Court of Queen's Bench of Alberta

Citation: Bradford v Snyder 2015 ABQB 406

Date: 20150624
Docket: 1201 09761
Registry: Calgary

Between:

Casey Bradford

Plaintiff

- and -

Siobhan M. Snyder and Eithne P. Snyder

Defendants

Reasons for Judgment
of the
Honourable Mr. Justice A.D. Macleod

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[1] On a grey and rainy afternoon on June 18, 2011 at about 5 pm the Plaintiff, while riding her bicycle, was involved in a collision with a Volkswagen van driven by the Defendant S. Snyder and owned by her mother, E. Snyder at the intersection of 24th Ave and 5th Street NW. At that intersection, 5th Street was controlled by a stop sign whereas 24th Avenue was a through street.

[2] The Plaintiff, who was travelling north on 5th Street, testified that she came to a rolling stop at the stop sign and looked both ways but saw nothing, notwithstanding that the Volkswagen van, which was proceeding west on 24th Avenue, was there to be seen.

[3] The Plaintiff was seriously injured and damages have been agreed upon. The only issue before me is whether the Defendant driver is liable and, if so, to what extent. The Plaintiff concedes that she did not stop at the stop sign and that, if she had done so, the accident could have been avoided. I heard from five witnesses: the Plaintiff, the Defendant driver, Mr. Michael Barton and two accident reconstruction experts -- Dr. Good and Mr. MacInnis.

[4] The onus of proof is critical to the analysis of this case. The Plaintiff relies upon s. 186 of the *Traffic Safety Act*, RSA 2000, c T-6, which reads as follows:

> If a person sustains loss or damage by reason of a motor vehicle being in motion, the onus of proof in any civil proceeding that the loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or driver of the motor vehicle is on that owner or driver.

[5] The definition of "motor vehicle", as it applies to that section, does not include a bicycle.

[6] The Plaintiff cites authority that suggests that this onus, while rebuttable, is on the Defendant until the end of the trial and is not discharged merely by demonstrating that the Plaintiff was negligent. On the other hand, the Defendant alleges that the Plaintiff was in breach of the *Traffic Safety Act* by failing to stop and relies upon a reverse onus, citing in support of that proposition the decision of the Alberta Court of Appeal in ***Elliott v Edmonton (City) [1993], 135 AR 316 (CA)***. The Defendant also invokes the cases of ***Walker v Brownlee [1952] 2 DLR 450 (SCC)*** and ***Vibert v Stern [1997] 225 AR 1 (QB)*** for the principle that the dominant driver will be absolved from all liability unless the servient driver can demonstrate that the dominant driver was, or reasonably should have been, aware of the impending accident and could have taken evasive action. Once it is established that the servient driver failed to yield the right of way, she must show that the dominant driver, acting with reasonable care, could and should have avoided the accident. Thus the first question that must be resolved is who has what onus.

[7] Section 186 of the *Traffic Safety Act* clearly applies to this case. As Justice Germain of this Court said at para. 100 of ***Meyer (Next Friend of) v Neuman, 2004 ABQB 232***, this section applies to an accident between a motor vehicle and a bicycle and requires:

> ...that the Defendant establish that the Plaintiff's negligence materially contributed to the mishap and that the Defendant could not by reasonable care have avoided the Plaintiff's negligence. The Defendant should show that he had not failed in the standard of care, skill and judgment which can fairly and properly be required of a driver.

[8] This case and others state that the section creates a rebuttable presumption and that this presumption remains until the very end of the case. See also ***HC v Loo, 2003 ABQB 52, 403 AR 212, varied on other grounds, 2006 ABCA 99, 384 AR 200; Gotlib v Calgary (City), 2009 ABQB 174*** and ***Plume v Weir, 1998 ABQB 523, 220 AR 332***.

