

SUPREME COURT OF PENNSYLVANIA

Straus v. Rahn

179 A. 445 (Pa. 1935) · Decided May 27, 1935

SUMMARY

The Pennsylvania Supreme Court affirmed an order granting a new trial in a wrongful death negligence action. The trial court's jury instruction erroneously stated that the plaintiff bore the burden of proving the decedent was free from contributory negligence, which is a misstatement of the law; instead, the plaintiff must present a case clear of contributory negligence. The appellate court also noted that an order granting a new trial is generally not reviewable on appeal unless the lower court certifies that a controlling point of law was decisive, which did not occur here.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Drew; Kephart; Linn; Maxey; Schaffer; Simpson
JURISDICTION	Pennsylvania
DECIDED	May 27, 1935
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff brought a wrongful-death negligence action against Douglass Rahn and Perry Rahn. After a jury returned a verdict for Douglass Rahn, the court below granted plaintiff a new trial. Douglass Rahn appealed the new-trial order.
STANDARD OF REVIEW	An appellate court generally will not review an order granting a new trial unless the lower court states that it would not have granted the new trial but for a distinctly identified, controlling legal issue and provides the required certificate. Review is otherwise unavailable when the asserted error requires evaluation of the evidence or testimony.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Douglass Rahn v. Straus

TOPICS

- wrongful death
- negligence
- contributory negligence
- standard of review
- appellate procedure

PRACTICE AREAS

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court's instruction placing the burden on plaintiff to prove that the decedent was free from contributory negligence was erroneous.
2. Whether the decedent's contributory negligence was established as a matter of law, such that the erroneous instruction could not have prejudiced plaintiff and the new-trial order constituted an abuse of discretion.
3. Whether the appellate court could review the order granting a new trial absent a certificate from the trial judge stating that the new trial would not have been granted but for a single controlling legal issue.

HOLDINGS

1. It is error to instruct that the plaintiff bears the burden of proving both the defendant's negligence and the absence of negligence by the plaintiff's decedent. Although the plaintiff must present a case clear of contributory negligence to recover, the absence of contributory negligence is not an element that the plaintiff must affirmatively prove in that manner.
2. The decedent's contributory negligence was not established as a matter of law on this record; it was a question of fact for the jury.
3. The appellate court will not review an order granting a new trial unless the record shows that the lower court would have refused to grant the new trial but for a distinctly stated legal issue that controlled the whole case, generally through an express certificate from the trial judge.

KEY QUOTATIONS

"But it is error to say 'the burden is on the plaintiff to prove that defendant was negligent and that there was no negligence on her husband's part.'" (95)

"This court will not review an order granting a new trial." (96)

FACTUAL BACKGROUND

Plaintiff alleged that her husband was negligently killed on a public highway by an automobile driven by Douglass Rahn, who allegedly acted as Perry Rahn's agent, servant, or employee. After plaintiff took a voluntary nonsuit against Perry Rahn, the jury returned a verdict for Douglass Rahn. The trial court granted a new trial because it had instructed the jury that plaintiff bore the burden of proving both defendant's negligence and the decedent's freedom from contributory negligence, and because contributory negligence was a factual issue for the jury.

PROCEDURAL HISTORY

Plaintiff sued for damages arising from the alleged negligent automobile killing of her husband and the children's father. She suffered a voluntary nonsuit as to Perry Rahn. The jury found for Douglass Rahn, but the

court below granted a new trial because the jury had been erroneously instructed regarding the burden of proving the decedent's freedom from contributory negligence. The Supreme Court of Pennsylvania affirmed.

DISPOSITION

affirmed

CASES CITED

- Coolbroth v. P. R. R. Co., 209 Pa. 433
- Fornelli v. P. R. R. Co., 309 Pa. 365
- Class Nachod Brewing Co. v. Giacobello, 277 Pa. 530, 537-38

OPINION

PER CURIAM.

