

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002180-MR

RODNEY J. LOVE

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE STEPHEN N. FRAZIER, JUDGE
ACTION NO. 97-CI-00350

JEFFERY L. BLAIR; AND
KERN'S BAKERIES, INC.

APPELLEES

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: COMBS, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE. Appellant Rodney J. Love contends that the trial court erred in directing a verdict in favor of the appellees, Jeffery L. Blair (Blair) and Kern's Bakeries, Inc., in the trial of this motor vehicle accident case. Appellant argues that the court applied the incorrect standard in considering the directed verdict motion by failing to draw all inferences in favor of appellant, the non-moving party.

Furthermore, appellant argues that the trial court erred because even though appellee Blair had the right of way, he did not have the right to proceed without exercising due care. We have reviewed the record in the case, and we reverse the court's directed verdict.

The appropriate test for the trial court to apply when ruling upon a motion for directed verdict is:

the trial court must "draw all fair and rational inferences from the evidence in favor of the party opposing the motion, and a verdict should not be directed unless the evidence is insufficient to sustain the verdict. The evidence of such party's witnesses must be accepted as true."

Spivey v. Sheeler, Ky., 514 S.W.2d 667, 673 (1974). When engaging in appellate review of a ruling on a motion for directed verdict, an appeals court must assign to the evidence all reasonable inferences and deductions which support the claim of the prevailing party. Bierman v. Klapheke, Ky., 967 S.W.2d 16, 18 (1998). A reviewing court can only substitute its judgment for that of the trial judge, who heard and considered the evidence, if the ruling is clearly erroneous. Id.

The uncontroverted evidence in this case was that appellee Blair had the right of way on Route 460. The evidence was that appellant pulled out in front of him from a stop sign on Route 40. Appellant testified that he stopped at the sign before proceeding; according to the police report, appellee

Blair told the police at the scene that appellant ignored the stop sign. The evidence presented by appellant prior to the directed verdict overwhelmingly showed that it was a foggy night and that visibility was limited, at least in patches.

Appellant argues that the trial court erred in granting appellees a directed verdict because if the court had drawn all inferences in favor of appellant it would have found that Blair was driving too fast for the conditions and was partly responsible for the accident. We agree that the evidence presented at the trial produced a question of fact for the jury.

In a case where a party failed to yield the right of way, there may still exist an issue of negligence of the driver on the main roadway. In Wittmer v. Jones, Ky., 864 S.W.2d 885, 888 (1993), the Kentucky Supreme Court held, "A driver approaching an intersection with the right-of-way has no absolute right to proceed so unconditional that she can ignore duties of reasonable lookout, sounding a horn when necessary, and avoiding collision when there is reasonable opportunity to do so." The Court acknowledged that it is generally a jury question whether the carelessness of the motorist on the inferior road is the *only* proximate cause, or whether the other driver had reasonable time and opportunity to avoid the collision after he was able to apprehend the negligence of the first motorist. Id., citing Tilford v. Garth, Ky., 405 S.W.2d

6, 8 (1966). The motorist on the favored highway may assume that another motorist about to enter the intersection will yield the right of way, but "there is a point in time and circumstance when a favored motorist is no longer warranted in indulging such an assumption and, if that issue is presented, a jury question also is presented." Browning v. Callison, Ky., 437 S.W.2d 941, 944 (1969).

Appellant presented evidence in the form of expert testimony as to the speed at which appellee traveled and, due to the foggy conditions, the time he would have had to avoid the collision. We believe that there were questions of fact for the jury's determination. The trial court erred in granting a directed verdict in this case.

Accordingly, we reverse and remand for further proceedings consistent with this opinion.

ALL CONCUR.

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