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Rogert Gordon; J. Grant Iverson; Attorneys for Appellant;

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IN THE SUPREME COURT
of the
STATE OF UTAH

FILED

FEB 11 1957

Clerk, Supreme Court, Utah

CHESTER WILLIAM WRIGHT,
Appellant,

vs.

SALT LAKE TRANSPORTATION COMPANY, a corporation
Respondent.

Case No. 8615

APPELLANT'S BRIEF

ROBERT GORDON
J. GRANT IVERSON
Attorneys for Appellant

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IN THE SUPREME COURT
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CHESTER WILLIAM WRIGHT,
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Case No. 8615

APPELLANT'S BRIEF

STATEMENT OF FACTS

This case involves an automobile collision which occurred on January 26, 1955, at approximately 8:35 P.M. at the intersection of Main Street and Robert Avenue (2430 South) in Salt Lake City, Utah. There is no traffic control at said intersection for vehicles proceeding North and South on Main Street. There are stop signs located on Robert Avenue to control traffic proceeding East or West on Robert Avenue at its intersection with Main Street.

Chester William Wright, plaintiff and appellant, was proceeding North on Main Street, in the outside lane, at a speed of thirty to thirty-five miles per hour. Respondent was proceeding East

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on Robert Avenue. Wright first observed the Respondent's vehicle from a distance of 90 feet away and at that time Wright contends the vehicle was just entering the intersection. Upon observing Respondent's vehicle entering the intersection, Wright immediately applied his brakes. His vehicle struck an icy portion of the street and skidded into Respondent's vehicle, the point of impact being near the center of the intersection. Main Street was clear and dry except for a portion thereof adjoining the intersection where the shadow of a building apparently covered the street preventing the thin layer of ice thereon from melting. The aforesaid building is virtually on the property line of Main Street and presents an obstruction to the view of the driver on Robert Avenue from observing traffic proceeding North on Main Street and approaching the intersection with Robert Avenue. Respondent contends that its driver had either stopped at the stop sign and then was proceeding out into the intersection or did not stop at the stop sign and was proceeding out into the intersection beyond the building to look down Main Street when the accident occurred and was in the process of stopping at the time of impact. (R 1, 2, 5).

Based upon the foregoing facts, which were presented by counsel at pre-trial, the trial judge concluded that the statements of counsel presented no jury questions and the case was dismissed. (R 7).

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STATEMENT OF POINTS

POINT I

THE TRIAL COURT ERRED IN DISMISSING THE CASE AT PRE-TRIAL, BASED UPON COUNSEL'S STATEMENT OF FACTS. THE CASE SHOULD HAVE BEEN PERMITTED TO PROCEED TO TRIAL AND DISPUTED QUESTIONS OF FACT REGARDING NEGLIGENCE SUBMITTED TO THE JURY FOR DETERMINATION. THE FOLLOWING QUESTIONS OF FACT SHOULD PROPERLY BE SUBMITTED TO THE JURY FOR DETERMINATION:

(a) WHICH PARTY HAD RIGHT OF WAY AT INTERSECTION? WAS PLAINTIFF APPROACHING INTERSECTION WITHIN SUCH PROXIMITY THERETO AS TO BE CONSIDERED WITHIN THE RANGE OF IMMEDIATE HAZARD, THEREBY MAKING DEFENDANT NEGLIGENT IN ATTEMPTING TO ENTER SAID INTERSECTION?

(b) DID DEFENDANT COME TO A COMPLETE STOP IN OBEDIENCE TO STOP SIGN? IF DEFENDANT DID STOP, WAS SUCH STOP AT THE ENTRANCE TO INTERSECTION AS REQUIRED BY STATUTE AND WAS SUCH STOP OTHERWISE SUFFICIENT TO COMPLY WITH REQUIREMENTS OF SECTION 41-6-74 UCA, 1953?

(c) PROXIMATE CAUSE OF COLLISION.

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ARGUMENT

POINT I

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(c) PROXIMATE CAUSE OF COLLISION.

The appellant herein contends that the limited evidence presented to the trial court, at pre-trial, presented sufficient questions of fact regarding negligence of the parties to be submitted to the

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jury for determination and such evidence did not warrant a dismissal of the case at pre-trial.

