1957

Chester William Wright v. Salt Lake Transportation Co. : Brief of Respondent

Utah Supreme Court

H. R. Waldo, Jr.; Ray, Rawlins, Jones & Henderson; Attorneys for Respondent;

In the

Supreme Court of the State of Utah

CHESTER WILLIAM WRIGHT,
Appellant,

vs.

SALT LAKE TRANSPORTATION COMPANY, a corporation,
Respondent.

Case No. 8615

RESPONDENT'S BRIEF

H. R. WALDO, JR.,
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Attorneys for Respondent.

ARROW PRESS, SALT LAKE

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STATEMENT OF FACTS

From the admitted allegations of the complaint and from the statements of counsel at pretrial of the evidence he would introduce in behalf of his claim, plaintiff presented the following facts: That a collision occurred on January 26, 1955, at approximately 8:35 P. M. at the intersection of Main Street and Robert Avenue in Salt Lake City, Utah, between automobiles driven by the plaintiff Wright, a highway patrolman, and the defendant's employee Lambert; that immediately before the collision, the plain-

tiff was proceeding north on Main Street in the outside lane, that is, the lane nearest the east curb, at a speed which he estimated at 30 to 35 miles per hour; that when Wright was 90 feet away from the intersection he, for the first time, observed defendant's automobile entering the intersection and applied his brakes, but because of an icy portion on the street not observed by him, the brakes failed to hold and the car spun around from the outside lane closer to the center of the road and crashed into defendant's vehicle; that the point of impact occurred in the middle of the intersection or barely over the center line of the intersection; that the road was clear and dry except for the ice on which plaintiff skidded.

Defendant and respondent presented the following additional facts: That defendant's driver stopped at the stop sign and, because of the building obstructing his view to the south, proceeded forward at a slow rate and again stopped slightly beyond the property line to look for oncoming traffic and then proceeded into the intersection at a slow rate of speed—barely moving according to plaintiff (R. 8) or not more than 3 to 4 miles per hour. Defendant stated that the driver may not have stopped at the stop sign first as the view to the south was obstructed, but if he did not, he did stop slightly beyond the property line where he could observe the traffic on Main Street. At the time of the impact, Lambert had stopped or was proceeding to stop his car and the impact occurred in the southwest quadrant of the intersection, that is, in the south bound traffic lanes on Main Street.

Based on these facts, the trial court dismissed the case.

STATEMENT OF POINTS

POINT I

THE TRIAL COURT CORRECTLY DISMISSED THIS CASE BECAUSE THE ADMITTED FACTS FAILED TO SHOW THAT DEFENDANT WAS NEGLIGENT AND, FURTHER, SAID FACTS SHOW THAT PLAINTIFF WAS CONTRIBUTORILY NEGLIGENT, THAT NONE OF THE ACTS OF DEFENDANT PROXIMATELY CAUSED THE ACCIDENT, AND THAT THERE WAS AN UNAVOIDABLE ACCIDENT.

ARGUMENT

POINT I

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It is the position of respondent that the facts presented as above set forth are insufficient to state a cause of action against defendant and that no reasonable juror could con-

clude on such facts that defendant was in any way liable to plaintiff.

An intersection accident is involved here. The evidence is uncontradicted that defendant's driver, Lambert stopped before entering the intersection (R. 7, 10, 11) and that he was in the intersection at a time when plaintiff was more than 90 feet from the intersection (R. 7). Having stopped before entering the intersection, Lambert was entitled to proceed into the intersection and plaintiff was required to yield the right-of-way to him. 41-6-74(a), U. C. A. 1953; *Smith* v. *Lenzi,* 74 Utah 362, 279 P. 893; *Hickock* v. *Skinner,* 113 Utah 1, 190 P. 2d 514. True, Lambert could not project himself into a position of danger where there was an immediate hazard of collision, but there is no evidence here that he did so nor was any such evidence offered. When Lambert entered the intersection, plaintiff was more than ninety feet away (plaintiff stated when he saw defendant that defendant was in the intersection and plaintiff was then 90 feet away (R. 7). Defendant did not race across the intersection into the lane in which plaintiff was traveling in order to get across first as was the case in *Bullock* v. *Luke,* 98 Utah 501, 98 P. 2d 350, but proceeded slowly and cautiously at not more than three to four miles an hour or barely moving as stated by plaintiff (R. 8). As is the case with most motorists, Lambert apparently believed in giving police cars a wide berth. The Highway Patrol car was traveling in the outside lane on the opposite side of the street from defendant's vehicle and Lambert was entitled to assume that he would stay there. Surely, he cannot be charged with knowing that plaintiff would slam on his

brakes, hit some ice and spin from one lane to another. Indeed, since the impact occurred in the southwest quadrant of the intersection or (giving plaintiff the benefit of the doubt) in the center of the intersection or barely east of the center (R. 10) and defendant had stopped or was stopping at the time (R. 7), it appears that defendant was prepared to let plaintiff pass on the outside lane before proceeding further across the intersection.

Plaintiff argues that there is no definite evidence that defendant's driver stopped before entering the intersection, but apparently the statements at Page 11 of the Record were overlooked:

> "He [Lambert] either stopped at the stop sign first and then stopped again slightly beyond the property line, or he stopped slightly beyond the property line without first stopping at the stop sign."

We may concede that defendant's obligation to stop before entering the intersection required him to stop at a point where he could observe the traffic yet the record shows that this was done (R. 11, 7, 10).

Coming now to plaintiff's actions, he was proceeding, according to his own statement, at 30 to 35 miles per hour. This is in excess of the speed limit established by Sec. 41-6-46(b)(2), U. C. A. 1953. Since there is no evidence of unusual circumstances or a higher speed limit lawfully created by proper authorities, this speed constitutes negligence on the part of Patrolman Wright as a matter of law. *Jensen* v. *Utah Light & Rwy. Co.*, 42 Utah 415, 132 P. 8.

Finally, even, assuming plaintiff was not contributorily negligent, at most the evidence shows that the accident was unavoidable. As has been pointed out previously, the Highway Patrol car was traveling in the outside lane. In the ordinary course of events, Patrolman Wright would and should have stayed in that lane especially after observing Lambert coming from the opposite side of the street. But, when he put on his brakes, he ran onto an icy stretch of pavement and the car spun away from the outside lane and at least to the center of the roadway where the impact occurred. Had the patrol car not spun on the ice, it would have passed defendant without any collision. Defendant at the time was stopped or stopping in the center as plaintiff states or on the west side of the road as defendant states. In either event, the patrol car in the easternmost lane would have passed by without incident had it not been for the spin on the ice, ice which according to the evidence neither party could have foreseen. But for the skid propelling the patrol car out of the outside lane, there would have been no accident.

CONCLUSION

For the foregoing reasons, we contend the judgment of the court below should be affirmed.

Respectfully submitted,
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Attorneys for Respondent.