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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000137-MR

TAMARA L. WRIGHT — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARTIN F. MCDONALD, JUDGE
ACTION NO. 02-CI-006677

JAMES V. MAHLMANN, EXECUTOR OF
ESTATE OF JOHN J. MAHLMANN — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; HENRY AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Appellant, Tamara L. Wright, was the driver of the third car in a six car chain reaction rear-end collision, in which she sustained bodily injury. Wright made claims against all of the motor vehicle operators involved in the collision, the majority of which were settled prior to trial. This appeal

arises out of Wright's negligence action against the driver of the first car, John J. Mahlmann.[1]

A jury trial was held September 21-24, 2004. The drivers of the first three vehicles, Mahlmann, Teresa Raines (the driver of the second vehicle), and Wright, testified at trial. All three gave differing versions of events.

The collision occurred at approximately 4:00 p.m., June 28, 2001, on Hurstbourne Lane at a traffic light at the intersection of Hurstbourne Lane and Taylorsville Road, in Jefferson County, Kentucky. John J. Mahlmann was driving the first car. Mahlmann testified that the traffic light at the intersection was yellow, so he stopped. Mahlmann testified that he stopped in the proper place for the light, and that the party behind him (Raines) stopped. The third party (Wright) then hit the party behind him (Raines), causing that party (Raines) to hit the rear of his (Mahlmann's) car, which impact pushed his car into the middle of the intersection. Mahlmann denied having suddenly stopped in the intersection as alleged. Mahlmann was not injured.

Appellant, Tamara Wright, testified to a different version of events, as follows. Wright testified that the light was red as she approached the intersection, coasting slowly.

[1] By order entered January 11, 2005, James V. Mahlmann, executor of the estate of John J. Mahlmann, was substituted as a party Defendant for John J. Mahlmann, deceased September 27, 2004.

Mahlmann's car was stopped at the red light (the first car at the light) and Raines's pick-up truck was at a complete stop behind Mahlmann's car. As she (Wright) approached, when at a distance of about three car lengths from Raines's truck, the traffic light changed to green, so she continued coasting, and did not brake. Seeing Mahlmann's car and Raines's truck "take off", she (Wright) started to accelerate. According to Wright, as soon as she hit the accelerator, Mahlmann, who had traveled about a car length, and was now in the intersection, slammed on his brakes. Wright hit her brakes, and thought she stopped without hitting Raines's truck (which Wright recalled as having moved about a car length, to about where Mahlmann's car had been), but was unsure because everything happened so fast. She (Wright) was then rear-ended by the fourth car, and received two additional impacts from the fourth car due to the collisions of the fifth and sixth cars. These impacts caused Wright to hit Raines's truck three times.

The driver of the second vehicle, Teresa Raines, testified to a version which differed from both Mahlmann's and Wright's. Raines testified that as she approached the intersection, she saw Mahlmann's car stopped at a green light. She began to gear down, but did not stop, and then Mahlmann's car began moving, so she pressed the gas. According to Raines, Mahlmann's car crossed two lanes of the intersection and then

suddenly stopped. Raines braked, stopping in the first lane of the intersection, about six or seven feet from Mahlmann's bumper. Raines testified that the car behind her (Wright) stopped without hitting her at first. Raines then felt three hits on the rear of her truck. Raines did not recall hitting Mahlmann's car, but did see him looking at the back of his car after the accident.

The jury found that Wright had sustained permanent injury or incurred medical expenses directly related to injuries sustained in the accident in excess of $1,000, but that Mahlmann was not at fault. Wright's motions for a new trial and judgment not withstanding the verdict were denied. This appeal followed.

On appeal, Wright first argues that the trial court erroneously failed to give a "sudden stopping" instruction. Both parties tendered instructions to the trial court. Wright's proposed instructions provided, in pertinent part:

> 1. It was the duty of the Defendant, John Mahlmann, in driving his automobile, to exercise ordinary care for his own safety and for the safety of other persons using the highway and this general duty included the following specific duties:
>
> a. To have his automobile under reasonable control;
>
> b. To exercise ordinary care to avoid collision with other persons or vehicles on the highway;

c. Not to stop his vehicle, except when necessary to avoid conflict with other traffic, within an intersection.

d. Not to suddenly stop his vehicle in the roadway, except for a roadway hazard confronting him with an emergency.

If you are satisfied from the evidence that Defendant, John Mahlmann, failed to comply with one or more of these duties and that such failure was a substantial factor in causing the collisions, you will find for the Plaintiff, Tamara Wright; and proceed to Instruction No. 2; otherwise, you will find for the Defendant, John Mahlmann.

The trial court rejected the aforementioned proposed instruction, and, as to the duties of Mahlmann, instructed the jury as follows:

INSTRUCTION NO. 4

It was the duty of John J. Mahlmann in driving his automobile to exercise ordinary care for the safety of other persons using the road, which general duty included the following specific duties:

(a) To keep a lookout ahead for other persons and vehicles near his intended line of travel as to be in danger of collision;

(b) To have his automobile under reasonable control;

(c) To drive at a speed no greater than was reasonable and prudent, having regard for the traffic and for the condition and use of the highway;

(d) To exercise ordinary care generally to avoid collision with other persons and vehicles used in the street;

(e) Not to follow another vehicle more closely that [sic] was reasonable and prudent, having regard for the speed of the respective vehicles and for the traffic upon and condition of the roadway; and

(f) It was the further duty of each of the parties, including John J. Mahlmann, upon entering the intersection, to exercise ordinary care to observe the presence and avoid collision with any other conflicting traffic which may have already entered the intersection but had not yet cleared through it.

