

IN THE COURT OF APPEALS OF IOWA

No. 6-560 / 05-1754
Filed August 9, 2006

TAMMI SUE TUCKER,
Plaintiff-Appellant,

vs.

TYLER RYAN DUDA,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Tammi Sue Tucker appeals from the jury verdict in her negligence action.

AFFIRMED.

John J. Rausch of Rausch Law Firm, Waterloo, for appellant.

Samuel C. Anderson of Swisher & Cohrt, P.L.C., Waterloo, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

Tammi Sue Tucker appeals from the jury verdict in her negligence action. She argues the verdict is inconsistent and contrary to the evidence. We affirm.

I. Background Facts and Proceedings

On May 10, 2004, Tyler Duda was driving the pick-up and trailer he used for his seamless gutter business. The truck and trailer combined were forty feet in length. Duda, and his employee passenger, were traveling northbound on 4th Street in Waterloo when they came to the stoplight at an intersection known as Six Corners. Directly across from where Duda was stopped, 4th Street turns into a southbound one-way street. Duda, who was unfamiliar with the intersection, traveled straight across the intersection, continuing to travel north on 4th Street. Duda realized his mistake just past the intersection of 4th Street and Williston/5th Street. He pulled his truck and trailer to the east curb, blocking most of the access to a Phillips 66 gas station located there.

Tucker was traveling east on Sullivan Street, which quickly turns south on Kingsley Street, running parallel to 4th Street. Between Kingsley and 4th Street is a Kwik Star gas station. After reaching Kingsley Street, Tucker turned left, continuing to travel east, and cut across the Kwik Star parking lot to reach 4th Street. Tucker stopped at the Kwik Star exit before entering 4th Street. Nearly directly across from her was the Phillips 66 exit where Duda was coming to a stop with his truck. Tucker's ultimate destination was her daughter's school on 5th Street. To get there, she would have had to proceed south out of the Kwik Star parking lot, then merge across 4th Street, then make an immediate left turn on Williston/5th Street to continue traveling east. Tucker also stated she had, at

times, cut across the Phillips 66 parking lot to get to 5th Street. She stated that her intention on May 10, 2004, however, was to go all the way to the intersection.

Tucker testified she looked both directions before pulling out of the Kwik Star parking lot. Upon exiting the parking lot, she immediately crossed two lanes on 4th Street. At the time of impact, her car was moving to the right and she was leaning forward and looking left for on-coming traffic. She testified she did not look up until the impact. She was accelerating, while Duda was either moving slowly or stopped. The driver's side front corner of Tucker's car collided with the driver's side front corner and side of Duda's truck at almost a ninety-degree angle. The impact ruptured Duda's driver's side front tire and knocked his right tires up onto the curb. Tucker sustained injuries to her face and her teeth went through her chin. She had to have five teeth removed.

Trial was held on August 30 and 31, 2005. The jury determined that Duda was negligent, but that his negligence was not the proximate cause of Tucker's damages. Tucker filed a motion for new trial on September 9, 2005. She argued the verdict was inconsistent with the law and evidence. The district court overruled her motion on September 27, 2005. Tucker appeals.

II. Standard of Review

We review a motion for new trial according to the grounds on which it is based. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). We review challenges to the consistency of a special verdict for errors at law. *Id.* Therefore, we review the district court's ruling for errors at law.

III. Merits

Tucker argues the jury's verdict was inconsistent because it determined Duda was negligent and her injuries were caused by the collision. Though she was injured in the collision, and the jury determined Duda was negligent, it does not necessarily follow under Iowa law that Duda was the proximate cause of those injuries. The plaintiff in *Ten Hagen v. DeNooy*, 563 N.W.2d 4, 8 (Iowa Ct. App. 1997), offered an argument similar to Tucker's argument. There we said,

Plaintiff contends that because the jury found defendants were at fault, it necessarily follows that defendants "caused, at least in part, the subject collision." But in order to be a proximate cause of plaintiff's injuries, it is not enough to assert that the harm to plaintiff would not have occurred had defendants not been negligent. Although a finding of negligence is necessary, it is not, standing alone, sufficient. The fault or negligence of a defendant must also be a substantial factor in bringing about plaintiff's harm.

....
Pedersen [v. Kuhr], 201 N.W.2d 711, 713 (Iowa 1972)] establishes a two-part test for proximate cause: (1) But for defendant's fault, plaintiff's injuries would not have occurred; and (2) defendant's fault must be a substantial factor in bringing about plaintiff's harm.

Thus, in the case at bar, although the jury found defendants at fault, by its finding that such fault was not a proximate cause of plaintiff's damages, it follows the jury determined such fault was not a substantial factor in bringing about plaintiff's harm. It is reasonable to conclude the jury, by its finding, determined the effect of defendants' faults were "so insignificant that no ordinary mind would think of them as causes."

Ten Hagen, 563 N.W.2d at 8 (citations omitted). Thus, we conclude it was not inconsistent for the jury to determine Duda was negligent, but that he was not the proximate cause of Tucker's damages.

We also conclude the jury's verdict was consistent with both the law and the evidence. The jury could have determined that Duda was negligent for traveling the wrong way on a one-way street. However, the jury could also

reasonably conclude “that defendant[’s] fault was not a substantial factor in producing damage to plaintiff and the damage plaintiff suffered would have been incurred even though [defendant was] negligent.” See *id.* at 9.

The district court’s ruling denying Tucker’s motion for new trial is affirmed.

AFFIRMED.