

IN THE COURT OF APPEALS OF IOWA

No. 6-829 / 05-2089
Filed January 18, 2007

DALE E. WHEELER,
Plaintiff-Appellant,

vs.

**MARJORIE C. STRUNK, Fiduciary of the Estate of
ROBERT C. ADLER, and DAVID E. WILSON,
Fiduciary of the Estate of DIANE E. ADLER,**
Defendants-Appellees.

Appeal from the Iowa District Court for Clinton County, Nancy S. Tabor,
Judge.

Plaintiff appeals the district court's grant of summary judgment to
defendants on her tort claims arising from an automobile accident. **AFFIRMED.**

James D. Bruhn of Farwell & Bruhn, Clinton, for appellant.

Michael J. Motto of Bush, Motto, Creen, Koury & Halligan, P.L.C.,
Davenport, for appellees.

Considered by Huitink, P.J., and Vogel, J., and Nelson S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

NELSON, S.J.**I. Background Facts & Proceedings**

On June 16, 2002, at about 3:00 p.m., Robert Adler, who was seventy-six years old, picked up his wife, Diane Adler, and two of her co-workers, Dale Wheeler and Joan Greene, when they got off work at a local nursing home in Clinton, Iowa. Adler's vehicle was traveling east on Springdale Drive in the right-hand lane, when it rear-ended a vehicle driven by Patricia Diaz, which was traveling in the same direction, in the same lane. Diaz moved over to the left lane, and Adler's vehicle side-swiped her car as it came by. Diaz stated Adler's car swerved a few times and it was going fast. She stated Adler's vehicle did not appear to slow down after it hit the rear or the side of her car.

Adler's vehicle went over the curb on the right side of the road and hit the guide wires of a telephone pole. The car then went down into a ditch or culvert, vaulted out, flipped, and landed on the roof. The two backseat passengers, Wheeler and Greene, were ejected from the car during the accident, and they suffered serious injuries. They were unable to remember anything about the accident. Adler and his wife died as a result of the injuries they sustained in the accident.

An autopsy of Adler was performed by Dr. Salvador Borja. Dr. Borja found evidence Adler was having a heart attack, or acute myocardial infarction, at the time of the accident. Microscopic evidence showed Adler had begun having a heart attack two to three hours before he died. Dr. Borja stated that because Adler's heart was not working properly, not enough blood was going to his brain and he lost consciousness. He gave the opinion that due to loss of

consciousness, Adler lost control of the vehicle. Dr. Borja stated, “I can say for sure that he was in the process of having a heart attack, then he lost consciousness, and then that’s when the accident happened.” Adler’s blood tested positive for benzodiazepine, a drug he was prescribed for anxiety.

Wheeler filed a tort suit against the estates of Adler and his wife, claiming Adler operated the vehicle in a negligent manner, and this caused her damages. In their answer, defendants raised the affirmative defense of sudden emergency. Defendants filed a motion for summary judgment, claiming there were no genuine issues of material fact and they were entitled to judgment as a matter of law under the doctrine of sudden emergency. Wheeler resisted the summary judgment motion, asserting it was unclear whether Adler had a heart attack prior to, during, or after his vehicle struck Diaz’s vehicle. She also stated Adler’s medication could have had a potential side-effect of drowsiness, which could have affected his driving.

The district court granted the motion for summary judgment. The court noted that generally the issue of sudden emergency is for the jury to decide. In this case, the court determined, “there is no genuine issue of material fact on the record presented concerning the fact that Robert Adler was suffering from a heart attack at the time of the accident” The court also found the heart attack caused the accident. Wheeler appeals the summary judgment for defendants.

II. Standard of Review

Our review is for the correction of errors at law. Iowa R. App. P. 6.4. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.

Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the nonmoving party. *Eggiman v. Self-Insured Servs. Co.*, 718 N.W.2d 754, 758 (Iowa 2006).

III. Merits

Wheeler claims the district court erred in granting summary judgment to defendants because there was a genuine issue of material fact as to whether Adler suffered a sudden heart attack which caused the accident. Plaintiff asserts Dr. Borja was not able to assert with any degree of medical certainty whether Adler suffered a heart attack before, during, or after the collision. She points out that Adler did not die as a result of the heart attack, but died as a result of injuries sustained in the accident. Wheeler states Adler tested positive for benzodiazepine, and one of the side-effects of this drug is drowsiness. She contends the issue of the cause of the accident should be submitted to a jury.

The doctrine of legal excuse permits a jury to excuse a driver's failure to obey statutory law when confronted with a sudden emergency. *Vasconez v. Mills*, 651 N.W.2d 48, 54 (Iowa 2002). The elements of sudden emergency are: (1) the driver is confronted with a sudden emergency; (2) the emergency was not created by the driver's own negligence; and (3) the driver conducted himself or herself as a reasonable person in a similar emergency. *Jones v. Blair*, 387 N.W.2d 349, 352 (Iowa 1986). A sudden heart attack may be considered a sudden emergency. *Foster v. Ankrum*, 636 N.W.2d 104, 106 (Iowa 2001) (quoting *Weiss v. Bal*, 501 N.W.2d 478, 482 (Iowa 1993)); *Mosell v. Estate of Marks*, 526 N.W.2d 179, 182 (Iowa Ct. App. 1994).

The party asserting a sudden emergency existed has the burden of proving this legal excuse, and we view the evidence in the light most favorable to that party. *Beyer v. Todd*, 601 N.W.2d 35, 39 (Iowa 1999). Generally, whether a party has been faced with a sudden emergency is a question for the jury. *Bangs v. Kiefer*, 174 N.W.2d 372, 374 (Iowa 1970).

During the deposition of Dr. Borja, plaintiff's counsel asked several times if it were possible that the collision occurred first, and then the heart attack. Dr. Borja stated he did not believe this was possible. Dr. Borja stated Adler died within a minute or two after he sustained the injuries in the accident, and microscopic evidence showed the heart attack started two to three hours before the accident. Dr. Borja stated he could not say exactly when the heart attack started, but could "say for sure that he was in the process of having a heart attack, then he lost consciousness, and then that's when the accident happened." There is no evidence in the record to support plaintiff's contention that the collision occurred before the heart attack.

There is also no evidence in the record to support plaintiff's allegation that the accident may have been caused because Adler became drowsy from taking benzodiazepine. Dr. Borja testified drowsiness may be a side-effect of this drug, but there was no evidence Adler became drowsy from taking it. Plaintiff also raised the possibility that Adler suddenly stopped taking the medication, which could lead to withdrawal symptoms. Again, there was no evidence to show Adler had suddenly stopped taking his medication.

We concur in the district court's conclusion:

The court concludes that there is no genuine issue of material fact in the record presented concerning the fact that Robert Adler was suffering from a heart attack at the time of the accident and there is no evidence, other than plaintiff's speculation, to refute the medical examiner's conclusion that "The early acute myocardial infarction most likely resulted in his losing control of the vehicle he was driving."

We determine there was no genuine issue of material fact present in this case as to whether Adler suffered a heart attack and whether the heart attack caused the accident. Defendants are entitled to summary judgment based on the doctrine of sudden emergency.

AFFIRMED.