IN THE COURT OF APPEALS OF IOWA

No. 7-848 / 07-0094
Filed January 16, 2008

JOHN H. HALTERMAN,
Plaintiff-Appellant,

vs.

VERL JACKSON and
MERLE H. CROSSETT,
Defendants-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, Greg W. Steensland, Judge.

Plaintiff appeals from the district court's ruling denying his motion for new trial following a jury verdict and judgment entry in favor of defendants. **REVERSED AND REMANDED.**

Dennis M. Gray and Jacob J. Peters of Peters Law Firm, P.C., Council Bluffs, for appellant.

T.J. Pattermann of Smith Peterson Law Firm, L.L.P., Council Bluffs, for appellees.

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

ZIMMER, J.

John Halterman appeals from the district court's ruling denying his motion for new trial following a jury verdict and judgment entry in favor of Verl Jackson and Merle Crossett. We reverse and remand for a new trial on all issues.

I. Background Facts and Proceedings.

On April 15, 2003, Halterman and his friend, Deloris Tye, were traveling east on Interstate 80 (I-80) near Council Bluffs, Iowa. Soon after Halterman began driving on I-80, he encountered signs warning him of approaching road construction. The signs directed motorists traveling in the right lane to merge into the left lane. Barrels were also set up in the right lane to gradually taper traffic into the left lane.

Halterman came upon Jackson's semi-truck, which was being driven by Crossett, and passed the truck. Halterman estimated he was driving approximately fifty-five miles per hour while Crossett, a semi-truck driver with at least thirty years' experience, was traveling at about thirty to thirty-five miles per hour. The speed limit in the "pre-construction zone" was fifty-five miles per hour.

Upon passing Crossett, Halterman noticed an elderly lady in a white vehicle "about five car lengths or so" ahead of him on his right side. Aware of the impending road construction, Halterman slowed down to about thirty miles per hour to allow the white vehicle to merge in front of him. As they approached the barrels forcing traffic into the left lane, the white vehicle did not seem as if it was going to merge. Tye leaned out of the passenger-side window "trying to get her attention to move her in front of us." Halterman continued to slow down and moved over to the far left side of the left lane to allow the white vehicle to merge

in front of him. The white vehicle was running out of room to travel in the right lane due to the barrels, and Halterman was against the guardrail of a bridge on the interstate "clear over to the left side as far as he could go." It then appeared to him that the white vehicle was going to stop, so he started to proceed ahead of it. The white vehicle did not stop and instead turned left into Halterman's path. Tye said, "'look out. . . . [S]he's going to hit us,'" and Halterman "slammed on the brakes."

Crossett, who estimated he had been traveling about seventy-five to one hundred feet behind Halterman since he was passed, saw the white vehicle "come out like she was going to stop there . . . to get on the – to the one lane road." He then saw Halterman "hit his brake lights and come to a complete stop." Crossett immediately attempted to stop, but it was "awful sudden, too quick for me to do anything." Crossett rear-ended Halterman, and the white vehicle exited off the interstate.

Halterman filed a personal injury action in February 2005 against Crossett and Jackson, alleging Crossett negligently operated Jackson's semi-truck, causing the collision and Halterman's resulting injuries. The case proceeded to trial in August 2006. At the close of evidence, the jury was instructed that a driver is negligent if the driver fails to keep a "proper lookout" to the rear, or if the driver stops a vehicle "upon the main traveled part of the highway when it is practical to stop off the highway." The district court overruled Halterman's objections to these instructions and submitted them to the jury.

The jury returned a special verdict finding sixty percent of the causal fault was attributable to Halterman's negligence while forty percent of the causal fault

was attributable to Crossett's negligence. Although the special verdict form instructed the jury to disregard the question regarding the amount of damages sustained by Halterman if he was found to be more than fifty percent at fault, the jury answered the question and found Halterman sustained total damages in the amount of $22,350. After the jury returned its verdicts, the district court entered judgment in favor of the defendants. The judgment was entered without clarification of the inconsistency in the jury's answers to the special verdict forms.

