is near the extreme edge of the roadway on his left side, for in that place he need not watch the traffic from the rear and is facing the oncoming traffic and can step to the left on the shoulder to avoid it. . . . (Pge. 84) In the hypothetical situation we have suggested an unencumbered walker might escape by jumping to his left, but a person leading a cow or other domestic animal, or driving one, or driving a harnessed but unhitched horse or team would very likely be unsuccessful in getting the frightened animal or animals to jump with him. The result would probably be a catastrophe for all concerned. We doubt very much that the legislatures of the states mentioned intended such statutory provisions to apply to persons on foot and in charge of horses, cows, and other livestock upon the highways. . . . (Pge. 85) (Pedestrians are those who may use the sidewalks, certainly animals are not

allowed on sidewalks so the law for pedestrians does not apply where a person is in charge of animals.) So far as our research has disclosed, no court by dictum or decision has ever said, and no text writer . . . has ever interpreted these statutes as including a person on foot leading or otherwise in charge of one or more cows, horses, mules, hogs, sheep, etc. on the highway."

The Respondent humbly submits that since the enactment of Section 41-6-5, Utah Code Annotated, 1953, in 1941, horseback riders must use the right side of the highway along with vehicles. The law clearly so states and even the use of that side must be done with care depending on the circumstances even to the extent of getting off onto the right shoulder when cars approach and pass from the rear. The above cases submitted by the Respondent also point out that all interpretations of laws similar to our Utah law uphold the principle that horseback riders must use the right hand side of the road.

Even though there were certain points of conflict in the evidence presented in, and, which had to be sorted and resolved by the lower court, said Court had to make a decision and findings and naturally thereby positively rejected certain bits of evidence. The positive findings included time and place and found that both the Appellant and the Respondent were riding and operating "on the left hand side of the same road" going in the same direction. That the Appellant had travelled 30 rods on the left side "when the accident occurred." BUT THE COURT MADE NO SPECIFIC FINDINGS AS TO

WHERE ON THE ROAD THE RESPONDENT HAD BEEN TRAVELING EXCEPT TO SAY THAT HIS CAR HAD BEEN GOING NORTH AND HIT THE REAR END OF THE HORSE.

The Court then further found both Appellant and Respondent negligent for both being on the wrong side of the road and that the negligence of each was the proximate cause of their own injuries and damage.

It is only natural to assume that the Court gave full consideration and credence to any other testimony introduced at the trial, not specifically in conflict with the above findings, and if the *full* picture of such testimony could give to the court reasonable grounds for its findings, said findings of the Court and its decree should be upheld and affirmed and no new trial granted. This honorable Court has frequently held that even though there be a conflict in the testimony, or even though this Court might have held otherwise had they been the Judge or Judges in the lower court, this Court cannot disturb but must uphold the findings of the lower court unless the lower court was clearly wrong and had no evidence to support said findings.

See:

Yowell vs. Occidental Life Ins. Co., 110 Pac. 2nd 566-7; 100 Utah 120.

Bear River State Bank vs. Merrill, 120 Pac. 2nd 325-7; 101 Utah 176.

Ercanbrack vs. Ellison, 134 Pac. 2nd 177-8; 103 Utah 138.

Palfreyman vs. Bates and Rogers, 158 Pac. 2nd 315-23; 119 Utah 529.

Garrett Freight Lines vs. Cornwall, 232 Pac. 2nd 786-9; 120 Utah 175.

Douglas vs. Duvall, 304 Pac. 2nd 373-4; 5 Utah 2nd 429.

Respondent submits and repeats that the lower court doesn't presume in the least way to find or establish through its findings the details of how or where the accident occurred. We again refer to the Court's findings above. These findings are very general and certainly must be leaving the details to the record. Respondent submits that there is great conflict in this case as to the *claims being made* but there is no conflict in the *ultimate details of this accident*. About the *only important point of conflict* in the testimony of the two parties is the *point at which* the Appellant caused his horse to cross over the highway. Respondent's testimony was to the effect that the horse crossed over just prior to the accident. (R. 73-74). This theory was apparently rejected by the Court but in the other important details Respondent claims there is no serious conflict.