Section 41-6-74 UCA, 1953 provides:

> VEHICLE ENTERING A THROUGH HIGHWAY. 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.
>
> (b) 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 obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

There is no evidence in the record regarding the Respondent driver's first observation of Appellant's approaching automobile. The Appellant first observed the Respondent when the two cars were ninety feet apart and at that time Appellant was travelling thirty to thirty-five miles per hour and

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Respondent was travelling very slowly entering the intersection (R 2). The Appellant contends that under such circumstances, a jury could properly find that the Respondent was negligent in failing to yield the right of way to Appellant in that Appellant was approaching the intersection so closely as to constitute an immediate hazard. This position is stated in American Jurisprudence as follows:

> 5A Am Jur, Automobiles, Sec. 327. YIELDING RIGHT OF WAY. *** (P. 433) It is frequently provided by statute that a motorist approaching a highway which is protected by stop signs must yield the right of way to vehicles approaching so closely as to constitute an immediate hazard, the question whether a particular vehicle constituted such a hazard in a particular case being one for the jury.

Assuming that defendant had stopped at the stop sign, or that he had stopped at a point nearer the intersection thereby avoiding the obstruction to his view caused by a building on the corner of the intersection, he was still negligent in failing to yield the right of way to plaintiff. The mere act of stopping, without more, could not discharge the defendant driver's duty to vehicles travelling on the through street. He had the further duty of looking for oncoming traffic and yielding the right of way to those vehicles within the range of hazard. In *Hickok* v. *Skinner*, 190 P.2d 514, this court held

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that a driver must do more than merely stop at a traffic signal in order to discharge his duty of due care. He must, after stopping, continue to appraise the traffic situation to determine whether or not it is safe to proceed. In Justice Wolfe's dissenting opinion, at page 514, he states: "Whether an approaching driver is so close to the intersection as to constitute an immediate hazard is largely a question of human judgment, and will depend upon a number of factors, e.g. width of intersection, speed of intersection, speed of approaching automobile, visibility conditions, whether the road is dry or slippery, and many other factors. And since the relative rights and duties of drivers approaching an intersection such as this depends to a large extent upon the exercise of human judgment, I am inclined to the opinion that the question of whether or not the judgment exercised by the drivers was reasonable, is a question of fact for the jury".

In *Smith* vs. *Lenzi*, 279 Pac. 893, this court held, in an intersection case, that the speed that the cars were approaching, their distance from the point of intersection, the ability of the respective drivers to see, were all factors to be considered by the jury in determining whether appellant or respondent was entitled to the right of way. There are numerous cases from other states, notably California, involving intersection accidents as in the instant case,

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wherein the Courts have held, under a right-of-way statute identical with the Utah statute, that a jury question is presented in determining whether or not a vehicle is approaching so closely as to constitute an immediate hazard. *Zwerin* vs. *Riverside Cement Co.* 126 P.2d 920 (Calif.); *Von Cise* vs. *Lencioni*, 235 P.2d 236 (Calif.); and *Mason* vs. *San Diego Electric Ry.*, 133 P.2d 341 (Calif.).

The testimony in the record, while asserting that Respondent's driver stopped for the stop sign, fails to establish the point at which he stopped. The record indicates (R 2, 5) that the Respondent's driver did stop at the stop sign and then was either proceeding very slowly past the building obstructing his view or stopped again at a point past the building. The record then indicates (R 5, 6) that the driver did not stop at the stop sign but proceeded slowly past the stop sign and stopped at the property line past the building. There is testimony in the record that there is a building on the corner at the intersection that obstructs the view of Main Street for a driver proceeding East on Robert Avenue, (R 2). The appellant contends that if a stop was made, it was made at the stop sign, at a point from which the defendant's driver could not observe approaching traffic on Main Street and, conversely, vehicles proceeding North on Main Street could not observe the stopped vehicle on Robert Avenue. The duty prescribed by the statute,

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Section 41-6-74, is that the driver stop at the entrance to the through highway. The Appellant first observed Respondent's driver moving into the intersection and did not observe him stopped at the entrance to the intersection or at any other place. In view of the vague testimony in the record, the matter should properly be submitted to a jury to determine whether or not Respondent's driver complied with the requirements of the statute in stopping at the entrance to the intersection.

