

1957

# Ida and James Williams v. Zion Cooperative Mercantile Institution : Brief of Appellant

Utah Supreme Court

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**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

**FILED**

1957

IDA AND JAMES WILLIAMS,  
*Plaintiffs and Appellant,*

Supreme Court, Utah

—VS.—

ZION COOPERATIVE MERCANTILE  
INSTITUTION,  
*Defendant and Respondent.*

**BRIEF OF APPELLANT**

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IN THE SUPREME COURT  
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STATE OF UTAH

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IDA AND JAMES WILLIAMS,  
*Plaintiffs and Appellant,*

—vs.—

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INSTITUTION,  
*Defendant and Respondent.*

Case No.

8614

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BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This appeal is from a judgment of dismissal with prejudice at the close of plaintiff's case.

Throughout this brief plaintiff and appellant, Ida Williams, will be referred to as plaintiff and the defendant and respondent, Zions Cooperative Mercantile Institution, will be referred to as defendant.

## STATEMENT OF FACTS

The basis of defendant's motion was that the evidence conclusively shows plaintiff was contributorily negligent as a matter of law (R. 66). It was stipulated that the plaintiff, James Williams, be granted judgment against the defendant for the sum of \$157.40 and costs.

The cause of action of plaintiff arose out of a collision which occurred on the 5th day of February, 1953 at about 3:25 P.M. at the intersection of "B" Street and Third Avenue in Salt Lake City.

• Plaintiff was driving a 1947 four door sedan in a southerly direction. As she approached the intersection while at a point about 25 feet north of the intersection she saw a panel truck owned by defendant stopped at the stop sign protecting "B" Street from traffic going east on Third Avenue (R. 49, 50, 51). She then looked to the east and proceeded through the intersection (R. 60). No movement on the part of the truck at the stop sign was ever observed by plaintiff (R. 59). After plaintiff had started into the intersection, when her car was about twenty-five feet from the panel truck, it suddenly pulled out into the intersection (R. 63, 65). The defendant's truck struck the right side of the plaintiff's automobile at the right front door and middle post on the right side. At the moment of the impact plaintiff was driving about 20 miles per hour (R. 63, 64). "B" Street is approximately 40 feet in width and Third Avenue slightly nar-

rower. Both streets accommodate only two lanes of traffic at the intersection (R. 58, 59).

As a result of the collision plaintiff suffered injury and damage to her back and left side. The automobile in which she was riding careened off from the collision and stopped at a point in the gutter on the east side of "B" Street.

From judgment that she was contributorily negligent as a matter of law, plaintiff prosecutes this appeal.

## SUMMARY OF ARGUMENT

### POINT I.

THE COURT ERRED IN RULING AS A MATTER OF LAW THAT PLAINTIFF WAS CONTRIBUTORILY NEGLIGENT.

## ARGUMENT

### POINT I.

THE COURT ERRED IN RULING AS A MATTER OF LAW THAT PLAINTIFF WAS CONTRIBUTORILY NEGLIGENT.

The Trial Court held that plaintiff had a duty even though she was on a street protected by stop signs to continuously watch the automobile which had stopped for the intersection and avoid in every event any movement by such automobile.

Section 41-6-74 U.C.A. 1953 covers intersections and reads as follows:

“The driver of a vehicle shall stop as required by this act at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard, but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on said through highway shall yield the right-of-way to the vehicle so proceeding into or across the through highway.”

Plaintiff saw defendant's panel truck stopped at the stop sign when she was twenty-five feet from the intersection. Concerning the relative positions of the vehicles in the intersection, plaintiff and the witness, Singleton, testified:

“A. Well, on my way home I was going south on B Street. I saw the—there is a stop sign there on Third Avenue, and I saw this Z. C. M. I. panel truck standing there as I was on my way traveling south, you know, to on my way home, and I thought that the truck was standing there with time for me to pass. He were standing there. I saw it.

