

SUPREME COURT OF IDAHO

Kuhn v. Proctor, 141 Idaho 459

111 P.3d 144 (2005) · No. No. 29820 · Decided April 13, 2005

SUMMARY

The Idaho Supreme Court reviewed a judgment finding Betty J. Kuhn and Margaret L. Proctor equally negligent in a motor vehicle accident. The court held that evidence of Proctor's payment of a traffic citation should have been admitted and that the error was not harmless. It vacated the judgment and remanded for a new trial, while also addressing the proper treatment of insurance-related jury instructions on retrial.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Chief Justice Schroeder; Justice Trout; Justice Kidwell; Justice Eismann; Justice Burdick
JURISDICTION	Idaho
DECIDED	April 13, 2005
DOCKET	No. 29820
DISPOSITION	vacated
PROCEDURAL POSTURE	Kuhn appealed from a district court judgment entered after a jury found Kuhn and Proctor each 50 percent negligent in a motor vehicle accident. The appeal challenged denial of post-trial relief, exclusion of evidence that Proctor paid a traffic citation, and a jury instruction concerning insurance.
STANDARD OF REVIEW	The correctness of jury instructions is reviewed de novo as a question of law. The Court examines whether the instructions, taken as a whole, fairly and adequately present the issues and state the law, and whether the challenged instruction was supported by evidence. An erroneous instruction is not reversible if it did not mislead or prejudice the party.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Betty J. Kuhn v. Margaret L. Proctor

TOPICS

negligence

comparative fault

evidence

hearsay

appellate procedure

PRACTICE AREAS

torts

evidence

appellate procedure

jury instructions

QUESTIONS PRESENTED

1. Whether the district court erred by excluding evidence that Proctor paid the traffic citation arising from the accident.
2. Whether exclusion of the traffic-citation payment evidence was harmless.
3. Whether the district court's insurance instruction was proper under the circumstances.

HOLDINGS

1. Payment of a fixed penalty under Idaho Infraction Rule 6(a) constitutes an admission to the charge and is admissible in the related civil action as a statement by a party against interest.
2. The exclusion was not harmless and required a new trial because the jury's equal allocation of negligence meant that even a one-percent shift could have changed Kuhn's recovery.
3. If an insurance instruction is given on retrial, it should state that whether insurance exists is not to be discussed or considered by the jury, rather than stating that no insurance company is a party.

KEY QUOTATIONS

"Payment" under I.I.R. 6(a) constitutes an admission of guilt and is likewise a statement against interest. The evidence of payment should have been admitted." (111 P.3d at 147)

"A shift of a single percentage point in favor of Kuhn would have meant some recovery instead of none. The error in excluding the evidence cannot be considered harmless." (111 P.3d at 147)

"If an insurance instruction is given it would be better to state that whether there is or is not insurance is a fact that should not be discussed or considered by the jury." (111 P.3d at 148)

FACTUAL BACKGROUND

On August 15, 2001, Proctor's vehicle collided perpendicularly with Kuhn's vehicle at an intersection in Nampa, Idaho. A police officer cited Proctor for failing to yield the right of way, and Proctor paid the citation by check after receiving information from her insurer that payment could be made without admitting liability. At trial, both drivers testified that they had stopped or slowed, looked for traffic, and proceeded into the intersection, while Kuhn's testimony concerning sight restrictions conflicted with her deposition testimony.

PROCEDURAL HISTORY

Kuhn sued Proctor for negligence arising from a motor vehicle collision. Following a jury trial, the jury apportioned negligence equally between the parties. The district court denied Kuhn's motions for additur, a new

trial, and judgment notwithstanding the verdict, and Kuhn appealed. The Supreme Court of Idaho vacated the judgment and remanded for a new trial.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the district court judgment and conduct a new trial. On retrial, any insurance instruction should avoid implying whether insurance exists and should direct the jury not to discuss or consider insurance.