If you are satisfied from the evidence that John J. Mahlmann failed to comply with one or more of these duties and that such failure on his part was a substantial factor in causing the accident, you will find against John J. Mahlmann.

"The instructions given by the trial court should be confined to the issues raised by the pleadings of the case . . . and by the facts developed by the evidence[.]" Farrington Motors, Inc. v. Fidelity & Casualty Co. of New York, 303 S.W.2d 319, 321 (Ky. 1957). A party to civil litigation is entitled to have his or her theory of the case submitted to the jury if there is any evidence to sustain it. Risen v. Pierce, 807 S.W.2d 945, 947 (Ky. 1991). A trial court must instruct the

jury in a civil case on each party's common law and statutory duties. Clark v. Hauck Manufacturing Co., 910 S.W.2d 247, 251 (Ky. 1995).

Wright contends that Mahlmann had a statutory duty not to stop in an intersection (KRS 189.450(5)(d)) and not to stop upon any portion of the roadway (KRS 189.450(1)). Wright further cites to Woosley v. Smith, 471 S.W.2d 737 (Ky. 1971) and Ferguson v. Stevenson, 427 S.W.2d 822 (Ky. 1968), for the proposition that a driver who stops on the roadway is negligent as a matter of law. Wright contends, therefore, that the trial court committed reversible error in failing to instruct the jury as to Mahlmann's duty not to stop suddenly in an intersection or roadway.

A trial court should give only "bare bones" instructions, which can be subsequently fleshed out by counsel in closing argument. First and Farmers Bank of Somerset, Inc. v. Henderson, 763 S.W.2d 137, 142 (Ky.App. 1988) (citing Cox v. Cooper, 510 S.W.2d 530 (Ky. 1974)). If "[t]he instructions as a whole fairly state the law of the case embodying the respective theories of the parties" and any "objectionable features of the instructions are not considered prejudicial", the instructions do not constitute reversible error. Farrington Motors, 303 S.W.2d at 321.

Under the facts of this case, we disagree with Wright that the trial court was required to give a "sudden stopping" instruction. The present case is readily distinguishable from Ferguson (negligence as a matter of law where it was undisputed that motorist stopped and backed up on a highway) and Woosley (negligence as a matter of law where motorist stopped on main traveled portion of highway for purpose of backing up to pick up a friend).[2] The statutory duties enumerated in KRS 189.450(1) (no stopping upon a roadway) and KRS 189.450(5)(d) (no stopping within an intersection) are codifications of ordinary care, see generally Lucas v. Davis, 409 S.W.2d 297, 300 (Ky. 1966), and the general instruction given by the trial court would have allowed the jury to find Mahlmann negligent under Wright's theory of the case. Risen, 807 S.W.2d at 947; Farrington Motors, 303 S.W.2d at 321. Further, Wright's counsel had the full opportunity to "flesh out" the instruction in his closing, and did so, submitting to the jury that Mahlmann caused the accident by stopping suddenly in the middle of an intersection, and informing the jury that this situation is covered by the ordinary care instruction. First and Farmers Bank, 763 S.W.2d at 142; Farrington Motors, 303 S.W.2d at 321. Accordingly, we conclude the trial court did not err in refusing to give a "sudden stopping" instruction.

[2] We further note that instructions were not at issue in Woosley or Ferguson.

We next address Wright's argument that the trial court should have granted a directed verdict on the issue of Mahlmann's liability. Wright contends that all of the evidence indicated that Mahlmann stopped suddenly in the roadway, with the only dispute being as to whether it was in the intersection or not. Wright further contends that there is no obligation or right to stop on a yellow light of a traffic control device which is changing, and hence, Mahlmann "had no right to stop his vehicle in the middle of the roadway at the yellow light." Therefore, Wright argues that Mahlmann was negligent per se, and a directed verdict should have been entered.

We disagree. The evidence in the case was conflicting as to the facts surrounding the collision. Contrary to Wright's assertion, all of the evidence was not that Mahlmann suddenly stopped in the roadway. Mahlmann's testimony was simply that he stopped for a yellow light in the "proper place". Mahlmann did not testify that he stopped suddenly. Further, Wright's argument that Mahlmann had no right to stop for a yellow light is completely without merit. KRS 189.338(2) provides that a steady yellow signal warns vehicular traffic that "green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection." It goes without the need for further citation that an individual not only may, but should

stop at a yellow light under penalty of receiving a citation for running a red light if the light in fact turns red before the individual clears the intersection. Viewing the evidence in the light most favorable to Mahlmann, the trial court did not err in submitting the negligence issue to the jury. Buchholtz v. Dugan, 977 S.W.2d 24, 26 (Ky.App. 1998); Lovins v. Napier, 814 S.W.2d 921, 922 (Ky. 1991).

In light of our conclusions above, the remainder of Wright's arguments are rendered moot. For the aforementioned reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Michael T. Connelly Louisville, Kentucky	Andrew N. Clooney Louisville, Kentucky