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State of Minnesota
In Court of Appeals

PATRICK BRIAN STEWART,

Appellant.

vs.

CHRISTOPHER MICHAEL KOENIG, et al.,

Respondent.

APPELLANT'S BRIEF AND APPENDIX

DUNLAP & SEEGER, P.A.
Peter C. Sandberg
Attorney Reg. No. 095515
206 South Broadway
Suite 505
Post Office Box 549
Rochester, Minnesota 55904
(507) 288-9111

Attorneys for Appellant

LaBORE, GIULIANI, COSGRIFF
& VILTOFT, LTD.
Angela C. Shackelford
Attorney Reg. No. 183209
10285 Yellow Circle Drive
Post Office Box 70
Hopkins, Minnesota 55343-0070
(952) 933-3371

Attorneys for Respondent

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STATEMENT OF THE LEGAL ISSUES

- I. DID THE TRIAL COURT'S DENIAL OF APPELLANT'S PROPOSED JURY INSTRUCTION #1 CONSTITUTE ERROR, AND ERROR PREJUDICIAL ENOUGH TO CALL FOR A NEW TRIAL ON LIABILITY?**

- II. DID THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR NEW TRIAL ON DAMAGES CONSTITUTE ERROR, AND ERROR PREJUDICIAL ENOUGH TO CALL FOR A NEW TRIAL ON DAMAGES?**

STATEMENT OF THE CASE

On June 1, 2005, Appellant Patrick Brian Stewart (“Stewart”) was riding his bicycle on a blacktop recreational trail maintained by the Minnesota Department of Natural Resources (“DNR”) known as the “Douglas Trail”. On this said date, Stewart collided with a car owned by Respondent Jean Marie Koenig, and driven by her son, Respondent Christopher Michael Koenig (“Koenig”). Stewart was hurt, started an action against Koenig to recovery damages and a jury found Stewart 100% at fault. The jury found he suffered a permanent injury and awarded him no damages. Appellant filed a motion for new trial on liability and damages. The trial court denied the motion and this appeal followed.

STATEMENT OF THE FACTS

On June 1, 2005, Appellant Stewart was riding his bicycle on the Douglas Trail, a blacktop recreational trail located in Olmsted County owned and maintained as a state recreational trail by the DNR and designated as state recreational trail. (Tr. Vol. II. p. 246). The Douglas Trail intersects at a right angle with a private driveway that crosses the trail. (Tr. Vol. I, pp. 172-73). There were no signs at the intersection either controlling access across the intersection or speed limit along the Douglas Trail. (Tr. Vol. II, pp. 249-50, 262-63, 264-67). Koenig was driving his mother's car on the private drive. The parties stipulated Christopher Koenig was driving the car with his mother's consent. Stewart was riding his bicycle to Koenig's left and Koenig was crossing the Douglas Trail to Stewart's right, and the two hit as the bicycle and car were crossing the intersection.

Stewart's neck was broken as a result of the accident. His broken neck was treated at Mayo Clinic, and his doctor testified the injury to Stewart's neck was permanent. (Tr. Vol. I, pp. 143, 146)

Stewart asked the trial court to give the following proposed jury instruction:

The Outdoor Recreation Act of 1975 governs the trail upon which Plaintiff Patrick Stewart was riding his bicycle and Defendant Christopher Koenig was crossing.

You are instructed that the term 'trail' is defined as all of that land contained within the area designated as a state recreational trail by the commissioner. The term 'treadway' means that part of the trail constructed for travel.

You are instructed that any trail user who is about to enter upon or cross a trail treadway, shall yield the right-of-way to any trail user already on the treadway to entered or crossed.

You are instructed that Defendant Christopher Koenig was about to cross a trail treadway, and Plaintiff Patrick Stewart was a trail user already on the treadway to be crossed. A violation of this regulation is negligence per se, and Defendant Christopher Koenig has no legal excuse for violating the regulation. (App – 1 - 2).

The trial court denied the proposed jury instruction on the grounds Koenig did not constitute a trail user, and gave no jury instruction on right-of-way or forfeiture of the right-of-way. (Tr., Vol. II, pp. 247-48). The jury returned a special verdict finding Stewart 100% at fault for the accident and found he suffered a permanent injury because of the accident but awarded zero damages. (App - 3). Appellant Stewart filed a motion for new trial on liability and damages; the trial court denied the motions and this appeal followed. (App – 8 - 9).

ARGUMENT

I. DID THE TRIAL COURT'S DENIAL OF APPELLANT'S PROPOSED JURY INSTRUCTION #1 CONSTITUTE ERROR, AND ERROR PREJUDICIAL ENOUGH TO CALL FOR A NEW TRIAL ON LIABILITY?

Appellant claims his proposed jury instruction # 1 was a fundamental, controlling principle of law, and the trial court's refusal to give the proposed jury instruction was prejudicial enough to call for a new trial on liability. Right-of-way is a fundamental and controlling principle of law at an intersection and, if there is evidence to justify giving the instruction, failure to give such an instruction constitutes prejudicial error sufficient to warrant a new trial on liability.

It is recognized that no general rule may be laid down as to what may be error in instructions with reference to 'fundamental law or controlling principle' which may be assigned for the first time on a motion for new trial. What may constitute an error as to fundamental law or controlling principle must necessarily depend upon the circumstances in each particular case. The majority is of the view here that the failure to instruct with reference to the rule that excessive speed forfeits the right-of-way was determinative in that it related to a controlling principle, since the omission left the jury with the impression that excessive speed of the defendant would not exonerate the driver of the left-turning vehicle from a charge of contributory negligence for violating the statute. Anderson v. Mid-Motor, Inc., 98 N.W.2d 188, 193 (Minn. 1959).

