Williams v. Goffena (decision)

DISTRICT COURT

NEGLIGENCE: Collision between calf and vehicle must be analyzed under negligence standard, not negligence per se . . . Spaulding.

Charles Williams struck Frank Goffena's calf on Hwy 12 east of Roundup 11/4/14. Williams alleges that his pickup was damaged and he was injured. He asserts that Goffena violated §§ 60-7-101 et. seq and therefore is negligent and negligent per se. Goffena requests summary judgment as to negligence per se on the grounds that (1) there is no absolute liability under § 60-7-201, and an alleged violation must be analyzed under an ordinary negligence standard, and (2) that § 60-7-203 eliminates a claim for negligence per se by precluding any presumption or inference under 60-7-201 that a collision between a vehicle and domestic animal on a highway was due to negligence by the animal owner.

§ 60-7-201 provides:

> A person who owns or possesses livestock may not permit the livestock to graze, remain upon, or occupy a part of the right-of-way of:
>
> (1) a state highway running through cultivated areas or a part of the fenced right-of-way of a state highway if in either case the highway has been designated by agreement between the transportation commission and the secretary of transportation as part of the national system of interstate and defense highways; or
>
> (2) a state highway designated by agreement between the transportation commission and the secretary of transportation as a part of the federal-aid primary system, except as provided in 60-7-202.

Hwy 12 is a federal-aid highway. However, an alleged violation of 60-7-201 is to be analyzed under a standard of ordinary negligence. The plaintiffs in Ambrogini (Mont. 1981) argued that § 60-7-201 resulted in absolute liability for conduct by a rancher resulting in livestock on the highway. The Court rejected this argument and reasoned that the Legislature's choice of the term "may not permit" implies liability for negligent conduct as opposed to absolute liability. It explained that practically every state that has considered the issue agrees that "permit" or "allow" implies liability for negligent conduct as opposed to absolute liability. Larson-Murphy (Mont.2000) clarified that pursuant to Ambrogini a livestock owner may be held liable for negligent rather than willful conduct which results in cattle on the highway, but cannot be held strictly liable, and concluded that an alleged violation of § 60-7-201 is analyzed under a negligence standard. It recognized that:

> because both a livestock owner and a motorist may have an equal right to lawfully occupy the highway . . . both owe each other a legal duty to use such roads so as not to injuriously interfere with the other's right of use . . . Accordingly, establishing a standard of reasonable care for livestock owners in their legal relationship with motorists on such highways is a fact-driven, circumstance-specific inquiry that is merely assisted by a proven violation of § 60-7-201.

Larson-Murphy further analogized livestock on the highway to a vehicle in the middle of the highway:

> If a car becomes disabled, "the motorist should employ due diligence to remove it from the highway within a reasonable time, but, in the absence of any showing of lack of diligence, the mere fact that a disabled car is standing on the highway does not constitute actionable negligence." (citing Morton (Mont. 1934).

Thus the mere fact that a cow is on the highway does not render a livestock owner absolutely liable or negligent per se under § 60-6-7-201. Rather, the owner has a duty to not permit his cattle to be on the highway and in order to prevail as to liability, Williams must prove elements of ordinary negligence.

Nor can Goffena be liable for negligence per se for any alleged violation of § 60-7-20 I because 60-7-203 precludes any presumption or inference that the collision was the result of negligence attributable to Goffena:

> In a civil action for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway brought by the owner, driver, or occupant of a motor vehicle or by their personal representatives or assigns or by the owner of livestock, there is no presumption or inference that the collision was due to negligence on the part of the owner or the person in possession of the livestock or the driver or owner of the vehicle.

Because there is no presumption or inference of negligence attributable to Goffena for the collision resulting from his cows having been on the road, there can be no claim for negligence per se. Summary judgment as to negligence per se is granted.

Williams v. Goffena, Musselshell DV-15-35, 10/28/15.

Christopher Froines (Froines Law Office), Missoula, for Williams; Jared Dahle (Dahle Law Firm), Billings, for Goffena.