

1997

Durrant v. Bryant : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JOHN DURRANT,)	BRIEF OF APPELLEE
)	BRADLEY E. BRYANT
Plaintiff and Appellant,)	
)	
vs.)	
)	
BRADLEY E. BRYANT,)	
WORKERS COMPENSATION FUND)	
OF UTAH, and UTAH TRANSIT)	
AUTHORITY, a Utah corporation,)	Appellate Court No. 970659-CA
)	
Defendants and Appellee.)	Priority Classification No. 15

APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY, STATE OF UTAH
Judge Stanton M. Taylor

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**UTAH COURT OF APPEALS
BRIEF**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
JURISDICTION.....	1
STATEMENT OF THE ISSUES.....	1
DETERMINATIVE LAW	2
STATEMENT OF THE CASE.....	2
A. Nature of the Case.....	2
B. Course of the Proceedings.....	3
C. Disposition at Trial Court	4
SUMMARY OF ARGUMENT	4
ARGUMENT.....	5
I. THE TRIAL COURT DID NOT ERR IN FAILING TO GRANT PLAINTIFF’S MOTION FOR A DIRECT VERDICT OR MOTION FOR JUDGMENT N.O.V.....	5
A. Mr. Bryant’s Actions Were Reasonable Under the Circumstances and Not Negligent.....	5
B. Violation of a Safety Standard Set by Statute is Negligence Per Se	11
II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONDUCTING VOIR DIRE.....	13
A. Plaintiff Failed to Preserve the Jury Questionnaire Issue for Appeal	13
B. The Trial Court’s Questioning of the Jury was Reasonable.....	14
C. The Trial Court Did Not Abuse Its Discretion in the Voir Dire Process.....	16
CONCLUSION.....	17

TABLE OF AUTHORITIES

UTAH STATE CASES

<u>Barrett v. Peterson</u> , 868 P.2d 96, 98 (Utah App. 1993)	16
<u>Billings v. Union Bankers Ins. Co.</u> , 918 P.2d 461 (Utah 1996).....	9
<u>Collier v. Frerichs</u> , 626 P.2d 476 (Utah 1981).....	6
<u>Evans v. Doty</u> , 824 P.2d 460 (Utah App. 1991)	14, 16, 17
<u>Fretz v. Anderson</u> , 5 Utah 2d 290, 300 P.2d 642 (1956)	6
<u>Gaw v. State By and Through DOT</u> , 798 P.2d 1130 (Utah App. 1990)	11
<u>Hardman v. Thurman</u> , 121 Utah 143, 239 P.2d 215 (1951)	12
<u>Harris v. Utah Transit Authority</u> , 671 P.2d 217 (Utah 1983)	6
<u>Hornsby v. Corporation of the Presiding Bishop</u> , 758 P.2d 929, 932 (Utah App.) <i>cert. denied</i> , 773 P.2d 45 (Utah 1988).....	1, 14
<u>Jenkins v. Parrish</u> , 627 P.2d 533, 536 (Utah 1981).....	15
<u>McCloud v. Baum</u> , 569 P.2d 1125, 1127 (Utah 1977)	1, 10
<u>Meese v. Brigham Young University</u> , 639 P.2d 720 (Utah 1981).....	5
<u>Mel Hardman Productions, Inc. v. Robinson</u> , 604 P.2d 913 (Utah 1979)	6
<u>Mitchell v. Pearson Enterprises</u> , 697 P.2d 240 (Utah 1985).....	5
<u>Nielsen v. Watanabe</u> , 90 Utah 401, 62 P.2d 117 (1936).....	6
<u>Rasmussen v. Sharapata</u> , 895 P.2d 391, 394 (Utah App. 1995)	1, 13, 14
<u>Ryan v. Gold Cross Services, Inc.</u> , 903 P.2d 423 (Utah 1995).....	11
<u>Saunders v. Sharp</u> , 806 P.2d 198, on remand 840 P.2d 796 (Utah 1992).....	6
<u>Smith v. Gallegos</u> , 400 P.2d 570 (Utah 1965)	7
<u>State v. Bishop</u> , 753 P.2d 439, 448 (Utah 1988).....	13, 14
<u>State v. Irwin</u> , 924 P.2d 5 (Utah Ct. App. 1996).....	13
<u>State v. Saunders</u> , 893 P.2d 584, 587 (Utah App. 1995)	14
<u>Steenblik v. Lichfield</u> , 906 P.2d 872 (Utah 1995)	6
<u>Thompson v. Ford Motor Co.</u> , 16 Utah 2d 30, 395 P.3d 62, 64 (1964).....	11, 12

