

SUPREME COURT OF INDIANA

Lutz v. Erie Insurance Exchange

848 N.E.2d 675 (Ind. 2006) · No. 49S02-0606-CV-205 · Decided June 8, 2006

SUMMARY

The Indiana Supreme Court held that a party's pleadings are subject to judicial notice and that a factual admission in a pleading may constitute a binding judicial admission. Although the color of a traffic light was not independently subject to judicial notice, the court could notice McCormick's admission in her answer that she entered against a red light. The court concluded that any failure to instruct the jury that the light was red was harmless and affirmed the judgment.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Boehm, Justice; Shepard, Chief Justice; Dickson, Justice; Sullivan, Justice; Rucker, Justice
JURISDICTION	Indiana
DECIDED	June 8, 2006
DOCKET	49S02-0606-CV-205
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lutz appealed from a jury verdict awarding Erie Insurance Exchange, as subrogee, damages for vehicle repairs. The Indiana Court of Appeals affirmed, and the Indiana Supreme Court granted transfer.
STANDARD OF REVIEW	The opinion applies Indiana Evidence Rule 201 to determine whether judicial notice was mandatory and reviews the asserted instructional error for prejudice or harmlessness.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Indiana
PARTIES	Carson Lutz v. Erie Insurance Exchange, as Subrogee of Paul McCormick

TOPICS

- judicial notice
- evidence
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court was required to take judicial notice of McCormick's pleading admission that she entered the intersection against a red light.
2. Whether the color of the traffic light itself was a proper subject of judicial notice.
3. Whether any error arising from the failure to give an instruction concerning the pleading admission required reversal.

HOLDINGS

1. A party's pleadings are subject to judicial notice, even when the facts recited in the pleading are not independently appropriate subjects of judicial notice.
2. The color of a traffic light at a particular time and place is not a proper subject of judicial notice because it is neither generally known nor capable of accurate and ready determination from an unquestionable source.
3. Once judicially noticed, McCormick's admission in her answer that the light was red became a judicial admission binding on McCormick as a matter of law.
4. Any error in failing to give an instruction concerning McCormick's pleading admission was harmless because Lutz was not prejudiced.

KEY QUOTATIONS

"A party's pleadings are subject to judicial notice and a fact admitted in a party's pleading may be binding on that party as a judicial admission even if it is not subject to judicial notice." (677)

"McCormick's admission in her answer, once noticed, became a judicial admission as a matter of law." (678)

"Unless a pleading is withdrawn or superseded, any admission contained in the pleading is conclusive as to that party." (678)

FACTUAL BACKGROUND

During a funeral procession in Indianapolis, a police officer was directing traffic when McCormick's vehicle collided with Lutz's vehicle in an intersection. McCormick's insurer, Erie, paid \$4,533.42 for repairs and sued Lutz as subrogee. McCormick's answer to Lutz's third-party complaint admitted that she entered the intersection against a red light as directed by a uniformed police officer. At trial, McCormick could not recall the light's color, and the jury allocated 80% fault to Lutz, 10% to McCormick, and 10% to a nonparty.

PROCEDURAL HISTORY

Erie sued Lutz for \$4,533.42 paid to repair McCormick's vehicle after a collision. Lutz filed a third-party complaint against McCormick, asserting that her negligence caused the accident. At trial, the court denied Lutz's request to take judicial notice of McCormick's pleading admission that she entered the intersection against a red

light. The jury allocated 80% fault to Lutz, 10% to McCormick, and 10% to a nonparty, and awarded Erie \$3,626.74. The Court of Appeals affirmed; the Supreme Court granted transfer, summarily affirmed issues not addressed, and affirmed the trial court's judgment.

DISPOSITION

affirmed

CASES CITED

- Lutz v. Erie Insurance Exchange, 838 N.E.2d 1181, 1187 (Ind. Ct. App. 2005)
- Owen v. State, 272 Ind. 122, 396 N.E.2d 376, 381 (1979)
- Brown v. Jones, 804 N.E.2d 1197, 1202 (Ind. Ct. App. 2004), trans. denied
- Sanders v. State, 782 N.E.2d 1036, 1038-39 (Ind. Ct. App. 2003)
- Sundstrand Corp. v. Standard Kollsman Industries, Inc., 488 F.2d 807, 811 (7th Cir. 1973)
- Brown v. Califano, 75 F.R.D. 497, 498 (D.D.C. 1977)

OPINION

BOEHM, J.

848 N.E.2d 675 (2006) Carson LUTZ, Appellant (Defendant below), v. ERIE INSURANCE EXCHANGE, as Subrogee of Paul McCormick, Appellee (Plaintiff below). No. 49S02-0606-CV-205. Supreme Court of Indiana. June 8, 2006. *677 Stephen Gerald Gray, Indianapolis, for Appellant. Stephen A. Semotuk, Carmel, for Appellee. BOEHM, Justice. A party's pleadings are subject to judicial notice and a fact admitted in a party's pleading may be binding on that party as a judicial admission even if it is not subject to judicial notice.

