

Timothy Marc McCARTNEY v. Virginia McLAUGHLIN

88-79

756 S.W.2d 907

Supreme Court of Arkansas  
Opinion delivered September 26, 1988

1. APPEAL & ERROR — REVIEW OF FINDING OF FACT — THE EVIDENCE IS CONSIDERED IN THE LIGHT MOST FAVORABLE TO THE APPELLEE. — The evidence, and all reasonable inferences therefrom, is considered in the light most favorable to the appellee in a review of a finding of fact by a trial judge.
2. NEGLIGENCE — AUTOMOBILE ACCIDENTS — CIRCUMSTANCES WHERE FINDING OF NO NEGLIGENCE WAS NOT CLEARLY ERRONEOUS. — Where the trial court believed appellee's testimony that she had slid off the ice-covered street onto the right shoulder until her wheels gained traction and had not crossed the center line, that the appellant at the same time had skidded off the road to his right, and that there was no impact, the finding of the trial court that there was no negligence on appellee's part was not clearly erroneous.

Appeal from Washington Circuit Court, Second Division;  
*Kim M. Smith*, Judge; affirmed.

*Matthews, Campbell & Rhoads, P.A.*, by: *Johnnie Emberton Rhoads*, for appellant.

*Curtis E. Hogue*, for appellee.

ROBERT H. DUDLEY, Justice. The trial judge, sitting as the trier of fact in this car-wreck case, found that the appellee, defendant below, was not guilty of negligence. Appellant, plaintiff, appeals and argues that the finding of fact was clearly erroneous. The argument is without merit.

[1] In reviewing a finding of fact by a trial judge we consider the evidence, and all reasonable inferences therefrom, in the light most favorable to the appellee. *Sipes v. Munro*, 287 Ark. 244, 697 S.W.2d 905 (1985). The trial court obviously believed appellee's testimony, and that testimony developed the following scenerio. The appellee, defendant, was driving her car at about ten miles per hour in an easterly direction on Backus Street in Springdale. The street was covered with ice and was extremely slick. Her car slid to the right shoulder, but as her wheels gained traction on the shoulder, the car straightened out. She did not cross the center line of the street. At the same time, the appellant, plaintiff, was driving his car in the opposite direction at about twenty-five miles per hour and skidded off the road to his right. There was no impact.

[2] We cannot say that the finding of the trial court that there was no negligence on appellee's part was clearly erroneous.

Affirmed.

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