STATUTES

Utah Code Ann. §78-2-2(3)(k) (1996).....	1
Utah Code Ann. §78-2a-3(2)(h) (1996)	1
Utah Code Ann. §41-6-73 (1953 as amended)	7, 10, 11, 12, 18

JURISDICTION OF UTAH COURT OF APPEALS

The Utah Court of Appeals has jurisdiction of this appeal pursuant to transfer from the Utah Supreme Court which had jurisdiction pursuant to Utah Code Ann. §78-2-2(3)(k) (1996) and Utah Code Ann. §78-2a-3(2)(h) (1996).

STATEMENT OF THE ISSUES

1. In viewing the totality of the evidence presented to the jury, in a light most favorable to Bradley Bryant, and with the benefits of all inferences which the evidence fairly supports, did the trial court err in refusing to grant a motion for directed verdict or grant a judgment notwithstanding the verdict?

The standard of review for denial of a motion for directed verdict and judgment n.o.v. is the same -- both raise the issue of the legal sufficiency of the evidence. Both are reviewed by an appellate court in the light most favorable to the non-moving party and afford him the benefit “of all inferences which the evidence fairly supports.” McCloud v. Baum, 569 P.2d 1125, 1127 (Utah 1977).

2. Did the trial court err in refusing to administer Plaintiff’s proposed jury questionnaire regarding tort reform, and if so, did the error substantially impair Plaintiff’s ability to make informed peremptory challenges?

The questioning of a juror “is a matter within the sound discretion of the trial court, and its rulings with respect thereto will not be disturbed on appeal absent a demonstrated abuse of discretion.” Rasmussen v. Sharapata, 895 P.2d 391, 394 (Utah App. 1995); quoting from Hornsby v. Corporation of the Presiding Bishop, 758 P.2d 929, 932 (Utah App.) *cert. denied*, 773 P.2d 45 (Utah 1988).

DETERMINATIVE LAW

The law of the case from the trial court is the instructions given. The jury was instructed on left-hand turns as follows:

The driver of a vehicle turning left must yield to vehicles close enough to represent an immediate hazard. However, a driver is not compelled to remain in an intersection indefinitely waiting to turn. The driver must make reasonable observations and yield when reasonably necessary.

(R. 803)

STATEMENT OF THE CASE

A. Nature of the Case.

This is a personal injury action filed by John Durrant, plaintiff and appellant, against Bradley E. Bryant and Utah Transit Authority, defendants and appellees (R. 001). The basis for the complaint was negligence on the part of the two defendants (R. 002). On September 30, 1993, Mr. Durrant was traveling northbound on Riverdale Road in the outside lane (T. Vol. I 1266). He struck Mr. Bryant's vehicle just behind his front tire on the passenger side of his vehicle as Mr. Bryant was attempting to complete a left hand turn (T. Vol. I 1068). Traffic conditions were heavy on Riverdale Road because of construction on Riverdale Road which directed all vehicles in the outside northbound lane to merge to the inside lane (T. Vol. II 1266). Mr. Bryant had waited in the turn lane for someone to be kind enough to stop and allow him to turn (T. Vol. I 1067). A UTA bus driver stopped and allowed Mr. Bryant to proceed into the inside lane (T. Vol. I 1067). Mr. Bryant could not see through the bus and had to rely on the bus driver to direct his actions thereafter (T. Vol. I 1067). The bus driver directed him to proceed, then directed him to stop, checked his mirror and directed him to proceed again (T. Vol. I

1067-1069). Mr. Durrant explained he was heading north in the outside lane and saw a place to merge behind the bus. He started to merge behind the bus and then saw a space in front of the bus. He changed his mind and attempted to merge in front of the bus (T. Vol. I 1082).

