IN THE COURT OF APPEALS OF IOWA

No. 7-583 / 06-0936
Filed September 6, 2007

STEVEN EASTON,
Plaintiff-Appellee/Cross-Appellant,

vs.

JEANETTE HOWARD,
Defendant,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY (MEMBER OF AMERICAN FAMILY INSURANCE GROUP),
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Delaware County, John Bauercamper, Judge.

American Family Mutual Life Insurance Company appeals from an adverse jury verdict and resulting judgment in favor of plaintiff. **AFFIRMED.**

Jeanette Howard, Wadena, pro se.

Ted Wallace, Davenport, for appellant.

Jason Walke of Gunderson, Sharp & Walke, L.L.P., Des Moines, for appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

BAKER, J.

American Family Mutual Life Insurance Company appeals from an adverse jury verdict and resulting judgment in favor of Steven Easton. Because there was substantial evidence to support the jury's findings and the trial court did not abuse its discretion in ruling a witness's testimony inadmissible, we affirm.

I. Background and Facts

No one knows exactly what happened on the night Easton was injured. The driver, Jeanette Howard, was too drunk to remember, and Easton has no memory of what immediately preceded his fall from a moving pickup truck. The jury was presented with a severely injured man, claiming his injuries were caused by his ex-fiancee's intoxication and failure to maintain control, but neither party with any knowledge of how he actually ended up in a coma on the road.

Howard and Easton lived together in rural Delaware County, Iowa, from 1997 to 2004. On June 5, 2003, they spent the day at a family gathering in Wadena, Iowa. Throughout the day, Howard drank more than ten cans of beer and became intoxicated. Easton also drank, although it is unclear whether he was also intoxicated. In spite of her intoxication, at approximately 11:00 p.m., Howard drove Easton and their daughters sixty miles home.[1] When they arrived home, they dropped off their daughters and drove to a nearby park to discuss an issue out of the presence of the girls. The couple argued. Howard left the park in the truck, and Easton began to walk home. Howard returned, and Easton got

[1] Both parties testified that Howard drove because they could not afford for Easton to lose his commercial drivers license (CDL).

in the truck. Howard then drove out of the park, but turned in the opposite direction from their home. After driving two miles, Howard made a u-turn, during which Easton fell out of the passenger door. Howard testified that she stopped the truck, picked Easton up, put him back in the truck, and drove him to the hospital.[2]

As a result of his fall, Easton suffered massive head injuries. He spent over a month in the hospital, missed one full year of work, and lost his senses of taste and smell. Easton filed an uninsured motorist claim with his insurance company, American Family, which they denied.[3] The matter went to jury trial from April 12 to 14, 2006. Following the submission of the evidence, the trial court instructed the jury on Easton's claim that Howard's negligence was a proximate cause of the injuries. The jury assigned sixty-five percent of the fault for Easton's damages to Howard and thirty-five percent to Easton. The trial court entered a judgment in favor of Easton for the policy limit of $100,000 plus interests and costs. Additional facts as relevant will be discussed below.

II. Directed Verdict and Judgment Notwithstanding Verdict

American Family contends the trial court should have granted its motions for directed verdict and for judgment notwithstanding verdict. We review the denial of such motions for correction of errors at law. *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 391 (Iowa 2001). The trial court decides "whether the

[2] Getting back in the truck is the last thing Easton remembers until he woke up in a hospital sixteen days later.

[3] In an October 17, 2003 letter to Easton, Carla Loehr with American Family, wrote, "[i]n order for us to entertain an Uninsured Motorist claim for you, there would have had to be negligence involved on the driver's part for causing your injury. Our investigation has determined that Jeannette Howard was not negligent."

nonmoving party has presented substantial evidence on each element of the claim. Evidence is substantial if a jury could reasonably infer a fact from the evidence. A directed verdict is appropriate if the evidence is not substantial." *Id.* (citations and internal quotation marks omitted). To determine whether there was sufficient evidence to justify submitting the question to the jury, we view the evidence in the light most favorable to the non-moving party

> regardless of whether it is contradicted and every legitimate inference that may be fairly and reasonably deducted therefrom must be carried to the aid of the evidence. "If . . . there is substantial evidence in support of each element of plaintiff's claim, the motion . . . should be denied."

Slocum v. Hammond, 346 N.W.2d 485, 494 (Iowa 1984) (quoting *Valadez v. City of Des Moines*, 324 N.W.2d 475, 477-78 (Iowa 1982)).

A. Proximate Cause

Negligence "cannot be assumed from the mere fact of an accident and an injury." *Fanelli v. Illinois Cent. R. Co.*, 246 Iowa 661, 664, 69 N.W.2d 13, 15 (1955). To recover on a negligence claim, Easton must establish that Howard's conduct was the proximate cause of his injuries. *Hasselman v. Hasselman*, 596 N.W.2d 541, 545 (Iowa 1999). American Family contends Easton failed to demonstrate that Howard proximately caused his injuries.

Questions of proximate cause are generally for the jury and are only to be decided as a matter of law in exceptional cases. Iowa R. App. P. 6.14(6)(*j*). "The matter of intoxication and its causal relationship to the injury are questions that must be decided by the factfinder." *Sechler v. State*, 340 N.W.2d 759, 766 (Iowa 1983) (citing *Yost v. Miner*, 163 N.W.2d 557, 561 (Iowa 1968)).

