

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001705-MR

RAY ASHLEY AND
JAMIE ASHLEY

APPELLANTS

v.

APPEAL FROM WARREN CIRCUIT COURT
HONORABLE STEVE ALAN WILSON, JUDGE
ACTION NO. 09-CI-00609

LYNN SKAGGS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, MAZE, AND VANMETER, JUDGES.

VANMETER, JUDGE: Ray and Jamie Ashley appeal from the judgment entered by the Warren Circuit Court dismissing with prejudice their complaint against Lynn Skaggs after a jury verdict absolved Skaggs of any liability. On appeal, the Ashleys urge us to reverse, arguing that the jury was erroneously instructed. We affirm.

This case arises from a three-vehicle automobile accident. The Ashleys' pickup truck (the lead vehicle) was stopped at a traffic light; Skaggs's minivan (the middle vehicle) was stopped behind them. Bobby Spainhoward's car (the rear vehicle) struck the rear of Skaggs' minivan and, as a result of the impact, Skaggs's minivan collided into the back of the Ashleys' pickup truck. Ray and Jamie Ashley sustained injuries from the accident and subsequently filed suit against Spainhoward and Skaggs. The Ashleys resolved their claims against Spainhoward after mediation. Their claims against Skaggs proceeded to trial. Neither Spainhoward nor his counsel participated in the trial, but apportionment instructions were submitted for both Spainhoward and Skaggs.

The Warren County jury unanimously found that Spainhoward failed to comply with his duties in the operation of his motor vehicle. Eleven of the twelve jurors determined that Skaggs did not breach any of her duties in the operation of her motor vehicle. The trial court entered a final judgment, ordering that the Ashleys shall recover nothing against Skaggs and dismissing their complaint. The Ashleys now appeal.

On appeal, the Ashleys contend that the instructions submitted to the jury improperly omitted Skaggs's duty to "keep her vehicle under reasonable control," but imposed such a duty on Spainhoward. The Ashleys argue that no valid basis exists for the disparate instructions and request a new trial with a properly instructed jury.

The parties disagree as to whether the Ashleys preserved their objection to the jury instructions. The record shows the Ashleys did not object to the portion of the instructions at issue, but did tender proposed instructions which avoided the alleged error. CR¹ 51(3), addressing jury instructions and objections, provides as follows:

No party may assign as error the giving or the failure to give an instruction unless he has fairly and adequately presented his position by an offered instruction or by motion, or unless he makes objection before the court instructs the jury, stating specifically the matter to which he objects and the ground or grounds of his objection.

Thus, an allegation of error in a jury instruction may be preserved by offering a proposed instruction avoiding the alleged error. Here, the Ashleys' proposed instructions did avoid the specific error complained of in the instructions which were given by the court. Therefore, they preserved their objection to the instructions, and we will review their claimed error on appeal under a *de novo* standard of review. *Mountain Water Dist. v. Smith*, 314 S.W.3d 312, 315 (Ky. App. 2010).

The Ashleys aver that the instructions submitted to the jury did not comport with *Palmore's Kentucky Instructions to Juries*, Vol. 2, 5th ed., 2012, a treatise which contains model jury instructions and which they assert is widely viewed as authoritative by Kentucky courts. The Ashleys direct our attention to three specific sections in *Palmore's* which they claim are most analogous to the situation

¹ Kentucky Rules of Civil Procedure.

presented in this case; we find only one of those three sections to be relevant – Section 16.30, entitled “Stopped or slow moving vehicles struck from rear . . .”

Section 16.30 directly addresses the situation at bar in which a stopped vehicle (Skaggs) is rear-ended by another vehicle (Spainhoward). That section differentiates between the duties of the operator of the rear vehicle and the duties of the operator of the front vehicle. The duty to “have his automobile under reasonable control” is only imposed on the operator of the rear vehicle, presumably because the front vehicle is either stopped or slow-moving. However, both operators are charged with the duty of exercising “ordinary care generally to avoid collision with other persons and vehicles on the highway[.]”

The instructions tendered by Skaggs and utilized by the court differ from the model instructions in Section 16.30 only in the deletion of two irrelevant issues – whether Spainhoward was required to sound his horn and whether Skaggs’s slow speed caused the accident by blocking or impeding the normal movement of traffic. Since the liability question at trial was whether the accident was the fault of Spainhoward or Skaggs, Section 16.30 was the relevant instruction, especially since no one disputed that Skaggs’s vehicle was stopped and was hit from behind by Spainhoward.

We fail to appreciate the Ashleys’ assertion that the trial court erred by giving the precise instruction which they submit on appeal is the relevant instruction in this case. For the foregoing reasons, the Warren Circuit Court’s judgment is affirmed.

ALL CONCUR.

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