B. Course of the Proceedings.

Plaintiff's First Amended Complaint was filed October 26, 1994 (R. 001). Bradley Bryant's Amended Answer was filed November 14, 1994 (R. 058); UTA's Answer to Plaintiff's First Amended Complaint was filed December 14, 1994 (R. 072). Mr. Bryant also filed a Cross Claim against UTA on March 26, 1996 (R. 163).

Trial was originally scheduled for July 23, 1996 (R. 138). Because plaintiff had been in an additional accident, the trial was postponed in order to obtain an IME of the plaintiff (R. 208). The trial was thereafter scheduled for October 30, 1996 (R. 213).

On October 10, 1996, plaintiff filed a Motion to Submit a Questionnaire to the Jury Panel (R. 436). No Order was ever entered denying said Motion. However, the questionnaire was not submitted to the jury on October 30, 1996. The plaintiff passed the jury for cause (R. 528). However, not enough jurors remained to allow peremptory challenges, and a mistrial was declared (R. 528).

A new trial date was set for February 18, 1997 (R. 529). Plaintiff's Motion to Submit a Questionnaire to the Jury Panel was not renewed. The trial court questioned the jury regarding potential bias and opinions as well as tort reform and excessive verdicts (T. Vol. I 899-995). During the trial court's voir dire, the trial court excused 10 jurors for cause (T. Vol. I 899-955). The counsel for all parties thereafter questioned the potential jurors (T. Vol. I 955-1030). No objections were made by plaintiff to the jury or the

questions asked by the trial court. The jury was impaneled only after counsel for the plaintiff had passed the jury for cause (T. Vol. I 1030; R. 613).

C. Disposition at Trial Court.

After the jury instructions were read to the jury, the jury retired and returned with the Special Verdict. The Special Verdict found Bradley E. Bryant to not be negligent and UTA to not be negligent (R. 828).

A Memorandum of Costs was filed by Bradley E. Bryant on April 29, 1997 (R. 863-880). The Judgment on the Verdict was filed on May 1, 1997 (R. 881-884). An Objection to Mr. Bryant's Memorandum of Costs was filed on May 7, 1997 (R. 885-889). This Motion is still pending in the trial court. A Notice of Appeal was filed May 23, 1997 (R. 890-893).

SUMMARY OF ARGUMENT

The jury verdict found Bradley Bryant to not be negligent. Sufficient evidence in the record exists for the jury to find Mr. Bryant's actions were reasonable under the totality of the facts presented to them, including the heavy traffic conditions, the merge signs for the northbound outside lane of travel, the UTA bus driver stopping in the inside lane for Mr. Bryant to proceed to make his turn, the inability of Mr. Bryant to see through the bus thereby necessitating a reliance upon the instructions of the bus driver as to the ability of him to execute a safe turn, the bus driver's clear directions to Mr. Bryant of proceeding, stopping, and then finally to proceed forward, and Mr. Bryant's inability to avoid the accident once his vision was clear of the bus.

Plaintiff's own brief indicates enough evidence exists for a jury to conclude "Bryant was reasonable in his reliance on the bus driver's signal (Brief of Appellant, p. 6)."

Further, even if a statutory violation occurred, the jury had sufficient evidence to conclude justification or excuse existed to overcome any presumption of negligence.

The jury was properly impaneled. The trial court did not limit the questioning of plaintiff's counsel. The questions asked were sufficient to reveal any potential bias or opinions regarding tort reform and excessive jury verdict. The trial court carefully guarded against any tainting of the jury.

ARGUMENT

I. The Trial Court Did Not Err in Failing to Grant Plaintiff's Motion For a Direct Verdict or Motion for Judgment N.O.V.

A. Mr. Bryant's Actions Were Reasonable Under the Circumstances and Not Negligent.

Plaintiff's claim is Mr. Bryant stated he failed to yield right-of-way to the plaintiff; and therefore, he admitted to the court and jury he was negligent as a matter of law. Accordingly, the argument is the trial court erred in failing to direct a verdict or enter a judgment n.o.v. because he was negligent.