Plaintiff sued to recover damages, on behalf of herself and her minor children, for the alleged negligent killing of her husband and their father on a public highway, by an automobile driven by the defendant Douglass Rahn, who, it was alleged, was then and there acting as the agent, servant or employee of the other defendant Perry Rahn, as to whom, however, plaintiff, thereafter suffered a voluntary nonsuit.

The jury rendered a verdict in favor of Douglass Rahn, the other defendant, but the court below in banc, on motion of plaintiff, granted a new trial, whereupon Douglass Rahn took this appeal, averring that the granting of a new trial was a gross abuse of discretion.

The order will be affirmed. In its opinion the court below said (the italicized words being its own): "We find that all the reasons [specified in plaintiff's motion] for a new trial, except the 7th, must be dismissed....

In his charge to the jury the trial judge said, inter alia, 'This is a civil case and, as in all civil cases, the burden of proving negligence in this matter, and the burden of proving every element of the case before you, is upon the plaintiff, and it is incumbent for her to do so by proving the facts by the weight or preponderance of the evidence.' At the end of the general charge the trial judge said: 'Now you will not take up the matter of damages at all until you have first disposed of the question of, the main question in the case I should say, and that is was the defendant negligent and did the plaintiff sustain the burden upon her by the weight of the evidence, and satisfy you by such weight *Page 95 of the evidence, that the defendant was guilty of negligence, and that the deceased husband of plaintiff was entirely free from contributory negligence.'

We are of the opinion that this statement of the law was erroneous." It was. In Coolbroth v. P. R. R. Co., 209 Pa. 433, cited by the court below, and in numerous other cases, we have held that a plaintiff, in order to recover in this form of action, must satisfy the jury that defendant was guilty

of negligence, and, in so doing, must present a case clear of contributory negligence on his part or on the part of his decedent, as the case may be.

But it is error to say "the burden is on the plaintiff to prove that defendant was negligent and that there was no negligence on her husband's part." In an ingenious argument, appellant's counsel, — who, like ourselves, was not present at the trial, — undertook to prove, from the charge in its entirety, that decedent was guilty of contributory negligence, as a matter of law, and hence it was error to grant a new trial because, though the matter was submitted to the jury as a question of fact, under erroneous instructions, appellee was not harmed thereby, since the court should have so ruled as a matter of law.

For this they rely on *Fornelli v. P. R. R. Co.*, 309 Pa. 365. We do not disagree with the conclusion in that case, which we would unhesitatingly follow if the facts here justified it; but they do not. On the contrary, we agree with the court below, — who, having seen and heard the witnesses, was better able to consider this matter than is either appellant's counsel or ourselves, — that this question was one of fact for the jury, to which, in the respect stated, it was not properly submitted.

Another consideration reaches to the same conclusion. In *Class Nachod Brewing Co. v. Giacobello*, 277 Pa. 530, 538, where the circumstances under which we will review an order granting a new trial was considered at length, we said: "This court will not review an order granting a new trial.... Unless the court [below] *Page 96 states it would have refused to grant the new trial but for reasons distinctly set forth, which, in its opinion, control the whole case, and then we will review the reasons given only... where it clearly appears the court below, in ordering a new trial, either asserted a power it did not possess, or its action was controlled by a point of law, the decision of which, one way or the other, would govern the case, to the exclusion of all other considerations."

And again (page 537): "Furthermore, the authorities indicate that because the opinion of the trial court refers to only one question, or a single point in the case, this fact will not be treated by us as conclusive proof that the point or question thus accentuated controlled the entry of the order appealed from; and before we will proceed to a review, it must appear that testimony is not to be passed upon by us... unless purely as to its legal effect in some isolated and all-controlling particular wherein its verity is admitted...."

Experience has established the wisdom of these conclusions; and hence we have repeatedly required appellant, in this class of cases, where the record presented to us did not with certainty base the decision of the court below upon such a single point, to obtain from the trial judge and file in this court a certificate expressly stating that, but for this one point, he would not have granted a new trial, as a condition precedent to even an argument of such an assignment of error here.

In the present case, the record does not so state, nor is there a certificate so asserting. The order of the court below is affirmed. *Page 97