CASES CITED

- LaRue v. Archer, 130 Idaho 267, 939 P.2d 586 (Ct. App. 1997)
- Beale v. Speck, 127 Idaho 521, 903 P.2d 110 (Ct. App. 1995)
- Briggeman v. Albert, 322 Md. 133, 586 A.2d 15 (1991)
- Walker v. Forrester, 764 P.2d 1337 (Okla. 1988)
- Clark v. Klein, 137 Idaho 154, 45 P.3d 810 (2002)
- Silver Creek Computers, Inc. v. Petra, Inc., 136 Idaho 879, 42 P.3d 672 (2002)
- Ricketts v. E. Idaho Equip. Co., Inc., 137 Idaho 578, 51 P.3d 392 (2002)
- Watson v. Navistar International Transportation Corp., 121 Idaho 643, 827 P.2d 656 (1992)
- Lubcke v. Boise City/Ada County Housing Authority, 124 Idaho 450, 860 P.2d 653 (1993)
- Howell v. E. Idaho R.R., Inc., 135 Idaho 733, 24 P.3d 50 (2001)

OPINION

SCHROEDER, J.

111 P.3d 144 (2005) 141 Idaho 459 Betty J. KUHN, Plaintiff-Appellant, v. Margaret L. PROCTOR, Defendant-Respondent. No. 29820. Supreme Court of Idaho, Boise, December 2004 Term. April 13, 2005. *145 Lojek Law Offices, Boise, for appellant. Donald W. Lojek argued. Brassey, Wetherell, Crawford & McCurdy, LLP, Boise, for respondent. J. Nick Crawford argued. SUBSTITUTE OPINION, THE COURT'S PRIOR OPINION DATED MARCH 3, 2005 IS HEREBY WITHDRAWN.

SCHROEDER, Chief Justice. Betty J. Kuhn (Kuhn) appeals from the judgment entered by the district court following a jury trial finding that she and Margaret L. Proctor (Proctor), were equally at fault for a motor vehicle accident occurring on August 15, 2001. Kuhn argues that the district court erred by (1) not granting Kuhn's motion for a new trial, (2) not allowing evidence of Proctor's payment of a traffic citation, and (3) improperly instructing the jury on the issue of insurance.

I. FACTUAL AND PROCEDURAL BACKGROUND On August 15, 2001, Proctor's vehicle was traveling eastbound on Fifth Street South in Nampa, Idaho, when it collided with Kuhn's automobile traveling northbound on Fourth Avenue South. Kuhn's vehicle was struck perpendicularly on the driver's side door. A police officer called to the scene issued a traffic citation to Proctor for failure to yield the right of way to Kuhn in approaching the intersection.

Kuhn sued Proctor for damages arising out of the accident, alleging that Proctor was negligent. Proctor answered, alleging that Kuhn's negligence caused or contributed to the accident. The case was tried to a jury. Kuhn testified that as she approached the intersection she slowed down, looked both ways twice, and seeing no other cars proceeded through the intersection.

She was traveling around 20 miles per hour prior to the collision. She stated that there were sight restrictions at the intersection, which she had confirmed by going back to the scene of the accident. This testimony was contrary to prior testimony Kuhn had given in a deposition when she stated that the intersection had no sight restrictions and that she had confirmed this fact by a visit to the scene the day before the deposition.

Proctor testified at trial that she approached the intersection and slowed to a stop, looked both ways and did not see any other cars coming. She proceeded through the intersection and Kuhn's vehicle "was just right there." Proctor testified that she applied her brakes prior to impact with Kuhn's car. Proctor paid the citation issued by the police officer by check, relying on information from her insurance company that she could pay the fine without admitting liability *146 for the accident.

Kuhn argued that the payment was an admission against interest and therefore admissible. The district court refused to admit the evidence based on the holding in *LaRue v. Archer*, 130 Idaho 267, 939 P.2d 586 (Ct.App.1997). Both parties submitted proposed jury instructions. Kuhn objected to Jury Instruction Number 10, which was based on former Idaho Jury Instruction (IDJI) 101, which advised the jury that no insurance company was a party to the case and the jury should not base a decision in any way on insurance.

