

Wager v. Moore (AC 40329)

Brief Summary: Plaintiff was injured when she was struck by a vehicle driven by the defendant. The court held that the evidence suggesting that the plaintiff popped into the roadway, not at a designed crosswalk, at night, wearing dark clothing, while intoxicated was sufficient for the jury to reasonably find that the plaintiff's negligence exceeded the defendant's negligence, thus, rendering a verdict in favor of the defendant

The plaintiff, Rachel Wagner, was injured when she was struck by a vehicle driven by the defendant, Alexandria Moore. The plaintiff was not in a designated crosswalk at the time of the collision, although there was a marked crosswalk 750 meters away, in which she testified she was aware of. The plaintiff was wearing a black jacket, dark jeans and golden boots, she was also unable to remember anything about the collision or the period immediately before it. The defendant testified that the plaintiff popped out in front of her car. The plaintiff's accident reconstruction expert testified that a person standing where the plaintiff was would have been able to see the headlights of an oncoming vehicle. A blood test taken thirty minutes after the collision revealed the plaintiff had a blood alcohol level of 170mg per deciliter—equivalent to nine standard alcoholic beverages consumed in a short period of time as per a toxicologist at trial. Further, footage prior to the accident from a surveillance camera on campus showed the plaintiff struggling to walk and stand on her own. She also admitted that everything seems slower and her judgment is impaired when she is intoxicated. The defendant informed the police officer at the scene that she had a martini 90 minutes prior to accident, she subsequently passed a field sobriety test. The plaintiff then sued the defendant alleging that the collision and injuries were the result of the defendants negligence in multiple ways: reckless operation of the vehicle; operating the vehicle at too high a speed; failing to keep proper lookout; failing to yield; failing

to swerve and failing to drive as a reasonable, prudent driver under the same circumstances. The defendant asserted that the injuries were proximately caused by the plaintiff's own negligence.

The defendant argued that the plaintiff was negligent by: failing to yield; walking into the path of the defendant's vehicle; walking upon the roadway while intoxicated; failing to keep a reasonable and proper lookout for vehicles and failing to be attentive of her surroundings.

Following a trial, the jury returned a verdict in favor of the defendant finding that the plaintiff was more than 50 percent (90 percent) contributorily negligent in causing the accident. The issues on appeal were: (1) whether there was sufficient evidence for the jury to reasonably find that the plaintiff's negligence exceeded the defendant's negligence; (2) whether there was sufficient evidence warranting a contributory negligence instruction; (3) whether the jury instructions were proper; and (4) whether the trial court erred in denying the plaintiff's motion for a mistrial. The court held that the evidence was sufficient, the instructions were proper and the trial court properly denied the motion for a mistrial, consequently, affirming the trial court's judgment.

To overturn a factual finding by the jury the appellant must demonstrate that the fact finder could not have reasonably and legally reached the conclusion. If the jury could have reasonably reached the verdict based on the evidence, then even if the appeal court would have ruled differently, the verdict must stand as the standard for overturning a factual finding is clearly erroneous. To prove contributory negligence, the defendant must prove that the plaintiff's negligence was a proximate cause of or substantial factor in the resulting harm.

To decide the first issue the court examined the evidence regarding the plaintiff's own negligence. The court concluded that the record contained ample evidence supporting the jury's verdict. The evidence included the plaintiff not being at a designated crosswalk despite one being

750 meters away, visible to the plaintiff, that she was aware of. Also, it was dark outside, and she was wearing dark clothing—making it difficult for the defendant to see her. Thus, based on the defendant testifying that the plaintiff came out of nowhere the jury could have inferred that she walked or ran in front of the vehicle. Moreover, the jury could have also reasonably reached its verdict based on the plaintiff being so intoxicated that she struggled to stand and navigate the campus, thus, impairing her judgment. On the other hand, the defendant passed her sobriety test and testified that she was not speeding and was paying extra attention to the roadway. Thus, the court concluded that the evidence suggesting that the plaintiff popped into the roadway, at night, wearing dark clothing, while intoxicated was sufficient for the jury to reasonably find that the plaintiff's negligence exceeded the defendant's negligence.

The next issue is whether there was sufficient evidence at trial warranting a contributory negligence jury instruction. A trial court should not submit to the jury any issue that is foreign to the facts in evidence or for which no evidence was offered. Essentially, to have an issue submitted to the jury there must be sufficient evidence regarding the issue. The court rejected the plaintiff's argument that there was insufficient evidence warranting a contributory negligence jury instruction due to the ample evidence previously discussed suggesting that the plaintiff was negligent.

Next, the plaintiff argued that the jury instructions were improper because it did not incorporate the duties of pedestrians identified in §§ 14-300b (a) and 14-200c (b) in its charge on contributory negligence; did not incorporate the duties of drivers in relation to pedestrians identified in §§ 14-300d and 14-300i in its charge on negligence; and failed to make clear that even if the plaintiff was negligent, the defendant still had a continuing affirmative duty of care. The court rejected these arguments stating that the jury instructions adequately identified the

duties of each statute as the instructions stated that drivers have a duty to drive in a way to avoid foreseeable harm; to exercise reasonable care towards others and that one can still be negligent when the conduct is combined with the conduct of another person. Further, the court stated that the jury obviously understood that even if the plaintiff was negligent the defendant had a duty of care as it found the defendant 10 percent negligent.

Lastly, the plaintiff argued that the trial court erred in denying her motion for a mistrial because hearsay evidence against her was presented during the videotaped testimony of the toxicologist. While the taped testimony of the defendant's toxicologist was played for the jury the toxicologist made a comment that the plaintiff recalled the collision, however, prior to the trial the parties agreed that these comments, based on hearsay (a police report), would be excluded from the recording shown. Consequently, the court instructed the jury to disregard the comment by the toxicologist and corrected the record by telling the jury that both parties agreed that the plaintiff had no recollection of the collision. To have a motion for a mistrial granted the moving party must establish that as a whole the stricken testimony was so prejudicial, that the jury reasonably cannot be presumed to have disregarded it. The court concluded that the plaintiff failed to satisfy this burden because the jury was told to disregard the comment almost immediately after hearing it, thus, the jurors had no opportunity to ruminate on the comment. Further, the plaintiff did not point to anything indicating that the jury ignored the court's instruction to disregard the comment. Thus, the court concluded that trial court properly denied the plaintiff's motion for a mistrial.

The key takeaway of this case is that it is very difficult to overturn a factual finding by the jury. This case demonstrates this difficulty because all the court had to do was identify

evidence that the jury could have relied on in reaching its verdict, regardless of if it would have reached the same verdict as the jury.