

COURT OF APPEALS OF OREGON

Washington v. Taseca Homes, Inc.

101 Or. App. 607 (1990) · Decided May 23, 1990

SUMMARY

In this personal injury action arising from an automobile accident, the Oregon Court of Appeals held that the defendant’s deposition statement denying that the plaintiff had done anything careless was admissible as an opposing-party statement under OEC 801(4)(b)(A). The court held that the admission was relevant to comparative fault and that the opinion-rule requirements of OEC 701 did not apply. Because the liability and damages issues were intertwined, the court reversed and remanded for a new trial on all issues.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Deits, J.; Newman, J.; Richardson, J.
JURISDICTION	Oregon
DECIDED	May 23, 1990
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from a judgment entered after a jury verdict in a personal injury action arising from an automobile accident, challenging the exclusion of a deposition statement by the defendant.
STANDARD OF REVIEW	The opinion reviews the trial court's evidentiary ruling for legal error and determines the proper scope of a new trial.
PRECEDENTIAL VALUE	Published Oregon Court of Appeals opinion
PARTIES	Washington v. Taseca Homes, Inc.

TOPICS

- evidence
- hearsay
- comparative fault
- personal injury
- appellate procedure

PRACTICE AREAS

- Evidence
- Personal injury
- Torts
- Appellate procedure

QUESTIONS PRESENTED

1. Whether defendant's deposition statement denying that plaintiff had done anything careless causing the accident was admissible as the statement of an adverse party under OEC 801(4)(b)(A), notwithstanding the requirements of OEC 701 for lay opinion testimony.
2. Whether the new trial should be limited to comparative fault or should include liability and damages.

HOLDINGS

1. A party's own statement offered against that party is admissible as an admission of an adverse party under OEC 801(4)(b)(A), and the technical requirements of the lay-opinion rule, OEC 701, do not apply to exclude the statement.
2. A new trial must be conducted on liability and damages, rather than being limited to comparative fault, when the evidence concerning liability and damages is sufficiently intertwined.

KEY QUOTATIONS

"The technical demands of the opinion rule and the rule requiring personal knowledge are suspended." (610)

"The trial court erred in excluding defendant's admission, which was relevant to the comparative fault of the parties." (610)

"We conclude that these issues are sufficiently intertwined to make a retrial on all issues appropriate." (611)

FACTUAL BACKGROUND

In November 1984, plaintiff was injured when her eastbound vehicle collided with defendant's westbound vehicle as defendant turned left through an intersection in Portland. Defendant asserted that plaintiff was negligent in failing to yield, maintain a proper lookout, maintain control, and avoid excessive speed. During a deposition, defendant answered "No" when asked whether plaintiff had done anything careless that caused the accident.

PROCEDURAL HISTORY

The jury found both plaintiff and defendant negligent, allocating 45 percent of the fault to plaintiff and 55 percent to defendant, and awarded plaintiff \$41,250 based on total damages of \$75,000. The trial court excluded a deposition statement in which defendant denied that plaintiff had done anything careless causing the accident. The Court of Appeals reversed and remanded for a new trial on all issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Conduct a new trial on all issues, including liability, comparative fault, and damages.

CASES CITED

- Wilson v. B.F. Goodrich, 52 Or. App. 139, 152-53, 627 P.2d 1280 (1981), aff'd, 292 Or. 626, 642 P.2d 644 (1982)

OPINION

DEITS, J.

DEITS, J. In this personal injury action arising out of an automobile accident, plaintiff appeals from a judgment awarding her damages of \$41,250, pursuant to a jury verdict.¹ She argues that the trial court erred in excluding evidence of an admission of defendant made in a deposition. She seeks a new trial on the issues of liability and damages.

We reverse. In November, 1984, plaintiff was injured when her car and defendant's collided at an intersection. She was driving east, and defendant was westbound on N.E. Multnomah in Portland. Plaintiff alleged that, as she went through the intersection of Union and Multnomah, defendant made a left-hand turn directly in front of her car, causing them to collide.

Defendant's affirmative defense was that the accident was caused by plaintiff's own negligence, because she failed to yield the right of way, maintain a proper lookout and maintain control of her vehicle and was driving too fast. Defendant testified that he did not see plaintiff's car until it was "[j]ust a few feet" from his car and that he was halfway or more into his turn, a second or two before they collided.

He also testified that he did not know how fast her car was going. The jury found both plaintiff and defendant negligent, 45 percent and 55 percent, respectively. It found that plaintiff suffered a total of \$75,000 in damages and, in accordance with the allocation of fault, plaintiff was awarded \$41,250. Plaintiff argues that the trial court erred in sustaining defendant's objections to introduction of a statement made by defendant in a deposition.

The statement was made in response to a question by plaintiff's counsel: "Counsel: Is there anything that Mrs. Washington did in your opinion which was careless that caused this car wreck? "Defendant: No." Plaintiff contends that that statement was admissible under OEC 801 (4) (b) (A) as an admission by an adverse party. That rule provides: *610 "A statement is not hearsay if: * * *

* "(b) The statement is offered against a party and is: "(A) That party's own statement, in either an individual or a representative capacity[.]" Defendant does not argue on appeal that the statement was not an admission.² Rather, he contends that it is not admissible, because it was an opinion of a lay witness and does not meet the prerequisites of OEC 701 for the admission of such evidence.

We need not decide whether the statement was admissible under OEC 701, because its admissibility as an admission of an adverse party under OEC 801 (4) (b) makes OEC 701 inapplicable. As stated in the Commentary to OEC 701: "In adopting this rule, the Legislative Assembly does not intend to make inadmissible an opinion that is presently admissible under Oregon law, even though the requirements of subsections (1) and (2) may not be satisfied." In

addition, the Commentary to OEC 801 (4) (b) states: “Paragraph (b) changes Oregon law with regard to admissions by a party opponent.

An admission is presently considered to be hearsay, but is admissible under an exception to the hearsay rule. Under paragraph (b) an admission is not hearsay. The practical result is the same * * *. The technical demands of the opinion rule and the rule requiring personal knowledge are suspended.” (Emphasis supplied.)

The trial court erred in excluding defendant’s admission, which was relevant to the comparative fault of the parties. The remaining question is whether this case should be remanded for a new trial on all issues or only on the issue of comparative fault. Defendant argues that, on remand, comparative fault should be redetermined, but that the extent of damages should not be reconsidered.

He contends that damages were determined at the first trial and that no issue relating to damages has been raised on appeal. There are cases in which it is appropriate to limit the issues to be considered in *611a new trial.

Here, however, the evidence on the issues of liability and damages overlap. We conclude that these issues are sufficiently intertwined to make a retrial on all issues appropriate. *Wilson v. B.F. Goodrich*, 52 Or App 139, 152-53, 627 P2d 1280 (1981), *aff’d* 292 Or 626, 642 P2d 644 (1982).³ Reversed and remanded.

The original complaint also named Taseca Homes, Inc., and Morris Bush as defendants. However, before trial, plaintiff filed an amended complaint naming Michael Bush as the only defendant. Judgment was entered against him, and he is the only defendant who is a party to this appeal. Defendant contended at trial that the statement was not an admission of an adverse party.

Because we remand for a new trial, we do not address plaintiffs assignment of error concerning the court’s response to a question from the jury during deliberations, because it is not likely that the same situation will arise on retrial.