

RENDERED: May 23, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 95-CA-2765-MR

PAUL CLARK and NANCY CLARK

APPELLANTS

V. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 93-CI-0164

JOSEPH W. SMITH, Executor of
ESTATE OF EDWARD G. SMITH, DECEASED

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, COMBS, and KNOPE, Judges.

COMBS, JUDGE. The appellants, Paul and Nancy Clark, appeal from the order of the Ohio Circuit Court denying their motion for Judgment Notwithstanding the Verdict and/or for a New Trial (JNOV). The appellants argue that they were entitled to a directed verdict as a matter of law. We do not agree and therefore affirm.

On July 26, 1992, Paul and Nancy Clark were traveling east on the Western Kentucky Parkway when they collided with a

vehicle driven by Edward W. Smith. Smith was driving west on the parkway when his car spun out of control, crossed the median, and collided with the Clarks' vehicle. It had been raining throughout the day and, as a result, the parkway was wet with standing water in several spots.

The Clarks brought an action against Smith to recover damages resulting from the accident. However, Smith passed away prior to the trial. The executor of Smith's estate, Joseph W. Smith, was substituted as a party, and the action proceeded to trial. At the close of the evidence, the appellants made a motion for a directed verdict on the grounds that Smith had violated KRS 189.300(1). They argued that negligence per se had been established and that they were entitled to a directed verdict on the issue of liability. The trial court denied their motion for a directed verdict. The jury returned a verdict in favor of the appellee. The appellants then filed a motion for a JNOV, which the court denied. This appeal followed.

The appellants contend on appeal that Smith violated KRS 189.300(1), which requires the operator of a vehicle to travel upon the right side of the highway whenever possible and that this statutory violation constituted negligence per se. They argue, therefore, that trial court's refusal to direct a verdict in their favor on the issue of liability constituted reversible error. We disagree.

In Peak v. Barlow Homes, Inc., Ky. App., 765 S.W.2d 577, 578 (1988), this Court succinctly stated:

Failure to comply with the terms of a statute is negligence per se. However, in an action for damages, the violation of the statute must be the proximate cause of the injury to permit recovery.

Proximate cause is a cause which naturally leads to, and which might have been expected to have produced, the result. Hines v. Westerfield, Ky., 254 S.W.2d 728 (1953). We find the doctrine of negligence per se inapplicable to the facts of the case sub judice. Although Smith violated KRS 189.300(1) when his vehicle crossed the median into oncoming traffic, the facts and circumstances indicate that proximate cause of the accident was either Smith's negligence or the wet condition of the road.

The case of Webb Transfer Lines, Inc. v. Taylor, Ky., 439 S.W.2d 88, 95 (1968), sets forth the controlling law in this case:

The rule is that when a collision occurs on the defendant's left side of the road, there is prima facie case of negligence. The obligation to go forward and to explain the reason for being on the wrong side of the road passes to the defendant. If the explanation is so clear and convincing and all the circumstances and fair inferences that could be drawn from them show that the reason for being on the wrong side of the road was completely unrelated to any negligence of the defendant, then the defendant is entitled to win by directed verdict, but if the reasons, circumstances or the inferences are not clear then the jury must determine the question.

In this case, the appellee met his burden of going forward with an explanation completely unrelated to any negligence on his part as to why he was on the wrong side of the road. He offered

evidence at trial that Smith's car had hydro-planed on standing water, causing him to lose control of the car. Additionally, a witness testified that Smith was driving less than the posted speed limit with both of his hands on the steering wheel and that he was not participating in the passengers' conversations. Conversely, the appellants presented testimony to support their contention that the accident was due to Smith's negligence. As the evidence on the issue of negligence was conflicting, it was clearly a question for the jury to determine.

Furthermore, when considering a motion for judgment N.O.V. or a motion for a directed verdict, our Supreme Court has instructed the following:

[T]he trial court must consider the evidence in its strongest light in favor of the party against whom the motion was made and must give him the advantage of every fair and reasonable intendment that the evidence can justify. On appeal the appellate court considers the evidence in the same light.

Lovins v. Napier, Ky., 814 S.W.2d 921, 922 (1991). Considering the evidence in the strongest light favorable to the appellees, the court correctly denied the Clarks' motion for a directed verdict. The appellees presented evidence that the accident was not a result of Smith's negligence. The trial court is precluded from entering a directed verdict if disputed issues of fact exist upon which reasonable men could differ. Lafrange v. United Services Auto Assn., Ky., 700 S.W.2d 411 (1985). In this case, the record indicates that disputed issues of fact did exist.

For the foregoing reasons, we affirm the order of the Ohio Circuit Court denying the appellants' motion for a JNOV.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Charles S. Wible
Evan Taylor
Owensboro, KY

Vernon J. Petri
Indianapolis, IN

BRIEF FOR APPELLEE:

Marvin L. Coan
David L. Sage II
Louisville, KY