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Ethel M. Gibbon v. Orem City Corporation, and Gary Scott Crawford : Respondent's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

ETHEL M. GIBBONS,
Plaintiff and Appellant,

vs.

OREM CITY CORPORATION,
and GARY SCOTT CRAWFORD,
Defendants and Respondents.

Case No.
12476

RESPONDENTS' BRIEF

Appeal from a Summary Judgment of the
Court of Utah County,
the Honorable Allen B. Sorenson, Judge

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NATURE OF CASE

This is an action against Orem City Corporation and its employee. Plaintiff claims property damage and personal injury which allegedly resulted from a collision between plaintiff's automobile and a vehicle owned by defendant Orem City and driven by its employee, defendant Gary Scott Crawford.

Plaintiff alleges that the driver of defendant's vehicle was negligent in his operation of said vehicle. Defendant denied its driver's negligence, and alleged that plaintiff's negligence proximately contributed to her damage and injuries, barring her recovery.

DISPOSITION IN LOWER COURT

The District Court for Utah County granted defendants' motion for summary judgment and judgment was entered in favor of defendants upon the grounds that plaintiff was contributorily negligent as a matter of law, which was a proximate contributing cause of her damage.

RELIEF SOUGHT ON APPEAL

The respondents seek an affirmation of the trial court's decision.

STATEMENT OF FACTS

On October 7, 1968 at approximately 12:50 p.m. plaintiff, Ethel M. Gibbons, was driving her automobile south on State Street in Orem, Utah, with May Sorenson, deceased, as her passenger. As plaintiff's automobile approached the intersection of State Street and State Road 52 she drove into the left turn lane and stopped, in compliance with the semaphore light which was red for south bound traffic. When the semaphore light she was facing changed to green, plaintiff attempted to make a left turn into the path of the north bound traffic facing her, which traffic included the Orem City truck driven by the defendant, Gary Scott Crawford. Plaintiff failed to see defendnt's truck and another vehicle driven by witness Boyd Erickson, both of which were north bound, and her automobile and defendant Orem City's truck collided in said intersection.

ARGUMENT

POINT I.

PLAINTIFF WAS CONTRIBUTORILY NEGLIGENT AS A MATTER OF LAW.

A. IN FAILING TO KEEP A PROPER LOOK-OUT.

Plaintiff testified in her deposition that she did not see defendant Orem City's truck prior to the collison. Her testmony is quoted as follows:

Q. You were stopped waiting for the light to change from red to green?

A. Yes.

Q. The question is were there any other cars on the opposite side of the intersection headed in a northerly direction or opposite from your car? Do you follow me?

A. There was no one in my lane of traffic, I guess I could say.

Q. I didn't make myself clear. You were stopped, your car would be facing south waiting to make a left hand turn to go east, were you not?

A. Yes.

Q. And you were waiting for the light to change from red to green. Now were there any other cars on the opposite side of the intersection also waiting for the light to change that you remember?

A. *I do not remember.* I knew that there was no one obstructing my lane of traffic.

Q. You intended to make a left hand turn to go east, did you not?

A. Yes.

Q. Up towards Heber City?

A. Yes.

Q. After the light changed you started to make your left hand turn, is that right?

A. Yes.

Q. Did you see any vehicles come ino the intersection going north which might interfere with your path or the path your car was going?

A. *I did not.*

Q. Did you see the truck which struck your car before the collision occurred?

A. *I did not.*

Q. *Then your first notice that an accident was happening was when a truck hit your car, is that right?*

A. *Struck my car.*

Q. *You didn't see the truck before it struck your car?*

A. *No, indeed.* If you will excuse me I had made that turn many,many times before.

(Plaintiff's deposition, page 7, beginning with line 7 and continuing to and including line 15, page 8). (Emphasis added).

During questioning by her attorney plaintiff similarly testified as follows:

Q. You were headed in a south and easterly direction to make a left turn, is that right?

A. Yes.

Q. Where did you look in the course of making that turn, or did you have your eyes closed?

A. No, I didn't have my eyes closed, never when I was driving a car.

Q. Go ahead, tell us where you looked?

A. I looked in the direction which I was going, east.

Q. Did you look in any other direction?

A. And I looked in the direction to the right of me to see that there was no one coming that would be in front of me.

Q. Would that be to the west?

A. No, that would be watching for the traffic coming from the south, if I remember my directions right.

Q. Did you see any coming from the south?

A. *I never saw anyone. They told me that is where the truck came from, but I did not see him. I did not see him.*

(Plaintiff's deposition beginning with line 27, page 18 and continuing to and including line 15, page 19). (Emphasis added).

In her own affidavit which is dated subsequent to her deposition, plaintiff reiterates that she did not see the approaching traffic:

> . . . I never saw the truck that hit me. My blinker signal was on for my left turn. I had looked to the south to see if any traffic was coming from the south. I saw no traffic coming in my direction and proceeded with my turn. . . . (R. 141).