However, Mr. Bryant's factual statement does not automatically lead to a legal conclusion of negligence. Negligence simply means the failure to use reasonable care under the circumstances. Mitchell v. Pearson Enterprises, 697 P.2d 240 (Utah 1985). Negligence depends upon the totality of the circumstances. Meese v. Brigham Young

University, 639 P.2d 720 (Utah 1981). The jury in this case determined Mr. Bryant's conduct was reasonable for him in the situation in which he was faced.

On review, this Court should review the evidence in a light most favorable to Mr. Bryant, and afford him all the reasonable inferences from that evidence which would support the jury verdict. Mel Hardman Productions, Inc. v. Robinson, 604 P.2d 913 (Utah 1979); Steenblik v. Lichfield, 906 P.2d 872 (Utah 1995). Appellate courts should not lightly disturb jury verdicts. Saunders v. Sharp, 806 P.2d 198, on remand 840 P.2d 796 (Utah 1992). As stated by the Utah Supreme Court:

We do not mean to imply that rulings by the court which decide factual contention as a matter of law are never appropriate. But the right to trial by jury is a basic principle of our system that cannot be eroded by improper intrusions on the jury prerogative.

Id. at 220.

In the Harris v. Utah Transit Authority, 671 P.2d 217 (Utah 1983) case, the Utah Supreme Court cited with approval other Utah cases which have determined that negligence must be examined under the "totality of the circumstances" approach. Id. at 221, citing with approval Collier v. Frerichs, 626 P.2d 476 (Utah 1981); Fretz v. Anderson, 5 Utah 2d 290, 300 P.2d 642 (1956); Nielsen v. Watanabe, 90 Utah 401, 62 P.2d 117 (1936).

The purpose of the Utah Comparative Negligence statute is to allow the jury to make the determination of the relative culpability of the parties to a lawsuit. The jury must assess the reasonableness or unreasonableness of the parties "in light of all the circumstances." Id. at 222.

The Utah Supreme Court has recognized the question of whether a driver making a left-hand turn **failed to perform his duty** in yielding right-of-way to an on-coming driver prior to the collision is a jury question. Smith v. Gallegos, 400 P.2d 570 (Utah 1965). In Smith, the truck driver Jones was making a left-hand turn when he was struck by a truck driven by Gallegos. Because Jones failed to yield right-of-way as he executed his left-turn, the issue on appeal to the Utah Supreme Court was whether Jones was negligent as a matter of law for his failure to yield right-of-way as set forth in Utah Code Ann. §41-6-73 (1953 as amended). Admitted was the fact Jones failed to yield. The issue was whether the failure to yield automatically resulted in a breach of Jones' duty to exercise due care under the circumstances. The Utah Supreme Court rejected the argument of the plaintiff (the same argument raised in this appeal). The Utah Supreme Court held:

Justice does not sanction any such favoring of one party at the expense of the other. It imposes upon all drivers, including not only the left turner (respondent Jones), but also upon the oncoming vehicle (appellant Gallegos) the fundamental duty which pervades the entire law of torts and from which no one is at any time excused: **to use that degree of care which a reasonable and prudent person would use under the circumstances for the safety of himself and others.**

Id. at 572.

The appellant Smith argued that because the accident happened when the driver Jones failed to yield the right-of-way, the statutory duty under Utah Code Ann. §41-6-73 (1953 as amended) had been breached. The driver making the left-hand turn who failed to yield was, therefore, negligent. [The plaintiff in this case has likewise argued that because Mr. Bryant failed to yield, he is automatically negligent]. The Utah Supreme Court rejected this simplistic analysis and stated:

It is not reasonable to suppose that it was intended [the left-hand turn statute] to compel a left turner to sit interminably at an intersection in fear that if he attempts to turn he will be “fair game” for anyone who could manage to strike him. Conceding the appellant’s assertion that the accident itself is proof that there was a hazard, this does not necessarily prove that it was, or should have been, apparent to the plaintiff that there was a hazard of his being struck during the time he would be moving in the intersection. No one should be obliged to accept any such “a rose is a rose” type of reasoning as to permit appellant to say, ‘Well, I hit you, so I must have been a hazard.’ This would be manifestly unfair and would result in concluding that at any time a left turner got hit he must have been at fault; and this no matter how reckless or unlawful the driving of the other car might have been.