[9] ***Walker v Brownlee*** states that a driver, even though she has the right of way, is bound to act to avoid a collision if reasonable care on her part will prevent it. However, it and the cases that follow it apply to collisions between motor vehicles. Further, it should be noted that ***Walker v Brownlee*** is an Ontario case. In applying cases from other jurisdictions, one has to ensure that they are based on similar legislation. The regulations enacted pursuant to the *Traffic Safety Act* provide that cyclists will obey the rules of the road but, as noted above, a bicycle is not a motor vehicle within the applicable definition.

[10] In ***Meyer v Neuman***, after a review of the evidence, the Court concluded that the defendant had rebutted the presumption in what is now s. 186 and, because he was not negligent, the claim was dismissed. The facts there were quite different from those before me. Similarly, in ***Elliott v Edmonton,*** the onus in what is now s. 186 applied but was rebutted so that the cyclist was apportioned 80% of the responsibility.

[11] The Defendant driver, Ms. Snyder, testified that she lived in the neighbourhood and had driven this street many times before. She had turned on to 24th Avenue at 4th Street and was

proceeding west through a playground zone. At some point, she looked down at her speedometer to see if she was speeding. The next thing she knew, she had hit the cyclist; she did not see her prior to the collision. At her questioning, Ms. Snyder testified she could have been looking down for approximately four seconds. At trial, she testified that it would have been no more than two seconds. She explained that, following questioning, she had driven the route many times and had concluded upon reflection that her previous estimate of four seconds was too long. It must also be assumed that at trial she would had the benefit of expert evidence called on her behalf which indicated it would have been very usual for someone to take their eyes off the road for four seconds and that witnesses are notoriously unreliable estimating time and distance.

[12] Ms. Snyder indicated her speed would have been between 30 and 35 km/hr. The speed limit in playground zone is 30 km/hr. An independent witness, Michael Barton, confirmed that Ms. Snyder was driving slowly.

[13] The reconstruction experts confirmed that the sightlines were clear and that each of the bicycle and the Volkswagen van could be seen by the other. The experts differed primarily on when, in their opinion, the bicycle should have been recognized as something to which Ms. Snyder ought reasonably to have reacted.

[14] I am prepared to accept that Ms. Snyder's original estimate of four seconds was in error but, in my opinion, the cyclist was there to be seen in time for a reasonable driver to have stopped prior to the collision. Whether Ms. Snyder took her eyes off the road for two, two and half or three seconds, it was, in my view, too long considering she was in a playground zone and the lighting conditions were poor. Playground zones exist primarily to protect children, but they also indicate that motorists should be on the lookout for increased traffic, particularly of the non-motor vehicle kind.

[15] I am satisfied on all of the evidence, including that of Dr. Good, that this accident should have been avoided. In my view, by taking her eyes off the road even for two seconds before entering an intersection in a playground zone, Ms. Snyder was not taking reasonable care to avoid a collision.

[16] Accordingly, I am not satisfied that Ms. Snyder has rebutted the onus imposed by s. 186. Accordingly, I find that she was negligent.

[17] Given that both parties have been found negligent, the *Contributory Negligence Act*, RSA 2000, c C-27 applies. The proper approach to apportion liability is the comparative blameworthiness approach. This requires an assessment of relative misconduct from the perspective of departures from standards of reasonable care. As the Plaintiff concedes that she did not stop at the stop sign as every driver knows is required, I find that she must bear greater responsibility.

[18] On all the evidence before me, I apportion fault at two-thirds to the Plaintiff and one-third to the Defendants. There will be judgment accordingly.

[19] Counsel may speak to costs if they cannot agree.

Heard on the 28th day of May, 2015.
Dated at the City of Calgary, Alberta this 24th day of June, 2015.

A.D. Macleod
J.C.Q.B.A.

Appearances:

Craig G. Gillespie and Petrina Wallebeck
Cuming & Gillespie
for the Plaintiff

David Pick and Mark Ricketts
Brownlee LLP
for the Defendants