The DNR owns Douglas Trail and designates it as a state recreational trail. The DNR regulates traffic on the state recreational trails under Minn. R. § 6100.3000 through rules for the following purpose:

It is the purpose of these statewide rules to provide for public use of designated state recreational trails while protecting the quality of the trail environment to promote long-term use and enjoyment.

Minn. R. § 6100.3300 applies the following definitions:

Subp. 2. **Bicycle.** “Bicycle” means any land based vehicle powered by human muscle.

Subp. 7. **Motor vehicle.** “Motor vehicle” means any self-propelled vehicle and any vehicle propelled or drawn by a self-propelled vehicle including, but not limited to, automobiles, trucks, dune buggies, minibikes, motorcycles, trail bikes, and all terrain vehicles (ATV’s).

Subp. 11. **Trail.** “Trail” means all of that land contained within the area designated as a state recreational trail by the commissioner.

Subp. 12. **Treadway.** “Treadway” means that part of the trail constructed for travel.”

Minn. R. § 6100.3400, Subps. 1, 2, and 6 regulate trail use as follows:

Subp. 1. **In general.** Subject to the limitations imposed by these parts and other duly enacted statutes, rules, and ordinances, or unless specifically prohibited by the commissioner, trails may be used for snowmobiling and all nonmotorized forms of recreation, including but not limited to hiking, bicycling, horseback riding, snowshoeing, cross-country skiing, camping, and picnicking.

Subp. 2. **Motor vehicles.** No motor vehicle, other than a snowmobile, shall be operated within a trail, except upon a legal road or highway as those terms are defined in Minnesota Statutes, § 160.02, subd. 26, and except as authorized by the commissioner.

Subp. 6. **Traffic control.** Traffic control:

D. *Any* trail user who is about to enter onto or cross a trail treadway, shall yield the right of way to any trail user already on the treadway to be entered or crossed;

E. When at approximately the same time, two trail users are about to enter an otherwise unmarked treadway intersection *from different treadways* or are approaching an otherwise unmarked *merger of two treadways* from any two directions, the trail user on the left shall yield the right-of-way to the trail user on the right. (Emphasis added.)

Stewart was riding on the treadway with his bicycle when Koenig crossed the treadway in front of him with a car from a private driveway. Since Koenig was crossing the treadway from a private driveway rather than a different treadway, the DNR rules require Koenig to yield the right-of-way to Stewart because Stewart was already on the treadway before Koenig used it. Minn. R., §6100.3400, Subd. 6(D). The right-of-way under Minn. R. §6100.3300, subd. (E) does not apply because Koenig entered the recreational trail from a private driveway rather than from another treadway.

State recreational trails were built, maintained, and regulated for the safe use and enjoyment of self-propelled vehicles such as bicycles. Motorized vehicles such as cars are not authorized to use state recreational trails. The only exception is a snowmobile. Minn. R., §6100.3400, Subds. 1 and 2. The safe use and enjoyment of a state recreational trail by a bicyclist is paramount.

The trial court stated:

Defendant Koenig cannot reasonably be described as ‘user’ of the trail, anymore than a driver who crosses a sidewalk as he backs down his driveway to the street could be reasonably called a ‘user’ of the sidewalk.

The trial court is incorrect. A car crossing a public sidewalk in a residential or business district is required to yield the right-of-way to “any pedestrian and all other traffic on the sidewalk.” Minn. Stat., §169.31. The trial court’s approach gives a bicyclist traveling on a state recreational trail less protection than a bicyclist on a public street or sidewalk. Said differently, the trial court’s approach makes it safer for someone to ride their bicycle

in a public street than on a state recreational trail. Such an approach discourages use of the state recreational trails contrary to its express purpose.

Who must stop at an intersection and who may pass unhindered is a vital question of law effecting to the rights and duties between users of a public street or way. There was sufficient evidence to support giving a right-of-way instruction under Minn. R. § 6100.3300, subd. (D). Such an instruction involves a fundamental and controlling principle of law and failure to give such a jury instruction on liability was prejudicial error justifying a new trial on liability.

II. DID THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR NEW TRIAL ON DAMAGES CONSTITUTE ERROR, AND ERROR PREJUDICIAL ENOUGH TO CALL FOR A NEW TRIAL ON DAMAGES?

There is no need to address this issue unless appellant is entitled to a new trial on liability, and there is a need to reverse and remand for a new trial unless appellant is entitled to a new trial on both liability and damages.

The jury found there was a permanent injury to Stewart's neck but awarded no damages -past or future. There was no evidence to controvert the broken neck; the medical expenses with Mayo Clinic to treat the broken neck were reasonable and necessary and the injury to the neck was permanent. The damage verdict was perverse. When a jury finds a permanent injury but no damages, the verdict is against the weight of the evidence, the answers are irreconcilable, and the verdict on damages cannot stand. The claimant is entitled to a new trial on damages as a matter of law.

Williamson v. Furch, 229 N.W.2d 39, 40 (Minn. 1975) and Bogut v. Jannettau, 410 N.W.2d 451, 454 (Minn. App. 1987).

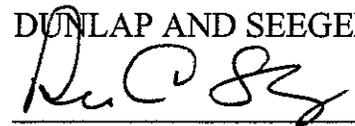
CONCLUSION

For the reasons above-stated, Appellant asks this Court to reverse the trial court and remand for a new trial on liability and damages.

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DUNLAP AND SEEGER, P.A.

By:



Peter C. Sandberg

Registration No. 095515

Attorneys for Appellant
206 South Broadway - Suite 505
Post Office Box 549
Rochester, Minnesota 55903-0549
Telephone: (507) 288-9111