May we briefly point out to the Court the details back of the Court's general findings. *PLEASE NOTE THAT ALL THE FOLLOWING FACTS COME EXCLUSIVELY FROM THE TESTIMONY OF THE APPELLANT'S OWN WITNESSES*. The Appellant was riding a brown horse (R. 27). The accident happened after sundown, just at dusk, and the Respondent had the lights on his car (R. 47, 48, 73). The Respon-

dent's car came to rest at a 22.5 degree angle in the west lane headed in a northwest direction, the left front wheel being six inches, and the left rear wheel being four feet from the west edge of the hard surface of the highway (R. 48, 49). The Respondent's right front wheel was one to two feet from the center line (R. 43). The Respondent skidded and left tire marks of 48 feet beginning from a point where the marks about straddled the center line and headed generally in a northwest direction to the point above indicated (R. 40, 42). The tracks were measured from the rear end where the tracks of the rear wheels started, to the front end where the tracks of the front wheels ended. The Respondent's car had four wheel brakes and measured 10½ feet between the wheels thereby cutting the actual skid to about 38 feet (R. 79 to 89). That the point of impact set by the dirt, debris and glass was at a point at and under the rear end of the car as it stood when the right rear wheel was four feet from the west edge of the road. *This would place the point of impact about six feet east of the west edge of the road* (R. 49, lines 5-6). This cannot be disputed, it is the testimony of the Appellant's own witness, and it is in absolute harmony with all the other testimony of the Appellant's witnesses and was beyond doubt accepted by the Court. Therefore, it appears that we find the Respondent, after he discovers his peril and puts on his brakes, skidding 38 feet from the east lane to the west lane to avoid some peril and it must have been the Appellant's horse because our collision was with the Appellant's horse in the west lane six feet from the west

edge of the road. *This is undisputed and the Court made no finding contrary to it.*

Therefore, looking at *all* the evidence of the case the lower Court must have accepted the fact that the Respondent was driving northward just prior to the accident, at least substantially in his own lane of traffic. The *indisputable* physical facts put the Respondent in said lane, the Court made no contrary findings and couldn't be disputed by the Court. The *indisputable* facts are that the Respondent was confronted by a sudden peril and skidded at least 38 feet into the Appellant and his horse. The Respondent gave an absolutely consistent reason for those skid marks by maintaining and testifying that the horse appeared suddenly before him crossing from the east to the west (R. 73, 74), and Respondent tried to avoid hitting the horse by veering to his left and putting on his brakes. The Court rejected the portion of the evidence that the horse crossed over the highway from the east but the Court made no findings denouncing, amending or rejecting the physical facts of the Respondent skidding diagonally *from the east to the west side of the highway*. The only finding of the Court was that the Respondent was on the west and wrong side of the road with his automobile "without just cause or excuse." So ultimately we find both the Appellant and Respondent on the wrong side of the road. The Court finds them both wrong in being there. Apparently the Court felt the Appellant was there by deliberate action and the Respondent got there because of some sudden action or peril which caused the said Respondent to veer

his car to the wrong side of the highway. Under these circumstances *both would have to be wrong. One couldn't be negligent and the other not.*

THESE FACTS PUT BOTH PARTIES ON THE WRONG SIDE OF THE ROAD, BOTH NEGLIGENT OR IN VIOLATION OF LAW, AND CERTAINLY BOTH SUPPLYING OR CONTRIBUTING TO THE PROXIMATE CAUSE OF BOTH THEIR INJURIES AND LOSSES. CERTAINLY IF THE APPELLANT HAD BEEN COMPLYING WITH THE LAW THE ACCIDENT WOULD NEVER HAVE HAPPENED.

If the Appellant had been on the hard surface on his side the undisputed evidence is that the Respondent in moving to the left would have avoided the accident and certainly if the Appellant had been on the *right* shoulder of the admitted six feet width there would have been no accident.

CONCLUSION

The Respondent submits that:

1. The Appellant was violating the law by riding his horse on the left side of the highway.

2. This violation was the proximate cause of the Appellant's injuries and losses.

3. Had the Appellant been complying with the law he would have received no injuries or losses.

4. For these reasons the judgment of the lower Court should be affirmed, and that the alternate requests of the Appellant for either a new trial or for a direction to the lower Court to fix damages be both denied.

Respectfully submitted,

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