STATE OF MICHIGAN

COURT OF APPEALS

KEVIN D. O'DONNELL,

Plaintiff-Appellee/
Cross-Appellant,

v

CAPITAL AREA TRANSPORTATION AUTHORITY and JERRY M. DUNN,

Defendants-Appellants/
Cross-Appellees.

UNPUBLISHED
September 20, 1996

No. 179298
LC No. 91-070169

Before: Murphy, P.J., and O'Connell and M.J. Matuzak,* JJ.

PER CURIAM.

Defendants appeal as of right the judgment entered in plaintiff's favor following a jury trial in this negligence action. We affirm in part and reverse in part.

Plaintiff's vehicle was stopped at a red light in the City of Lansing. Defendant Dunn was driving a bus, which was stopped behind plaintiff's vehicle at the light. When the light turned green, plaintiff took his foot off of the brake to proceed through the intersection. At this time, Dunn also began to proceed. After rolling a few feet, plaintiff stopped his vehicle, unsure of whether the light actually turned green. When plaintiff's vehicle stopped, Dunn was unable to avoid hitting it in the rear.

At trial, the jury found defendants were not negligent. However, the trial court subsequently granted plaintiff's motion for judgment notwithstanding the verdict (JNOV), ruling that Dunn was negligent as a matter of law, and required a new trial to determine whether plaintiff had been comparatively negligent, and whether Dunn's negligence was the proximate cause of plaintiff's injuries. After the second trial, the jury found plaintiff to have been ten percent negligent and awarded economic damages of $365,000 and noneconomic damages of $65,000.

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* Circuit judge, sitting on the Court of Appeals by assignment.

First, defendants claim that the trial court erred in refusing to instruct the jury on the sudden emergency doctrine, and subsequently granting plaintiff's motion for JNOV. We disagree.

The uncontroverted evidence established that defendant violated the assured clear distance statute, MCL 257.627(1); MSA 9.2327(1). Violation of that statute is prima facie evidence, and creates a rebuttable presumption of negligence. *Zeni v Anderson*, 397 Mich 117, 128-136; 243 NW2d 270 (1976). However, the statute is inapplicable "when a collision is shown to have occurred as the result of a sudden emergency not of the defendants' own making." *Vander Laan v Miedema*, 385 Mich 226, 231; 188 NW2d 564 (1971).

Defendants argue that Dunn was confronted with a sudden emergency, and cite *Humphrey v Swan*, 14 Mich App 683; 166 NW2d 17 (1968) in support of their argument. In *Humphrey*, this Court held, on similar facts, that the jury could have found that the defendant was confronted with a sudden emergency and was therefore, not causally negligent. *Id*. at 684-685. However, in light of our Supreme Court's opinion in *Vander Laan*, *supra*, which was issued subsequent to *Humphrey* and further explained the circumstances necessary to come within the purview of the sudden emergency rule, we reject *Humphrey* and consider it to have been effectively overruled.

In this case, plaintiff's vehicle was in defendant Dunn's "clear view," and although plaintiff's action may have been somewhat unexpected, we cannot say that, given the everyday rigors of driving in an urban area, that it should have been "totally unexpected." See *Vander Laan*, *supra*, at 232. Therefore, because there was no evidence of a sudden emergency, defendants were not entitled to such an instruction. *Moore v Spangler*, 401 Mich 360, 381-383; 258 NW2d 34 (1977).

Plaintiff presented prima facie evidence of defendants' negligence. Defendants failed, even when viewing the evidence and all legitimate inferences in favor of defendants, to rebut the presumption of negligence by showing that Dunn was confronted with a sudden emergency or had another valid excuse for violating the assured clear distance statute. Therefore, plaintiff was entitled to judgment as a matter of law and JNOV was proper.

Next, defendants challenge the trial court's award of costs and attorney fees. On October 14, 1992, a mediation panel made a non-unanimous mediation award of $100,000. On October 20, 1992, plaintiff made an offer of judgment of $150,000. Neither party responded to the mediation award, and defendants ignored the offer of judgment. MCR 2.405(E) provides that if both a mediation award and an offer of judgment are rejected, the cost provisions of the rule under which the later rejection occurred control. Because a party has twenty-eight days to respond to a mediation award, MCR 2.403(L)(1), and twenty-one days to respond to an offer of judgment, MCR 2.405(C), defendants' deadline for responding to the mediation occurred one day after their deadline for filing an acceptance to the offer of judgment. Therefore, the cost provisions of the mediation rule control. Because the mediation award was not unanimous, costs should not have been awarded. MCR 2.403(O)(7). Therefore, the trial court erred.

Next, we address plaintiff's issues on cross appeal. First, plaintiff claims that the trial court erred in refusing to grant him prejudgment interest on his future damages.

MCL 600.6013(1); MSA 27A.6013(1) provides that prejudgment interest is not allowed on future damages. However, plaintiff contends that § 6013 does not apply to no-fault actions. While we concede that there is apparently some question regarding the applicability of certain provisions of the 1986 tort reform statute to automobile negligence cases, *Miller v Ochampaugh*, 191 Mich App 48, 64; 477 NW2d 105 (1992), plaintiff has failed to cite any authority to persuade us that § 6013 is such a provision and that prejudgment interest is to be given on future damages awarded in a third-party no-fault case. Therefore, we will follow § 6013 and uphold the trial court's ruling.

Plaintiff also claims that under the circumstances of this case, the trial court should have granted prejudgment interest on the whole damage award. Plaintiff bases his claim on the fact that the trial court did not use plaintiff's proposed verdict form, which requested separate damage awards for past and future damages, but instead used the standard verdict form, SJI2d 67.04, which asks the jury to award a single lump sum. Plaintiff argues that because it is impossible to tell which damages reflect past damages, on which prejudgment interest is allowed, plaintiff should be given prejudgment interest on the whole award. We disagree.

When plaintiff moved for prejudgment interest, the trial court correctly ruled that plaintiff was entitled to interest on the portion of damages that accrued between January 21, 1994, when plaintiff's no-fault benefits ceased, and the date of the verdict, less than six months later. The trial court stated that because it was not possible to determine what that amount was, it would appoint a special master to make such a determination unless the parties could agree on an amount. The parties subsequently agreed on $21,000. Under the circumstances of this case, we find no error with the trial court's actions, and refuse to grant prejudgment interest on the whole award when the vast majority of it reflects future damages.

The JNOV and damage award are affirmed, and the award of costs and attorney fees is reversed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Michael J. Matuzak