Kuhn argued the instruction was prejudicial because it gave the impression the defendant was not insured. The court agreed to remove the instruction. However, the clerk's record indicates that the instruction was included in the instructions delivered to the jury.

The jury returned a unanimous verdict finding Kuhn and Proctor each 50% negligent in causing the accident. Kuhn filed a motion for additur, new trial or for judgment notwithstanding the verdict. A hearing on these post-trial motions was conducted, and both parties agreed to waive the presence of a court reporter.

The district court denied each of the post-trial motions and entered a written order to that effect. Kuhn appealed. II. AN ERROR IN THE EXCLUSION OF EVIDENCE REQUIRES REMAND

FOR A JURY TRIAL Kuhn asserts she is entitled to a new trial on various grounds, including arguments that the verdict was not supported by sufficient evidence, that the district court gave an inappropriate instruction concerning insurance, and that the district court improperly excluded the evidence that Proctor paid the traffic citation that was issued.

A. The Exclusion of Evidence of the Payment of the Traffic Citation Proctor was cited for failure to yield and paid the citation by check. The district court ruled that payment of the citation was inadmissible, relying on *LaRue v. Archer*, 130 Idaho 267, 939 P.2d 586 (1997), decided by the Court of Appeals. This Court has not decided the issue. Idaho Infraction Rule 6(a) provides in part that "[a]ny person charged with an infraction by a citation may enter an admission by paying the fixed penalty by mail.

Payment of the fixed penalty shall constitute an admission of the charge." I.I.R. 6(a)(2004) (emphasis added). Idaho Rule of Evidence 801(d)(2)(A) provides that a statement made by a party "in either an individual or representative capacity" is not considered hearsay^[1] and is admissible regardless of a declarant's availability at trial. I.R.E. 801(d)(2)(A)(2004).

A "statement" includes nonverbal conduct where the conduct is intended as an assertion. I.R.E. 801(a)(2004). The Court of Appeals has dealt with the admissibility of evidence relating to a guilty plea to a traffic charge in a civil case involving the same incident. *LaRue*, 130 Idaho 267, 939 P.2d 586; *Beale v. Speck*, 127 Idaho 521, 903 P.2d 110 (Ct.App.1995).

In *Beale*, the Court of Appeals held that, "[e]vidence of a party's plea of guilty to a traffic infraction is admissible against that party in a subsequent civil proceeding arising from the same occurrence as an admission by a party-opponent." *Beale*, 127 Idaho at 530, 903 P.2d at 119.

The Court of Appeals again addressed the issue of admissibility of guilty pleas as reflected in traffic infractions in civil trials of the same incident in *LaRue*, determining the following: We... hold that the admission resulting from the payment of a traffic citation for an infraction, without appearing in court and entering a plea of guilty, is the functional equivalent of a plea of *nolo contendere*.... a plea of *nolo contendere* is inadmissible under Idaho Rule of Evidence 410(a)(2).

LaRue, 130 Idaho at 270, 939 P.2d 586, 589 (emphasis added). A plea of *nolo contendere* is considered the functional equivalent of a *147 guilty plea in the criminal context. *Black's Law Dictionary*, 1048 (6th Ed.1990). I.R.E. 410(a)(2) states that a plea of *nolo contendere* is inadmissible in a civil trial. I.R.E. 410(a)(2). *LaRue* held that I.I.R. 6(a) was inapplicable because the defendant mailed in payment of the fine and did not include a copy of the citation.

LaRue, 130 Idaho at 270, 939 P.2d at 589. According to *LaRue*, "the record in this case does not include the traffic citation. Therefore we are unable to determine whether [defendant] signed a written entry of admission at the time payment was tendered pursuant to Idaho Infraction Rule 6(a)." *Id.* In this case Proctor mailed the check without a copy of the citation included.

