

FILED

AUG 25 1981

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DAVID EUGENE BEHRENSMEYER, )  
Plaintiff-Appellee, )  
vs. )  
HENRY E. KUEHL, )  
Defendant-Appellant. )

Filed August 25, 1981

1-186  
2-6511

Appeal from Scott District Court. James Havercamp, Judge.

Defendant appeals from an adverse jury verdict, alleging (1) that plaintiff's counsel made improper statements in his opening argument to the jury, depriving the defendant of a fair trial, and (2) that the trial court committed prejudicial error by refusing to give Uniform Jury Instruction No. 2.19. AFFIRMED.

Celeste F. Bremer, of Raben, Liebbe, Shinkle & Bremer, Davenport, Ia., for defendant-appellant.

James M. Hood, of Peart & Hood, Davenport, Ia., for plaintiff-appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

**PER CURIAM**

Defendant appeals from an adverse jury verdict, alleging (1) that plaintiff's counsel made improper statements in his opening argument to the jury, depriving the defendant of a fair trial, and (2) that the trial court committed prejudicial error by refusing to give Uniform Jury Instruction No. 2.19. We affirm.

This case arose from an automobile-motorcycle collision on July 17, 1978. The plaintiff was driving his motorcycle in an easterly direction, and when the defendant pulled his Volkswagon out from a parking space headed west, the two collided. There was testimony that the street was too narrow to permit two automobiles to pass each other when cars were parked on either side of the street, but that a motorcycle and a small car could have passed. Testimony was conflicting as to precisely on what side of the street the accident occurred. The jury returned a verdict for the plaintiff, and the trial court entered judgment for the plaintiff in the amount of \$6,700. The defendant appealed.

Our review is on error assigned. Iowa R. App. P. 4.

I. The defendant-appellant argues that the plaintiff's counsel made improper remarks to the jury in his opening statement which deprived the defendant of a fair trial. Defendant's counsel did not object to the remarks during the opening statements, in order that the statement would not receive undue emphasis in the eyes of the jury. Rather, he objected in a hearing in the trial judge's chambers after opening statements were finished. The trial judge stated he would reserve ruling until later. The defendant's counsel did not request a ruling at a later time. Although defendant's counsel moved for a directed verdict, it was not on the grounds of the allegedly improper argument. The trial judge was never asked to make his reserved ruling. Therefore, any possible error was not preserved for appeal. Linge v. Ralston Purina Co., 293 N.W.2d 191, 195 (Iowa 1980).

II. The defendant-appellant alleges that the trial court committed prejudicial error by refusing to give Uniform Jury Instruction No. 2.19, "Duty To Use Ordinary Care Where Conditions Require Less Than Statutory Speed Limit."

Before a trial judge must instruct the jury on an abstract principle of law, the principle must be related to the facts of the case. Wilson v. Jefferson Transportation Co., 163 N.W.2d 367 (Iowa 1968). Circumstances which require a driver to drive less

than the maximum speed limit are such things as adverse weather conditions, slippery pavement, and road construction. See Plummer v. Loonan, 189 N.W.2d 617 (Iowa 1971); Rozmajzl v. Northland Greyhound Lines, 242 Iowa 1135, 49 N.W.2d 501 (Iowa 1951); Richards v. Eegenstos, 237 Iowa 398, 21 N.W.2d 23 (1945). In this case, the weather was good, there was no traffic other than the two vehicles involved in the accident, and the defendant pulled his parked vehicle out from behind a parked car and collided with plaintiff's motorcycle. The appellant argues that the existence of parked cars on both sides of the road and small children on the sidewalk four feet from the street are sufficient conditions to require the trial court to give the instruction. We hold that under these circumstances the court was correct in refusing to instruct the jury regarding speed less than the statutory speed limit.

Finding no error, we affirm.

AFFIRMED.