Id. at 571.

Mr. Bryant, the defendant and appellee, in this case factually stated he failed to yield to the plaintiff’s vehicle. However, his statement does not automatically require the trial court (or this Court) to hold he was negligent. His fundamental duty under Utah tort law is to “use that degree of care which a reasonable and prudent person would use under the circumstances for the safety of himself and others.” Id. at 572. The jury found he did not violate that duty under the totality of the facts presented to the jury and found Mr. Bryant was not negligent.

Mr. Bryant was in heavy, bumper to bumper, traffic conditions (T. Vol. I 1067). Northbound traffic in the outside lane of travel had been instructed to merge into the center lane on several occasions prior to the accident site (T. Vol. I 1094). Mr. Bryant had pulled into the center turn lane and had to wait for someone to be kind to let him through (T. Vol. I 1067). A UTA bus stopped and halted traffic in the inside northbound lane of travel to allow Mr. Bryant to execute his left-hand turn (T. Vol. I 1080). Mr. Bryant could not see through the bus (T. Vol. I 1080). He had to rely upon the bus driver, a professional driver, to help him through the intersection (T. Vol. I 1067). The bus

driver had a mirror on the side of the bus giving him good visibility down the right-hand side of the bus (T. Vol. I 1068). The bus driver was looking into the mirror, looked back at Mr. Bryant, and gave him the motion to come through (T. Vol. I 1068). As Mr. Bryant started to turn left, the bus driver quickly raised his hand and indicated Mr. Bryant should stop, so he did (T. Vol. I 1068). The bus driver continued to look in his mirror, looked back at Mr. Bryant and gave him the motion to proceed (T. Vol. I 1068). Mr. Bryant was relying upon the bus, which blocked his vision of the on-coming northbound traffic, to help him safely through the intersection (T. Vol. I 1067). The accident happened at the exact moment Mr. Bryant's line of vision was capable to see around the bus (T. Vol. I 1068).

The jury concluded Mr. Bryant was not negligent under these circumstances. While factually an accident happened because Mr. Bryant failed to yield, his failure to do so under the situation where he was totally relying upon the bus driver (because he could not see through the bus and the bus driver had assumed a duty of affirmatively acting and directly his traffic movements) was determined by the jury to not be negligence. "It is elementary that where there is dispute in the evidence, resolving the conflicts is for the jury under its prerogative as the exclusive finder of the facts." *Id.* at 572. Further, because the jury found in favor of Mr. Bryant, this court should accept his version of the accident and all inferences fairly to be drawn therefrom in a light most favorable to him. *Id.* at 573. In reviewing the evidence, a reasonable basis exists for the jury verdict, and the jury's verdict should be affirmed. See also, Billings v. Union Bankers Ins. Co., 918 P.2d 461 (Utah 1996), in reviewing jury verdicts, the Utah Supreme Court views the

evidence in the light most supportive of the verdict and assumes the jury believed those aspects of the evidence which sustain its findings and judgment.

The plaintiff and appellant argues the trial court improperly failed to grant a motion for directed verdict on the issue of liability because Mr. Bryant stated he failed to yield right-of-way. Mr. Bryant's factual statement does not equate to a legal conclusion he violated Utah Code Ann. §41-6-73 (1953 as amended). In denying the motion, the trial court stated the issue of whether Mr. Bryant was negligent was still a jury question (T. Vol. II 1342). The trial court's decision was correct in light of the Utah Appellate Court cases on left-hand turns.