LaRue further distinguished Beale on the basis the defendant in Beale had "appeared in court and entered a plea of guilty" to the traffic charge. *Id.* LaRue reasoned that the payment of a traffic citation was "neither a guilty plea nor an express acknowledgment of guilt" and is inadmissible in a civil trial. *Id.* (citing *Briggeman v. Albert*, 322 Md. 133, 586 A.2d 15 (1991); *Walker v. Forrester*, 764 P.2d 1337 (Okla.1988)).

The district court relied on LaRue in making its decision to exclude the evidence of payment of the citation. Cases exist from other jurisdictions supporting either the admissibility or inadmissibility of evidence of the payment of a traffic citation.

However, the question in Idaho is answered by reference to I.I.R. 6(a) which provides that, "[p]ayment of a fixed penalty shall constitute an admission to the charge," and I.R.E. 804(b)(3), which provides that a statement by a party which may subject the declarant to civil or criminal liability is admissible at trial. I.I.R. 6(a); I.R.E. 804(b)(3). "Payment" under I.I.R.

6(a) constitutes an admission of guilt and is likewise a statement against interest. The evidence of payment should have been admitted. In this case the jury apportioned the negligence of the parties equally. A shift of a single percentage point in favor of Kuhn would have meant some recovery instead of none.

The error in excluding the evidence cannot be considered harmless. III. THE INSTRUCTION ON INSURANCE A. Standard of Review The correctness of jury instructions "is a question of law over which this Court exercises free review, and the standard of review of whether a jury instruction should or should not have been given, is whether there is evidence at trial to support the instruction."

Clark v. Klein, 137 Idaho 154, 156, 45 P.3d 810, 812 (2002). Review is limited to a determination of whether the instructions, taken as a whole, fairly and adequately present the issues and state the law. *Silver Creek Computers, Inc. v. Petra, Inc.*, 136 Idaho 879, 882, 42 P.3d 672, 675 (2002); *Ricketts v. E. Idaho Equip. Co., Inc.*, 137 Idaho 578, 581, 51 P.3d 392, 395 (2002).

The jury should be instructed concerning every reasonable claim supported by the pleadings and the evidence. *Watson v. Navistar Intern. Transp. Corp.*, 121 Idaho 643, 666, 827 P.2d 656, 679 (1992); see also *Lubcke v. Boise City/Ada County Hous. Auth.*, 124 Idaho 450, 461-62, 860 P.2d 653, 664-65 (1993). If the instructions do not mislead or prejudice a party an erroneous instruction will not constitute reversible error.

Howell v. E. Idaho R.R., Inc., 135 Idaho 733, 24 P.3d 50, 57 (2001). B. The Instruction on Insurance Kuhn alleges that, over her objection, an instruction was given to the jury which states that an insurance company is not a party to this case. Proctor asserts that the alleged improper instruction was not given to the jury.

The record before this Court is that Kuhn objected to the inclusion of the instruction and the district court agreed to exclude the instruction in the final proposed instructions. However, the clerk's record submitted to this Court indicates that the instruction was included in the instructions given by the court.

The Court does not have to determine if the disputed instruction was given to the jury since the case will be retried. However, the propriety of the instruction will be addressed *148 since the question will most likely be presented upon retrial.

The disputed instruction is based on former IDJI 101 and states that no insurance company is a party to this case and that the jury should not make any "inference speculation or discussion about insurance." IDJI 101(2004). There has been considerable debate as to whether IDJI 101 implies that there is no insurance rather than simply advising a jury that the question of insurance should not be considered.

If an insurance instruction is given it would be better to state that whether there is or is not insurance is a fact that should not be discussed or considered by the jury. The case should be decided solely upon the facts and law presented to the jury. IV. CONCLUSION The judgment entered in the district court based upon the jury verdict is vacated.

The case is remanded for a new trial. Kuhn is awarded costs. No attorney fees are allowed. Justice TROUT, KIDWELL, EISMANN and BURDICK concur. NOTES [1] Hearsay is an out of court statement offered to prove the proof of the matter asserted. I.R.E. 801(c)(2004).