Halterman filed a motion for new trial. The district court denied the motion, and Halterman appeals. He claims the district court erred in denying the motion for new trial because the jury verdict was inconsistent and not supported by substantial evidence. He also claims the district court erred in instructing the jury on his duty to keep a proper lookout to the rear and his duty to not stop his vehicle on the highway.

II. Scope and Standards of Review.

Our review of a district court's ruling on a motion for new trial depends on the grounds raised in the motion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). When the motion and ruling are based on discretionary grounds, our review is for abuse of discretion. *Id.* However, when the motion and ruling are based on a claim the trial court erred on issues of law, our review is for correction of errors at law. *Id.*

In this case, Halterman's motion for new trial argued the jury's verdict was inconsistent and not supported by substantial evidence. Halterman additionally argued the district court erred in submitting two instructions to the jury. The trial court has some discretion when faced with inconsistent answers in a jury verdict.

Id. However, the question of whether the verdict is inconsistent so as to give rise to the exercise of that discretion is a question of law. *Id.* We therefore review the district court's conclusion as to whether answers are inconsistent for correction of errors at law. *Id.* We also review the trial court's ruling as to whether the verdict was sustained by substantial evidence and the claim that the trial court erred in submitting jury instructions for correction of errors at law. *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004); *Greenwood v. Mitchell*, 621 N.W.2d 200, 204 (Iowa 2001).

III. Discussion.

A. Inconsistent Verdict.

Halterman argues the district court erred in denying his motion for new trial because the jury's verdict finding him more than fifty percent at fault but awarding damages was inconsistent. We agree.

The jury verdict in this case was in the form of a special verdict, which "consists entirely of questions that elicit special written answers to resolve the material issues of fact in the case. . . ." *Clinton Physical Therapy Servs.*, 714 N.W.2d at 610. The answers by the jury become special written findings of fact. *Id.* The district court then uses the findings made by the jury in response to questions in a special verdict to enter judgment. *Id.* at 611. Each finding must be supported by the evidence presented, and the findings made cannot be internally inconsistent. *Id.* If the answers in a special verdict are inconsistent with each other, the court "may either send the jury back for additional

deliberations or grant a new trial." *Id.*; *see also* Iowa R. Civ. P. 1.934.[1] The court cannot enter judgment because "[i]nconsistent answers that constitute special findings cannot support a judgment." *Clinton Physical Therapy Servs.*, 714 N.W.2d at 612.

A verdict is not inconsistent if it can be harmonized in a reasonable manner consistent with the jury instructions and the evidence in the case, including fair inferences drawn from the evidence. *Id.* at 613. When, under this analysis, two answers or findings by the jury would compel the rendition of different judgments, the answers are inconsistent. *Id.*; *see also* 89 C.J.S. *Trials* § 992, at 604 (2001) ("The test to determine if conflict between jury questions is irreconcilable is . . . whether taking one finding alone a judgment should be entered in favor of the plaintiff and taking the other finding alone a judgment should be rendered for the defendant."). The jury's verdict in this case, finding Halterman to be more than fifty percent at fault for the accident but awarding him damages, cannot be harmonized with the evidence and the law set forth in the instructions.