Q. Did you proceed through the intersection?

A. Yes, I did.

Q. Now, did you ever, Mrs. Williams, see the panel truck start up from the stop sign?

A. No.

Q. What brought to your attention the fact that the truck had left the stop sign?



A. When Mrs. Singleton screamed.

Q. And then what happened?

A. The impact." (R. 13)

\* \* \* \*

"Q. Mrs. Williams, approximately what speed were you proceeding as you came through the intersection of B Street and Third Avenue?

A. Oh, not fast.

Q. Can you give us some idea of about how fast?

A. Oh, about twenty-five miles an hour maybe.

Q. Now, as you proceeded through the intersection, did you see any other traffic in the intersection or near it?

A. No.

Q. Let me ask you if you looked for other traffic.

A. I did.

Q. What direction did you look, Mrs. Williams?

A. I looked to the east and west." (R. 15-16)

\* \* \* \*

"Q. I want you to give me your best recollection how far away you were when you saw it?

A. I would say about twenty-five feet.

Q. North of the intersection?

A. Yes.

Q. At that time this truck was stopped at the stop sign, was it not?

A. Yes.

Q. Did you ever look again to see what happened to that truck until after the accident?

A. No." (R. 50)

\* \* \* \*

"A. No, Mr. Conder, after I saw the truck standing there, thinking he would stay there until I passed, then there wasn't any reason for me to keep watching him. If I had my head turned watching him I could have ran into someone else.

Q. (by Mr. Conder) You didn't watch him any-time after that?

A. No.

Q. How fast were you traveling?

A. Not fast, about twenty miles an hour." (R. 51)

\* \* \* \*

"A. No I don't know how long I looked at it.

Q. Were you proceeding during the time you looked at it in your direction to the south at the rate of twenty miles an hour?

A. Yes.

Q. While you looked at that truck, Mrs. Williams, can you tell us any time you were looking at it you observed it make any movement whatsoever?

A. No." (R. 59-60)

Witness Singleton

"Q. As you approached the intersection of B Street and 3rd Avenue, tell what you observed.

A. As we approached the intersection of B Street and 3rd Avenue, there was a Z. C. M. I. truck standing at the stop sign. We proceeded to go on down and suddenly this truck pulled out into the intersection.

Q. Where were you in the intersection when you saw the truck start to pull out?

MR. CONDER: I think that would be immaterial as far as this witness is concerned.

THE COURT: I will let her answer.

A. We hadn't got into it exactly.

Q. (by Mr. King) Will you tell us what happened?

A. As we got into it, the truck came across around and I yelled to her to look out.

Q. Did you notice what Mrs. Williams did when you yelled to her?

A. She started to swerve the car around to keep him from hitting her.

Q. Was she able to do that?

A. No.

Q. What happened? What happened then, Mrs. Shingleton?

A. After the car was struck, in fact before it was struck I yelled, as I said before, and we was struck and we got into the gutter, or ditch, or whatever it was, and a man got out.

Q. What effect did the impact of the car have?

A. As the truck struck the car, it hit my side and threw me over to her.

Q. Where was the car struck?

A. On the right.

Q. Approximately where on the right?

A. On the right door.

Q. At the moment of the impact, when it struck you, approximately how fast was the car of Mrs. Williams going?

MR. CONDER: I object to an approximation.

Q. (by Mr. King) Do you have an opinion how fast you were going at that time, Mrs. Singleton?

A. About the same speed, she had never speeded up.

Q. That would be how fast?

A. About twenty miles." (R. 63-64)

\* \* \* \*

"Q. About how far were you from the truck when it started to pull away?

A. About how far?

Q. Yes.

MR. CONDER: I object to it, it should be an exact measurement, not an approximation.

Q. (by Mr. King) About how far, in your opinion, was the truck from Mrs. William's car when the truck started to pull out?

THE COURT: The objection is overruled, you may answer.

A. I imagine about twenty-five feet.” (R. 65)

There is no question about the negligence of the driver of the defendant's automobile. He left the stop sign at a time when the automobile driven by plaintiff was obviously so close as to constitute an immediate hazard.