In McCloud v. Baum, 569 P.2d 1125 (Utah 1977), the Utah Supreme Court was faced with a similar appeal. The plaintiff/appellant brought the appeal alleging the trial court erred in denying his motion for directed verdict or motion for judgment notwithstanding the verdict when he ran into the defendant who made a left hand turn in front of him. (The standard of review for denial of a motion for directed verdict and judgment n.o.v. is the same -- both raise the issue of the legal sufficiency of the evidence. Both are reviewed by an appellate court in the light most favorable to the non-moving party and afford him the benefit "of all inferences which the evidence fairly supports." Id. at 1127.)

The Utah Supreme Court rejected the arguments and stated: "[W]hat is reasonable safety depends upon the facts in the particular case." Id. A left-hand turn does not automatically equate to negligence. Id. at 1128.

Bradley Bryant's statement in this case was he was relying on the individual driving the bus to help him through the intersection (T. Vol. I 1067). The jury found this

reliance was reasonable. While in his mind he felt he had failed to yield right-of-way to Mr. Durrant, the jury did not find his conduct negligent even after making the statement. The jury found Mr. Bryant acted with reasonable safety in light of the facts in the case.

B. Violation of a Safety Standard Set by Statute is Not Negligence Per Se.

No instruction was given to the jury which provided that violation of Utah Code Ann. §41-6-73 (1953 as amended) had occurred. Instead MUJI 5.17 jury instruction on left turns was given. While Utah Code Ann. §41-6-73 (1953 as amended) is cited as a reference, the instruction goes further than the statute and instructs the jury that: “A driver is not compelled to remain in an intersection indefinitely waiting to turn. The driver must make reasonable observations and yield when reasonably necessary (R. 803).” The jury found Mr. Bryant acted reasonably, and the issue of statutory violation was never reached.

Further, even if the plaintiff had requested and the court had instructed the jury as to Mr. Bryant’s potential violation of Utah Code Ann. §41-6-73 (1953 as amended), violation of a statute is not negligence per se. “It is a general rule of Utah law that violation of a safety standard set by statute or ordinance constitutes prima facie evidence of negligence.” Ryan v. Gold Cross Services, Inc., 903 P.2d 423 (Utah 1995). Prima facie evidence of negligence may be overcome by proof by the defendant of his non-negligent conduct. “It is sufficient to state the violation of a statute is evidence of negligence but ‘subject to justification or excuse if the evidence is such that it reasonably could be found that the conduct was nevertheless within the standard of reasonable care under the circumstances.’” Id. at 1135; quoting from Thompson v. Ford Motor Co., 16 Utah 2d 30, 395 P.3d 62, 64 (1964). As stated by this Court in Gaw v. State By and

Through DOT, 798 P.2d 1130 (Utah App. 1990): “[T]he violation of a statute does not necessarily constitute negligence per se and may be considered *only as evidence of negligence* . . . [The violation] may be regarded as ‘prima facie evidence of negligence, but is subject to justification or excuse . . .’” Id. at 1135; quoting from Thompson v. Ford Motor Co., 16 Utah 2d 30, 395 P.3d 62, 64 (1964), emphasis in original.

Had the jury been instructed, the jury could have concluded a violation of Utah Code Ann. §41-6-73 (1953 as amended) occurred. The jury could have concluded the violation was justified under the totality of the situation, especially after being instructed Mr. Bryant did not have to wait indefinitely and was directed by the bus driver to proceed. His actions were reasonable and justified. Likewise, the jury could have concluded Mr. Bryant was faced with an emergency situation caused by the conditions and could not obey the law, or had made reasonable efforts to obey the law, but was unable to do so (R. 792). Enough evidence exists to draw inferences in support of the jury’s verdict of no negligence on the part of Mr. Bryant.

In Hardman v. Thurman, 121 Utah 143, 239 P.2d 215 (1951), the Utah Supreme Court was faced with a similar appeal. The defendant/appellant contended the trial court erred by failing to grant a motion for a direct verdict when the evidence demonstrated the plaintiff made a left turn after traffic had stopped in two lanes for her to proceed. However, her vision of the third lane was blocked, and when she proceeded into the third lane of travel, she was struck. Her actions, the defendant/appellants argued, constituted negligence as a matter of law because she failed to yield right-of-way. The Utah Supreme Court rejected the argument and held the evidence was sufficient to require submission of the case to the jury. Id. at 150.