It should be noted that plaintiff herself never stated in her deposition or affidavit that her view was obstructed in any way. Instead she testified that she did not see defendant's vehicle until impact and that she saw no traffic coming in her direction.

The only suggestion that plaintiff's view of defendant's vehicle was in some way obstructed is made by plaintiff's attorney in their brief, on page six. There they affirmatively state, without supporting evidence, that the position of Mr. Boyd Erickson's car obscured defendant's dump truck and that plaintiff could not see the truck because of the Erickson car.

Later, on page seven of plaintiff's brief, it is claimed that the skid marks of defendant's truck shown in the photographs show that the defendant driver would have been able to see "out over a passenger car such as the Erickson vehicle." On one page plaintiff says that her view was probably obstructed. However, on the following page she claims that the defendant truck driver could have seen over that very obstruction. It would seem fair to conclude that if the defendant driver could see the plaintiff, then the plaintiff could also see the defendant.

The law has been clearly established in this state that a motorist who makes a left hand turn in the face of oncoming traffic, on a busy highway, must exercise reasonable care to be aware of the position of approaching vehicles, their speeds, and must appraise the situation as to whether said turn can be made safely. *Budge vs. Yeates,* 122 Utah 518, 252 P2d 220; *Hickok vs. Skinner,* 113 Utah 1, 190 P2d 514; *French vs. Utah Oil Refinery Co.,* 117 Utah 406, 216 P2d 1002; *Cederloff vs. Whited,* 110 Utah 45, 169 P2d 777; *Gren vs. Norton,* 117 Utah 121, 213 P2d 356.

The case of *Smith vs. Gallegos,* 16 Utah 2d 344, 400 P2d 570 (1965) is clearly distinguishable on its facts from the case at bar. In that case the plaintiff testified that he pulled into the left hand turn lane, signalled his turn, that as he was stopped he noticed cars in the northbound turn lane, that when the light turned green and the vehicles started to turn west, he checked and "everything was clear as far as he could see", that he was almost across the intersection when he saw the head lights of the defndant's truck "bearing down on him." The evidence showed the defendant Gallegos had been northbound on the inside lane, and as he approached the intersection, pulled into the outside lane around other northbound cars at an accelerated rate of speed.

In this instance plaintiff on a clear day, saw no vehicles, not even the Erickson car which was forced to make an abrupt stop to avoid a collision.

The case of *Hardman vs. Thurman,* 121 Utah 143, 239 P2d 215, cited by plaintiff also involved a different fact situation. In that case plaintiff was making a left hand turn to go east through the intersection of State Street and 21st South Street in Salt Lake City. When the light turned green she stopped to permit northbound traffic to proceed through the intersection. There was a truck making a left hand turn from the inside lane, another vehicle in the middle northbound lane had stopped to permit plaintiff to make the turn, under those circumstances she was clearly justified in assuming defendant's truck would also stop and yield her the right of way. Contra to the plaintiff in the case at bar, she made a careful appraisal of the situation and did not continue with her left hand turn until it became apparent northbound traffic had yielded her the right of way.

From plaintiff's own testimony the evidence is conclusive that she did not see nor make any attempt to see approaching traffic which was there to be seen.

B. FAILING TO YIELD THE RIGHT OF WAY IN VIOLATION OF 41-6-73 UTAH CODE ANNOTATED.

The Utah statute controlling right of way where one driver is making a left turn reads as follows:

> The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, during the time when such driver is moving within the intersection.

The affidavits of witness Boyd Erickson and defendant Gary Scott Crawford establish that their vehicles were each so close as to constitute an immediate hazard to plaintiff making a left turn through the intersection. In defendant Gary Scott Crawford's affidavit he states that he first observed plaintiff's automobile as it moved into his lane of traffic making a left turn. (R. 57). He estimates the distance separating the two vehicles at 70 to 75 feet. (R. 57). He detected no evasive action by plaintiff. (R. 57). He further states that plaintiff and her passenger appeared to be talking to each other just prior to the collision. (R. 57).

The affidavit of witness Boyd Erickson (R. 61) states that he was north bound on State Street and 800 North (State Road 52) when he witnessed the collision between plaintiff's and defendant's vehicles. As he approached the red semaphore he braked almost to a stop. When he was almost stopped, the semaphore changed from red to green for northbound traffic. He then proceeded into the intersection. He testified as follows:

> When I was almost completely stopped, the semaphore changed to green in my direction and I therefore proceeded into the intersection when a Ford automobile coming from the north and located in the turn lane provided for south bound traffic made a sudden left turn immediately in front of me. The driver apparently intended to drive east through the intersection onto 8th North. When the driver commenced the turn, I was already in the intersection and I had to make an abrupt stop to avoid hitting this automobile even though I had almost stopped at the inersection. Just at the time that I was stopped to avert making

conact with the Ford automobile, I heard brakes screeching to my right and rear. I had no idea of what caused this noise because I was observing the Ford automobile in front of me and did not observe the source of the screeching brakes until a dump truck skidded past me on my right and collided with the Ford automobile in the intersection. The dump truck made contact with the right side of the Ford vehicle and moved the Ford some distance to the north. The dump truck drove past me in the lane immediately to my right. I do not recall detecting any indications made by the driver of the Ford vehicle that a left turn was intended. As I approached the particular intersection the Ford vehicle was stopped in the far left lane of the southbound traffic. Only when the light turned green did that vehicle commence to make the abrupt left turn into the intersection. The driver of the Ford vehicle undertook no evasive action which was apparent to me prior to the impact. (R. 61-62).