The statute does not prescribe the exact point at which a driver is required to stop, it only prescribes that the stop must be made at the entrance to the intersection. Obviously, the intent of the legislature must have been that the stop be made at a point where the driver can fully observe approaching traffic on the through highway and also where the driver on the through highway can fully observe the motorist on the secondary road. A driver could not possibly ascertain whether or not approaching automobiles constitute an immediate hazard unless he is in a position to observe such approaching automobiles. In the absence of definite evidence regarding the point of stopping, there is no evidence that Respondent fully complied with the aforementioned statute. The Appellant contends that the respondent driver's failure to stop at a point where he could observe, and be observed,

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constituted negligence which proximately caused the accident.

The standard of care required in such circumstances has been stated in 60 C.J.S. Motor Vehicles, Sec. 350 b (2), as follows:

> Visibility; obstruction of view (P. 830). Visibility at the intersection is a factor to be considered in determining the care to be exercised by a driver at an intersection. A driver whose view is obscured or obstructed is particularly under a duty to use due care; ordinarily it is incumbent on him to exercise more caution than would be required if his view were unobstructed, and the standard of care in such event has been laid down as extreme care, or the care that a very prudent person would exercise under the same or similar circumstances.

In regards to the place of stopping for a stop sign, 60 C.J.S. Motor Vehicles, Sec. 353, states:

> Time, Place and Character of Observation — Time and Place. While there is no arbitrary rule as to the time at which, or the particular point from which, the driver is obligated to look, due care requires him to look at a time when and place where observation will be reasonably efficient for protection * * * he should look at a time and place when looking will reasonably apprise a reasonably careful person of the conditions confronting him at the intersection, so that he may control his actions accordingly.

The rule is stated in 5A Am Jur, Automobiles, Sec. 325:

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> It is incumbent upon a motorist on an unfavored highway, before entering an arterial highway or street, to stop and make his observation at a place or position where that observation will be effective to disclose approaching traffic. Generally speaking, his duty is to stop at a point somewhere between the stop sign and the arterial highway where he may effectively observe traffic approaching on the arterial highway.

In *Gartrell* vs. *Harris*, 187 SW2d 1019 (Ky), the court held that whether a motorist reasonably exercised judgment in selection of a point at which to make his stop before entering intersection with through highway was a question of fact for the jury. Before entering intersection with through highway, his auto must be stopped at a place where the view is sufficiently clear to permit observation of approaching traffic and driver should not proceed into intersection until he can do so with safety.

In *Cameron* vs. *Goree*, 189 P.2d 596 (Ore.), involving a similar fact situation as the instant case, and an identical right of way statute, the court held as follows: Obviously, yielding the right of way to cars with which a collision would otherwise occur is the chief objective of the stop requirement. A motorist upon a secondary way must, therefore, do three things: (1) stop, (2) look and (3) yield the right of way to cars within the range of hazard. The third duty makes it manifest that the legisla-

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ture intended that the stop must be made where an adequate view is obtainable. We are convinced that our traffic act means that drivers upon laterals must stop where they can see not only the cars in the intersection but also those approaching upon the trunk highway.

The Utah Court held in *Bullock* vs. *Luke,* 98 P.2d 350, that there is no arbitrary rule as to the time and place of looking for vehicles on an intersecting road and no particular distance from intersection is prescribed for that purpose, but general standards are that observation should be made at first opportunity and at a point where observation will be reasonably efficient for, and conducive to, protection.

In *Elmore* vs. *Lassen County,* 51 P.2d 481 (Calif.) the court held that the driver of an automobile entering a through highway did not fulfill his duty or comply with the right of way statute by stopping at a point from which his view of the through highway was obstructed and from which point he could not ascertain if a vehicle was approaching so closely from the left as to constitute an immediate hazard.

The Appellant contends the foregoing decisions are applicable in the instant case and that the sufficiency of the respondent's stop, if any, is not established by the testimony in the record and in the

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absence of such testimony the Trial Court erred in finding the respondent free of negligence. Appellant contends that respondent's driver did not make a stop in compliance with the statute and that such action constituted negligence which proximately caused the resulting collision.

CONCLUSION

The Appellant submits that the issues respecting negligence in this matter should be submitted to a jury for determination and that the trial court was in error in dismissing the appellant's case at pre-trial. Appellant respectfully requests that this court reverse the judgment of dismissal entered by the Trial Court.

Respectfully submitted,

ROBERT GORDON
J. GRANT IVERSON
Attorneys for Appellant

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