The basic question presented by this appeal is did the plaintiff have the duty to continue to keep her eye on the stopped vehicle which was in a place of safety and did not appear to constitute a traffic hazard to her or could she look to the east and then turn and watch in the direction in which she was driving without further observation to the west. A correlative question also presented is what could plaintiff have done even if she had seen the defendant start up into the intersection.

That plaintiff submits that under the facts and circumstances of this case there could not be presented a purely legal question. At most it is a question of fact whether plaintiff was guilty of contributory negligence.

The general law seems to be clear. It is stated in Volume 5A American Jurisprudence, page 686, section 712.

“A driver who makes reasonable observation before entering an intersection is not contributorily negligent as a matter of law for failing to make additional observation. When it appears to be safe to cross an intersection, an automobile

driver's contributory negligence in the light of the defendant's unanticipated speed or other negligence is for the jury.

“Clearly, however, the fact that the plaintiff proceeded into or across an intersection with the traffic signal or sign in his favor ordinarily precludes finding him guilty of such negligence as a matter of law, and he is sometimes held free of contributory negligence as a matter of law in such circumstances.”

See also: Blashfield, *Cyclopedia of Automobile Law and Practice*, Volume 10, Part 2, Section 6619 P. 10-17, and 1956 Cumulative Pocket Part, No. 6619, P. 7-20.

The general rule, which is recited by American Jurisprudence and by Blashfield has been on numerous occasions recognized and cited by this court in its intersection cases. The most recent case which plaintiff has been able to discover is *Bates v. Burns*, 3 Utah 2d 180, 281 P. 2d 209.

In the Bates case the question of negligence of a driver approaching a through highway on a disfavored highway was found by this Court to be a question of fact. Bates observed the automobile of the defendant approaching him at one hundred fifty feet on a through highway but since he had commenced to cross the intersection he proceeded with the right-of-way in his favor. Certainly if Bates was not contributorily negligent as matter of law in proceeding across the through highway

watching other traffic which might be in the vicinity, plaintiff, here, cannot be so held. She proceeded into the intersection after observing that the defendant was stopped at the stop sign and apparently was waiting for her to cross. At the time she observed defendant, plaintiff was obviously so close to the intersection as to constitute an immediate hazard. Defendant pulled only a short way into the intersection and struck the automobile of the plaintiff at the front door and towards the middle of the car. This would demonstrate that plaintiff was over half way through the intersection before the defendant even moved.

This Court has not had before it the exact facts which are the basis of the trial court's ruling. But on numerous occasions has had before it intersection collisions which present a more difficult and closer question as far as contributory negligence is concerned. In the following cases this Court has steadfastly held that in intersection collisions where time, distance, and other such important factors are matters of opinion and usually driver opinion the question of negligence and contributory negligence are matters which should be left for the jury to determine. See the following: *Beck v. Jeppesen*, 1 Utah 2d 127, 262 P. 2d 760; *Martin v. Stevens*, ..... Utah ....., 243 P. 2d 747; *Poulsen v. Manness*, ..... Utah ....., 241 P. 2d 152; *Lowder v. Hallen*, 120 Utah 231, 233 P. 2d 350; *Martin v. Sheffield*, 112 Utah 478, 189 P. 2d 127.

All of the cited cases demonstrate the basic principal

that in intersection collisions the questions of fact are so close and the application of standards of care are so nicely balanced that the jury must be left to apply the standards and determine the basic facts.