Under Iowa's Comparative Fault Act, Iowa Code chapter 668 (2005), a plaintiff cannot recover damages if he or she is more than fifty percent at fault. Iowa Code § 668.3(1)(a); *Reilly v. Anderson*, 727 N.W.2d 102, 108 (Iowa 2006). The jury was thus instructed, "[I]f you find the Plaintiff . . . was at fault and the Plaintiff's fault was more than 50% of the total fault, the Plaintiff . . . cannot

[1] Rule 1.934, which governs special interrogatories supplementing general verdicts and addresses the possibility of conflicts in answers to those interrogatories, is equally applicable to inconsistent answers in a special verdict. *Clinton Physical Therapy Servs.*, 714 N.W.2d at 612.

recover damages." Question No. 5 of the special verdict directed the jury to assign percentages of fault to the parties. It then instructed the jury, "If you find plaintiff to be more than 50% at fault, do not answer Question No. 6," which asked the jury find the total amount of damages Halterman sustained. The jury found Halterman was responsible for sixty percent of the causal fault. Despite the instructions and its findings regarding fault, the jury answered question No. 6, itemized Halterman's damages, and found he sustained total damages in the amount of $22,350. By answering question No. 6, the jury apparently found that the plaintiff was not more than fifty percent at fault.

In rejecting Halterman's motion for new trial, the district court concluded "[t]he rendering of damages is completely consistent with the jury's answers to the other interrogatories." We do not agree. The jury's two answers to question Nos. 5 and 6 "would compel the rendition of different judgments," one in favor of Halterman and the other in favor of the defendants. *Clinton Physical Therapy Servs.*, 714 N.W.2d at 613. We agree with the district court that it is not inconsistent under the evidence to find that Halterman sustained damages and to find he was more at fault for the accident than the defendants. Both findings are supported by the evidence. However, these findings cannot be harmonized with the law and the instructions issued in the case. *See id.* (stating two answers are not inconsistent if they can be harmonized under "the evidence *and the law*") (emphasis added). In light of the foregoing, we must conclude the jury's verdict was inconsistent.

Although we agree with the district court that "[i]t is the Court's obligation to render judgment based upon the apportionment of fault," *see* Iowa Code §

668.3(4), the court is prohibited from entering judgment in the face of inconsistent answers. *Clinton Physical Therapy Servs.* 714 N.W.2d at 612. The judgment entered by the district court in favor of the defendants harmonized the jury's inconsistent answers to question Nos. 5 and 6 and "engaged in a process of reconciliation not available when two special findings are inconsistent with each other, and both are supported by evidence." *Id.* at 614; *see also* Iowa R. Civ. P. 1.934 ("If the answers are inconsistent with each other . . . the court shall not order judgment, but either send the jury back or order a new trial."). We reject the defendants' argument that the judge is free to disregard an inconsistent finding by the jury in a special verdict. *See* 89 C.J.S. *Trial* § 992, at 603 (stating that when findings in special verdicts are inconsistent with each other, "they neutralize, nullify, or destroy each other").

The trial court's power to reform a verdict by correcting a mistake is limited and only permits the court to correct errors in the verdict that are technical or ministerial in nature. *Ostrem v. State Farm Mut. Auto. Ins. Co.*, 666 N.W.2d 544, 546 (Iowa 2003). A judge cannot use the power to substitute its judgment for the judgment of the jury. *Id.* Thus, verdicts can only be reformed when the change clearly expresses the jury's intentions. *Clinton Physical Therapy Servs.*, 714 N.W.2d at 614.

> When two answers in a verdict are both supported by substantial evidence but are inconsistent under the instructions, a court may not attempt to reconcile the inconsistency and enter a judgment by correcting the inconsistency to conform to the intent of the jury because the two conflicting views of the evidence would necessarily produce some speculation about the intent of the jury.

Id. The district court's orders entering judgment in favor of the defendants and denying Halterman's motion for new trial necessarily involved some degree of speculation as to the jury's intent because, as we have already stated, there was evidence supporting both the jury's finding of fault and its award of damages.

The district court's options in this case were accordingly limited to resuming jury deliberations or granting a new trial. *Id.* at 612-13; *see also* Iowa Code § 668.3(6) ("[T]he court shall not discharge the jury until the court has determined that the verdict or verdicts are consistent with the total damages and percentages of fault."). The court did not exercise either of these options and instead discharged the jury and attempted to reconcile the inconsistency itself by entering judgment in favor of the defendants. Because the jury's answers in the verdict were internally inconsistent, the court "had no power to enter judgment following discharge of the jury, but was required . . . to grant a new trial as a matter of law." *Clinton Physical Therapy Servs.*, 714 N.W.2d at 614.