Plaintiff's testimony does not contradict these statements since she admitted that she did not see defendant's truck prior to the impact. With reference to the vehicle driven by witness Boyd Erickson, plaintiff was asked in her deposition if there were any other cars on the opposite side of the intersection waiting to proceed north. Plaintiff answered: "I do not remember". (p. 7 of plaintiff's deposition). Plaintiff further stated that she looked for traffic coming from the south but "I never saw anyone". (p. 19 of plaintiff's deposition). As referred to above, plaintiff also looked to the south but saw no traffic coming in her direction. (R. 141).

Without contradiction by plaintiff's own testimony or evidence, the testimony of defendant Gary Scott Craw-

ford and the witness Boyd Erickson establishes that defendant's vehicle was close enough to the intersection to constitute an immediate hazard, and the Erickson vehicle was already within the intersection when plaintiff made her left turn. In attempting to turn left plaintiff violated Section 41-6-73, Utah Code Annotated (1953) and was therefore negligent as a matter of law. *Skerl vs. Willow Creek Coal Co.,* 92 Utah 474, 69 P2d 502 (1937).

POINT II.

THE GRANTING OF A MOTION FOR SUMMARY JUDGMENT IS PROPER WHERE THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT.

Relying on the case of *Singleton vs. Alexander,* 19 Utah 2d 292, 431 P2d 126 (1967), Plaintiff's brief argues that Summary Judgment in negligence cases should rarely be granted. Language is quoted from that decision suggesting that Summary Judgment is more frequently granted in contract cases than in negligence cases. Nonetheless, *Singleton vs. Alexander, supra,* agrees that a motion for Summary Judgment is proper where there is no genuine issue as to any material fact, whether the case concerns contracts, negligence or any other type of legal problem.

In a discussion of Summary Judgments under Rule 56 Utah Rules of Civil Procedure the court has said:

> The primary purpose of the Summary Judgment procedure is to pierce the allegations of the pleadings, show that there is no genuine issue of material fact, although an issue may be raised by the pleadings, and that the moving party is entitled to judgment as a matter of law.
>
> Rule 56 U.R.C.P. is not intended to provide a substitute for the regular trial of cases in which

there are disputed issues of fact upon which the outcome of the litigation depends, and it should be invoked with caution to the end that litigants may be afforded a trial where there exists between them a bona fide dispute of material fact. However, where the moving party's evidentiary material is in itself sufficient and the opposing party fails to proffer any evidentiary matter when he is presumably in a position to do so, the courts should be justified in concluding that no genuine issue of fact is present, nor would one be present at tral.

Upon a motion for Summary Judgment, the courts ought to recognize, as a minimum, that the opposing party produce some evidentiary matter in contradiction of the movant's case or specify in an affidavit the reason why he cannot do so.

Dupler vs. Yates, 10 Utah 2d 251, 351 P2d 624 (1960).

In the case of *Henry vs. Washiki Club, Inc.,* 11 Utah 2d 138, 355 P2d 973 (1960), the defendant's motion for Summbary Judgment was granted by the trial court and affirmed by the Supreme Court. Plaintiff complained of injuries sustained when he fell down a dark stairway. In affirming the Summary Judgment the court said:

> We recognize the validity of the plaintiff's argument that doubts should be resolved in favor of permitting one who has a grievance to present his claim to a court or jury, and that a Summary Judgment, which deprives him of that privilege, should be granted without reluctance. However, it does have a useful and salutary purpose. When the evidence as contended by the plaintiff, and every reasonable inference that fairly could be drawn therefrom, are considered in the light most

> favorable to him, and it nevertheless appears that he could establish no right of recovery, the motion should be granted to save the time, trouble and expense involved in a trial.

Although the courts are careful to preserve litigants' rights to have their claims ultimately decided by a trial, Summary Judgment may properly decide those claims in which the evidence shows there are no genuine issues as to a material fact. Here, the plaintiff admits that she failed to observe the approaching vehicle which collided with her car. She likewise concedes that she did not observe any northbound traffic, even the northbound vehicle which stopped to avoid hitting her car.

CONCLUSION

The evidence and every reasonable inference which can fairly be drawn therefrom shows that plaintiff was negligent as a matter of law, which was a proximate cause of her damage, and the judgment of the Trial Judge should be affirmed.

Respectfully submitted,

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