There are several cases from jurisdiction other than Utah similar to the situation before the Court. One of the most interesting cases is *Pollind v. Polich*, 78 Cal. App. 2d 87, 177 P. 2d 63. In this case the person on the disfavored roadway observed the favored driver approaching approximately two hundred feet away. The question was whether or not the favored driver was contributorily negligent as a matter of law in failing to observe the disfavored driver leave the stop sign and proceed into the intersection. The California Statute is similar to the Utah law quoted. The Court stated:

“Defendant had a right to assume not only that the car in which plaintiff was riding would make the required stop at 43rd Street, until he observed or, in the exercise of ordinary care, would have observed that the driver was not making a stop, but also that the Ford car would not enter the intersection in front of cars approaching so closely as to constitute an immediate hazard. Defendant testified that he saw the Ford car approaching when it was about 30 feet west of the intersection, but as he was passing the Pulliam car his view of the Ford was obstructed as he approached the intersection, and that he assumed that Secrest, the Ford driver, would stop long enough to allow his car and the Pulliam car to pass through the intersection first. He also testi-



fied that he next saw the Ford when it was about 12 or 15 feet in front of him, but that he the defendant, could not swerve to the right to avoid a collision because of the Pulliam car. Secrest testified that he saw the Pulliam car approaching but did not see that of defendant. It was clearly a question of fact whether defendant was guilty of negligence in assuming that Secrest would not enter the intersection in front of his car and that of Pulliam, but would remain at the boulevard stop sign until the two cars had passed." (Page 65)

An additional authority directly at point concerning the duty of the person on a through highway is *De Priest v. City of Glendale*, 74 Cal. App. 2d 464, 169 P. 2d 17. Here the plaintiff admittedly failed to maintain a constant lookout as he approached the intersection and did not observe the car which came into collision with him. The California Court following the general rule again held that under the facts and circumstances the negligence and contributory negligence were questions of fact for the jury to determine.

One of the most important cases which seems to be directly in point is *Mead v. Cochran*, 184 F. 2d 579. This case involved an accident on the open highway. The defendant left a stop sign after stopping and turned in front of the plaintiff's automobile. There was a collision. The basic question was whether or not plaintiff was contributorily negligent since his testimony indicated that he did not see the defendant's car at any time prior to

the impact. The Federal Circuit Court following the general rule held this was a question of fact to be submitted to the jury to apply the basic standards of care on the part of the driver of the automobile on the through highway. The following quote sets forth the facts and ruling:

“Furthermore, plaintiff did testify that he looked to his left about 100 feet from the intersection, and that before reaching that point there were trees and bushes on his left along old Route 40 which obstructed his view. Under the circumstances it might be that defendant’s stationary car did not make a permanent mental impression upon the plaintiff. Defendant’s automobile had been at a standstill at some point within 15 to 23 feet distant from the pavement of new Route 40. Defendant suddenly started his automobile in motion, intending to cross the center line of New Route 40 and then swing to his left in order to proceed along it in a northeasterly direction.

\* \* \* \*

“Under the facts of this case we believe that the question of contributory negligence was a question of fact for the jury.” (Page 581)

In *Foresman v. Pepin*, 71 F. Supp. 772, affirmed 161 F. 2d 872. Plaintiff approached on a through highway and observed that on her left the traffic on the highway was stopped, she then proceeded to cross through the intersection and did not look to the right to see the truck of defendant which was approaching and which ultimately came into collision with her. It was conceded

that if plaintiff had looked to the right at the intersection she may have been able to avoid the collision with the truck owned by the defendant. The Federal District Court submitted the case to the jury. He overruled the motions for a new trial and was affirmed on appeal. Held that the contributory negligence of plaintiff was a question of fact for the jury.

The discussion in the Foresman case concerns the normal habits of drivers who are on through highways and who cross intersections where other traffic is waiting. Once a driver commits himself to a certain course of conduct, i.e., crossing the intersection, additional observation may or may not be possible. The significance of the driver's actions in either causation or in applying the standards of care is for the jury to determine. It would be a very unusual situation if the driver could prevent collision should another vehicle enter the intersection after he had commenced the crossing.

## CONCLUSION

Plaintiff respectfully submits that the lookout which a person approaching an intersection on a through highway must make is dependent upon the surrounding circumstances. Whether the lookout is one which a reasonably prudent person would make must be left to the jury for its determination. Whether the making of additional observations would have prevented the collision is also a fact question. The Trial Court erroneously de-

terminated these fact questions as matter of law and his decision should be reversed.

Respectively submitted,

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