Mr. Bryant's conduct was not negligence per se. Even if his statement of failing to yield is some evidence of negligence, the jury concluded justification or excuse existed which permitted his actions. The jury verdict should be affirmed.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONDUCTING VOIR DIRE

A. Plaintiff Failed to Preserve the Jury Questionnaire Issue for Appeal.

Plaintiff failed to make a motion to submit the jury questionnaire prior to the jury being impaneled on February 18, 1997. Further, the plaintiff's counsel was given the opportunity to personally voir dire the jurors about any potential personal bias (T. Vol. I 994-1004) and was "afforded an adequate opportunity to gain the information necessary to evaluate jurors." State v. Bishop, 753 P.2d 439, 448 (Utah 1988). The plaintiff's counsel passed the jury for cause (T. Vol. I 1004). Counsel for the plaintiff did not object to the impaneling of the jury (T. Vol. I 1019, 1029). The plaintiff's counsel failure to object and raise the issue at trial precludes the argument on appeal. State v. Irwin, 924 P.2d 5 (Utah Ct. App. 1996).

This Court's decision in Rasmussen v. Sharapata, 895 P.2d 391 (Utah App. 1995) is controlling. In the Rasmussen case, the plaintiff complained the trial court did not allow her to formulate and ask questions necessary to reveal any bias on the juror's part. The plaintiff and appellate in this case complains the trial court did not allow him to ask questions to reveal bias on any potential juror's part. This Court in Rasmussen rejected the argument and stated:

The transcript shows the court invited counsel from both sides to question Branscomb. The court said nothing to limit the form or substance of counsels' questions. After the two questions Rasmussen's counsel chose to ask, he did not say he wished to pose further questions.

Thus, he did not present the trial court an opportunity to rule on this issue and we will not address it further on appeal.

Id. at 395.

Likewise, the plaintiff in this action has failed to preserve this issue for appeal.

B. The Trial Court's Questioning of the Jury was Reasonable.

Trial court's questioning of potential jurors is reviewed under an abuse of discretion standard. Rasmussen v. Sharapata, 895 P.2d 391 (Utah App. 1995); Hornsby v. Corporation of the Presiding Bishop, 758 P.2d 929, 932 (Utah App.) *cert. denied*, 773 P.2d 45 (Utah 1988); Evans v. Doty, 824 P.2d 460 (Utah App. 1991). The questioning of a juror "is a matter within the sound discretion of the trial court, and its rulings with respect thereto will not be disturbed on appeal absent a demonstrated abuse of discretion." Rasmussen at 394; quoting from Hornsby v. Corporation of the Presiding Bishop, 758 P.2d 929, 932 (Utah App.) *cert. denied*, 773 P.2d 45 (Utah 1988). The abuse of discretion standard requires the appellate court to find error "only when the record clearly indicates that the decision [regarding the scope of questioning] was unreasonable." Rasmussen at 394; quoting from State v. Saunders, 893 P.2d 584, 587 (Utah App. 1995). A trial court abuses its discretion and commits reversible error only when "considering the totality of the questioning, counsel [is not] afforded an adequate opportunity to gain the information necessary to evaluate jurors." Evans v. Doty, 824 P.2d 460 (Utah App. 1991); quoting from State v. Bishop, 753 P.2d 439, 448 (Utah 1988).

The jury voir dire questioning lasted the entire morning of the first day of trial (T. Vol. I 899-1030). The trial court conducted extensive voir dire into the background and potential biases of prospective jurors (T. Vol. I 899-995). During the trial court's voir

dire, the trial court excused 10 jurors for cause (T. Vol. I 899-955). Thereafter, the trial court did not limit the questioning by any of the attorneys representing the parties in the action (T. Vol. I 955-1030). The jury was impaneled only after all were satisfied with the panel (T. Vol. I 1030).

