

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002663-MR

ROY C. GOODLETT

APPELLANT

v. APPEAL FROM SPENCER CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 00-CI-00032

JOSEPH A. HUMPHREY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: COMBS AND DYCHE, JUDGES; AND POTTER, SPECIAL JUDGE¹.

POTTER, SPECIAL JUDGE. This is an appeal from a judgment entered by the Spencer Circuit Court directing a verdict in favor of appellee Joseph A. Humphrey in a motor vehicle accident liability case. For the reasons stated hereafter, we affirm.

On a clear, dry day in March 1998, Humphrey and appellant Roy C. Goodlett were driving in opposite directions on a straight stretch of KY 44 in Spencer County. Goodlett

¹ Senior Status John Woods Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

activated his left turn signal in preparation for turning onto a side street, and he stopped his vehicle to wait for oncoming traffic to pass before turning. Unfortunately, he then turned in front of Humphrey, who applied his brakes but was unable to stop before hitting Goodlett's vehicle. Goodlett, who was seriously injured in the collision, filed this liability action against Humphrey.

Goodlett's witnesses at trial included both parties, two eyewitnesses, the investigating police officer, and a traffic reconstruction expert. Goodlett had no memory of how the accident occurred, but Humphrey testified that he was heading west when Goodlett turned in front of him. Although he immediately stood on his brakes, he was unable to avoid the collision. Humphrey testified at trial that his speed just before the collision was 30-35 miles per hour, although he indicated during a pretrial deposition that his speed was 20-25 miles per hour. The eyewitnesses confirmed that testimony, and one estimated that Humphrey was traveling at 40 miles per hour "or so" before the collision.

It was undisputed that around the point where Humphrey's skid marks began, the speed limit increased from 35 to 55 miles per hour. The investigating police officer testified that the rear tires of Humphrey's truck left 35 feet of skid marks before, and 24-28 feet of skid marks after, the

point of impact. The traffic reconstruction expert testified that the failure of Humphrey's front tires to lock up when the rear tires did so indicated that the brakes did not function properly. He further opined that if the truck was traveling at 25 miles per hour when properly-functioning brakes were applied, the truck would have stopped in time to avoid the collision. Humphrey indicated that he had not experienced any problems with the brakes and had not had them inspected during his two-year ownership of the 1967 2½-ton truck. After the parties stipulated that there would be no additional evidence adduced as to liability, the trial court granted Humphrey's motion for a directed verdict. This appeal followed.

Goodlett contends on appeal that the trial court erred by granting a directed verdict in favor of Humphrey, as he asserts that the evidence was such that the jury could have found that Humphrey was partially at fault in the collision. We disagree.

The test on appellate review of a directed verdict is whether, under the evidence as a whole and after drawing all inferences in favor of the nonmovant, "it would be clearly unreasonable for a jury to find guilt." Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991). See RC 50.01; Lambert v. Franklin Real Estate Co., Ky.App., 37 S.W.3d 770 (2000). We cannot agree with Goodlett's assertion that if a jury resolved

all inferences in his favor, it could have found Humphrey at fault under any of three scenarios.

First, although Goodlett argues that Humphrey was speeding at the time of the collision, there is simply no evidence to support such a finding. The speed limit changed from 35 to 55 miles per hour before the point of impact, and every witness placed Humphrey's maximum speed at 45 miles per hour or less.

Next, Goodlett argues that Humphrey was inattentive to his driving as Humphrey testified that he did not see Goodlett until the latter started to turn in front of him. Goodlett asserts that because the road was straight, Humphrey should have noticed him waiting to make his turn and should have taken some unspecified preventive measure to avoid the collision. However, even if we assume Humphrey was inattentive by failing to notice that Goodlett was waiting to turn left from the opposite direction, such inattention was not a cause of the accident. Simply put, Humphrey had no duty to anticipate that Goodlett would make an unsafe turn from his stationary position.

Next, Goodlett contends that viewing the evidence in the light most favorable to him, a jury could have found that Humphrey was traveling at only 25 miles per hour when he started braking before the collision. According to the testimony of the accident reconstruction expert, Humphrey would have been able to

stop eight feet short of the point of impact if he had been traveling at that speed, if his brakes had been in good working order, and if he had applied his brakes at the spot indicated by skid marks on the road. The expert's opinion that Humphrey's brakes were not in good working order was further supported by the fact that only his rear brakes, rather than all four, locked up. However, even if a jury found that each of these allegations was true, no evidence was adduced to show that Humphrey was negligent in maintaining his brakes. While it is true that KRS 189.090(3) absolutely requires vehicles to have working brakes, that requirement has been interpreted as only requiring that owners use ordinary care to ensure that their brakes are in good working order. Swope v. Fallen, Ky.App., 413 S.W.2d 82 (1967). Here, as there was no evidence to suggest that Humphrey was on notice that his brakes were in any way defective prior to the collision, or that he otherwise failed to exercise ordinary care regarding his brakes, he was entitled to a directed verdict as it would have been clearly unreasonable for a jury to find him guilty.

The court's directed verdict is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David G. Vest
Robert M. Coots
Lexington, Kentucky

BRIEF FOR APPELLEE:

Dennis R. McGlincy
Louisville, Kentucky