While the act of driving while intoxicated is not negligence per se, a drunk driver may be found negligent if her "intoxicated condition is translated into outward conduct which is negligent and bears a causal relation to [the] injury." *Id.* (citing *Yost*, 163 N.W.2d at 561). To prove causation, Easton must establish some causal relationship between Howard's conduct and Easton's injuries. *Hasselman*, 596 N.W.2d at 545. If the jury were left to speculate as to whether Howard's conduct in fact caused Easton's injuries, the evidence would be insufficient to support a finding of proximate cause. *Id.* at 546.

The evidence provided for three possibilities for Easton's injuries: (1) he jumped, (2) the latch failed, or (3) a sudden and unexpected u-turn caused him to somehow hit the door handle and fall out. The evidence showed no problem with the latch. The jury, therefore, was left with two possibilities: either he jumped from the vehicle or Howard's driving caused the fall.

We hold there is substantial evidence to support the jury's finding that Howard's conduct was the proximate cause of Easton's fall. Howard was driving the truck while intoxicated. While leaving the park, she turned in the wrong direction. She then made a u-turn on a curved road with a double yellow line, during which Easton fell from the truck. The trial court did not err in submitting the issue of proximate cause to the jury. *See Horak v. Argosy Gaming Co*., 648 N.W.2d 137, 148 (Iowa 2002) (holding question of causal relationship between driver's intoxication and accident had been properly placed before jury).

B. Failure to Maintain Control

American Family further contends there was no substantial evidence to support the jury's finding that Howard failed to maintain control of the vehicle.

Control means more than being able to stop quickly – it also connotes an ability to maneuver a vehicle in a reasonably prompt manner "'so as to guide and direct its course or movement in the manner willed by the operator, acting as the ordinarily careful and prudent driver would do under similar circumstances.'" *Tillotson v. Schwarck*, 259 Iowa 161, 169, 143 N.W.2d 284, 288-89 (1966) (quoting *Paulsen v. Haker*, 250 Iowa 532, 540, 95 N.W.2d 47, 52 (1959)). Guided by these principles, it was proper for the trial court to submit the matter of control to the jury. *Bradt v. Grell Const., Inc.*, 161 N.W.2d 336, 344 (Iowa 1968); *see Sayre v. Andrews*, 259 Iowa 930, 941, 146 N.W.2d 336, 343 (1966) ("The question of control largely depends upon the circumstances of each case and is ordinarily a question for the jury.").

There is substantial evidence from which a jury could conclude that Howard failed to maintain control of the vehicle. Howard was admittedly intoxicated and testified that, when she is intoxicated, she is not able to control her vehicle as well as when she is sober. She took a wrong turn and testified that she did not know how fast she was going when she made the u-turn. Under these circumstances, a jury could find that Howard did not maintain control of the vehicle. The trial court did not err in submitting the issue to the jury.

III. Exclusion of Testimony

American Family next argues the trial court committed reversible error in refusing to admit relevant and probative testimony.[4] We review evidentiary

[4] In American Family's offer of proof, Sandy Howard testified that on some unspecified evening in the past, she and her husband went out with Easton. After having pizza and beers, the three went to a bar. Later that evening, Howard and her husband discovered Easton lying down by some garbage dumpsters. He had vomited. After they got Easton

rulings for an abuse of discretion. *Hutchison v. Amn. Family Mut. Ins. Co.*, 514 N.W.2d 882, 885 (Iowa 1994). The trial court has wide discretion in ruling on the admissibility of evidence, and we will not disturb its decision unless there is a clear and prejudicial abuse of discretion. *Gamerdinger v. Schaefer*, 603 N.W.2d 590, 594 (Iowa 1999).

It was well within the trial court's discretion to determine whether the fact that Easton had previously opened the door of a moving car at some unidentified time in the past was relevant to whether he jumped from the vehicle on the night of his injuries. *See* Iowa R. Evid. 5.402 ("Evidence which is not relevant is not admissible."); *State v. Buenaventura*, 660 N.W.2d 38, 51 (Iowa 2003) ("An assessment of remoteness rests in the sound discretion of the trial court."). It was also within the trial court's discretion to determine whether Sandy Howard's testimony was inadmissible due to unfair prejudice or because it was offered to prove conduct in conformity with a prior bad act. *See* Iowa R. Evid. 5.403, 5.404(b). We find no abuse of discretion in the trial court's decision not to admit Sandy Howard's testimony.[5]

IV. Conclusion

There was substantial evidence to support the jury's finding that Howard's conduct was causally related to Easton's fall from the truck and that Howard

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in the car and started to drive, Easton mumbled, "I need to get out," and started to open the door handle. When they stopped the car, he got out and lay down on the ground.

[5] Because we find no error in the trial court's refusal to admit Howard's testimony, we need not consider Easton's argument that American Family failed to provide a sufficient record regarding the trial court's ruling.

failed to maintain control of the vehicle. Additionally, the trial court did not abuse its discretion in determining Sandy Howard's testimony was inadmissible. [6]

AFFIRMED.

[6] Because we affirm the trial court, we need not address Easton's cross appeal regarding the trial court's failure to instruct the jury on the issue of waiver.