Facts and Procedural History In spring 2001, Kathryn McCormick was in a funeral procession traveling eastbound on Washington Street in Indianapolis. Indianapolis police officer Christopher Morgan had stopped his motorcycle in the intersection of Washington Street and Post Road and was directing traffic as the funeral procession approached. Carson Lutz, traveling southbound on Post Road, entered the intersection and collided with McCormick.

McCormick's automobile insurer, Erie Insurance Exchange, paid \$4,533.42 for repair to McCormick's vehicle and then, as subrogee, sued Lutz for that amount. Lutz filed a third party complaint against McCormick asserting that her negligence caused the accident and that he suffered both personal injuries and damage to his vehicle. At trial, McCormick testified on direct examination that she could not recall whether the traffic signal was red or green as she entered the intersection.

On cross-examination, Lutz's attorney presented McCormick with her answer to Lutz's complaint in which McCormick admitted that "she entered the intersection against the red light as part of a

funeral procession and as directed by the uniformed police officer pursuant to I.C. § 9-21-13-1." Lutz's attorney then requested the court to take judicial notice of this admission.

This request was denied. The jury allocated fault 10% to McCormick, 80% to Lutz, and 10% to a nonparty and awarded \$3,626.74 to Erie. Lutz appealed and the Court of Appeals affirmed, concluding that the trial court correctly denied Lutz's request for judicial notice. *Lutz v. Erie Ins. Exch.*, 838 N.E.2d 1181, 1187 (Ind.Ct.App. 2005). Lutz argues that the trial court was required to take judicial notice of (1) the fact that McCormick admitted that the color of the light was red in her answer, and (2) the fact that the light was red.

The Court of Appeals correctly held that the latter of these two was not a proper subject of judicial notice. *Lutz*, 838 N.E.2d at 1187. However, because the former is a pleading, it is judicially noticeable, and once McCormick's answer is noticed, the latter, as an admission in a party's pleading, is a judicial admission. Indiana Rule of Evidence 201 governs judicial notice.

It reads in relevant part: (a) Kinds of facts. A court may take judicial notice of a fact. A judicially-noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *678 (d) When mandatory.

A court shall take judicial notice if requested by a party and supplied with the necessary information. (g) Instructing the jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed.

The Court of Appeals was correct that the color of the light was not the type of fact appropriate for judicial notice. A judicially-noticed fact must be "one not subject to reasonable dispute" because it is "generally known" or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

The color of a traffic light at any particular time and place is plainly not generally known or resolvable by resort to any unquestionable source. The court may take judicial notice that McCormick admitted in her answer that the color of the light was red. It is well settled in Indiana that a trial court may judicially notice a party's pleadings, whether or not facts recited in those pleadings are susceptible of judicial notice.

See *Owen v. State*, 272 Ind. 122, 129, 396 N.E.2d 376, 381 (1979); *Brown v. Jones*, 804 N.E.2d 1197, 1202 (Ind.Ct.App.2004), trans. denied; *Sanders v. State*, 782 N.E.2d 1036, 1038-39 (Ind.Ct.App.2003). McCormick's admission in her answer, once noticed, became a judicial admission as a matter of law. Statements contained in a party's pleadings may be taken as true as against the party without further controversy or proof.

13 Robert Lowell Miller, Jr., *Indiana Practice* § 801.422, at 561 (2d ed.1995). Unless a pleading is withdrawn or superseded, any admission contained in the pleading is conclusive as to that party. *Id.* The reason for this is that pleadings are designed to narrow the issues required to be tried. See, e.g., *Sundstrand Corp. v. Standard Kollsman Indus., Inc.*, 488 F.2d 807, 811 (7th Cir.

1973) ("pleading is important only to inform the opposing party of what is claimed and the grounds upon which the claim rests."); *Brown v. Califano*, 75 F.R.D. 497, 498 (D.D.C.1977) (pleading "serves to sharpen the issues to be litigated and to confine discovery and the presentation of evidence at trial within reasonable bounds."). Opposing parties prepare their case on the assumption that facts admitted by other parties require no proof.

For this scheme to work properly, parties must be entitled to rely on trial courts to treat admissions in pleadings as binding on the party making the admission. Because McCormick's answer was a party admission, under Evidence Rule 201(g) Lutz was entitled to an instruction that as to McCormick the light was red.

However, it is unclear that Lutz requested such an instruction, and in any event he was not prejudiced by the absence of an instruction because the jury was properly instructed that a funeral procession has the right of way, but drivers in the procession are to exercise due care.

Accordingly, any error was harmless. Conclusion We summarily affirm on all issues not addressed in this opinion. Ind. Appellate Rule 58(A)(2). Transfer is granted. The judgment of the trial court is affirmed. SHEPARD, C.J., DICKSON, SULLIVAN, and RUCKER, JJ., concur.