We therefore reverse the district court's ruling denying Halterman's motion for new trial and remand for a new trial on all issues.[2] Given our conclusion in this regard, we need not and do not address Halterman's claim that the jury's verdict was not supported by substantial evidence.

[2] We reject the defendants' argument that the new trial should be limited to the issue of liability alone. *See Householder v. Town of Clayton*, 221 N.W.2d 488, 493 (Iowa 1974) (stating new trials are generally granted on all issues, unless a defendant's liability is definitely established); *see also Brant v. Bockholt*, 532 N.W.2d 801, 805 (Iowa 1995) (acknowledging specific issues may be retried, instead of a new trial on all issues, when it appears the other issues have been rightly settled and an injustice will not be occasioned).

B. Jury Instructions.

We will briefly address Halterman's claims regarding the disputed jury instructions "only to aid in their resolution should they arise again on retrial." *See Mills County St. Bank v. Fisher*, 282 N.W.2d 712, 716 (Iowa 1979).

The jury was instructed that the defendants claimed Halterman was negligent in failing to keep a proper lookout to the rear and in stopping on the main traveled part of the highway. Separate jury instructions explaining each of these specifications of negligence were also given. Halterman claims these jury instructions were improper because they were not supported by substantial evidence. *See Le v. Vaknin*, 722 N.W.2d 412, 414 (Iowa 2006) (stating we review the disputed jury instructions to determine if the instructions are a correct statement of the law based on the evidence presented).

An instruction regarding a driver's "duty of lookout to the rear" is appropriate where there is evidence "a maneuver is contemplated which may endanger a following vehicle." *McCoy v. Miller*, 257 Iowa 1151, 1157, 136 N.W.2d 332, 336 (1965); *see also Vanderheiden v. Clearfield Truck Rentals, Inc.*, 210 N.W.2d 527, 530 (Iowa 1973) (stating defendant was entitled to an instruction as to the duty of lookout to the rear where there was evidence plaintiff was struck from the rear when returning to a traveled lane from the shoulder).

An instruction regarding a driver's duty to not stop a vehicle on a highway based upon the statutory prohibition contained in Iowa Code section 321.354 is appropriate where there is evidence the stop was voluntary and amounted to "parking or leaving a vehicle standing, attended or otherwise." *Pinckney v. Watkinson*, 254 Iowa 144, 153-54, 116 N.W.2d 258, 263 (1962) (finding no error

in giving the instruction where the plaintiff stopped on the highway to pick up passengers). The instruction is not warranted where there is evidence the stop was momentary and made in due care in response to a hazardous road condition. *Jesse v. Wemer & Wemer Co.*, 248 Iowa 1002, 1007-08, 82 N.W.2d 82, 84 (1957) (approving trial court's refusal to give instruction where plaintiff momentarily stopped his vehicle near an underpass to allow an approaching vehicle through); *see also Larsen v. Johannsen*, 220 N.W.2d 872, 873 (Iowa 1974) (stating instruction should not have been given where plaintiff momentarily stopped to shift to forward gear after backing onto highway).

Based on the evidence presented at the first trial, we do not believe the trial court erred in submitting Instruction No. 25 regarding "Proper Lookout." On the other hand, we do not believe the evidence at the first trial supported Instruction No. 28 regarding "Stopping on a highway." On remand, the instructions regarding a driver's duty to keep a proper lookout to the rear and to not stop on a highway should only be given if the evidence supports them.

IV. Conclusion.

We conclude the jury's answers in the special verdict were inconsistent. We therefore reverse the judgment of the district court and remand for a new trial on all issues.

REVERSED AND REMANDED.