The trial court had the advantaged position of evaluating and determining the impartiality of the jurors. The Utah Supreme Court has stated that: “Due consideration should be given to the trial judge’s somewhat advantaged position in determining which persons would be fair and impartial jurors. . .” Jenkins v. Parrish, 627 P.2d 533, 536 (Utah 1981).

Plaintiff’s sole argument in regard to the jury panel was the court failed to submit a questionnaire to the jury which contained questions about tort reform. Specifically, the questionnaire asked: “1) Have you read magazine or newspaper articles or other literature suggesting there is a lawsuit crisis or the need for “tort reform”? 2) Have you read any articles or other literature suggesting that jury verdicts are excessive or unreasonable? 3) Have you heard anything on television or radio about a lawsuit crisis or excessive jury verdicts? 4) Do you hold the opinion that in this country today there is a lawsuit crisis caused by excessive jury verdicts? And 5) Do you feel insurance premiums are too high due to excessive lawsuits and/or jury verdicts?” (Brief of Appellant, Appendix No. 3).

The trial court specifically asked about publicity regarding excessive judgments and to assist the jury, mentioned two cases involving large verdicts (7-Up cap and McDonald’s coffee) (T. Vol. I 923). The trial court specifically informed the jury that a lot of publicity had resulted from excessive judgments from which “tort reform” or “the need to change the system” was suggested (T. Vol. I 923). The trial court then

specifically asked if anyone had a preconceived notion about whether the plaintiff should win or lose or how much money the plaintiff should recover if he won (T. Vol. I 924). Although not mentioned first by the court, questions regarding insurance were also covered (T. Vol. I 925, 930-934). One juror was specifically excused because he had strong feeling about frivolous lawsuits (T. Vol. I 929).

In reviewing the questions asked by the trial court, while not worded exactly as plaintiff requested, the trial court did question the jury about “tort reform,” “excessive verdicts,” and “insurance” (T. Vol. I 923-933). The trial court, thereafter, did not limit further inquiry by the plaintiff’s counsel. Jurors were excused for cause. Further, the plaintiff had the opportunity to gather information necessary to utilize any peremptory challenges. The peremptory challenges were exercised, and no objection was made.

The voir dire in this trial promoted the purposes set forth by this Court. Voir dire of a jury panel serves two purposes: “1) to allow counsel to uncover biases of individual jurors sufficient to support a for-cause challenge and 2) to gather information enabling counsel to intelligently use peremptory challenges.” Barrett v. Peterson, 868 P.2d 96, 98 (Utah App. 1993). The reasonable questioning by the court and counsel accomplished these purposes.

C. The Trial Court Did Not Abuse Its Discretion in the Voir Dire Process.

The plaintiff and appellant claims the failure to ask specific questions on the jury questionnaire was sufficiently prejudicial to require reversal of the jury verdict. While the plaintiff does not specifically identify what more the trial court could or should have asked, the totality of the questioning evidences the trial court’s examination of the jurors satisfied the purposes of voir dire. Like this Court found in the Evans case:

Given the totality of the questioning allowed and in light of the extensive, two-hour voir dire, we cannot say the trial court abused its discretion such that we must reverse. The trial court asked many questions that would allow Corinne to intelligently exercise her peremptory challenges, including an inquiry into the juror's occupations, background, and feelings about medical malpractice law in general. Further, when the trial court asked potential jurors if they could not be impartial because of an exposure to tort-reform information, two indicated they could not be impartial and the trial court excused them. Accordingly, an examination of the totality of questioning leads us to conclude the trial court did not abuse its discretion in conducting voir dire.

Evans, 824 P.2d at 468.

The trial court in this case likewise conducted a thorough investigation into the background, bias and opinions of the jury. The judgment should be affirmed.

CONCLUSION

The jury found Bradley Bryant to not be negligent. The jury had the favored position of being in the courtroom, evaluating the evidence presented, judging the demeanor of the witnesses, and in their collective reasoning determined Mr. Bryant was not negligent. This Court should affirmed their decision.

The jury selection process was extensive and without restriction. Peremptory challenges were made with knowledge. No abuse of discretion occurred in not administering a potentially biased jury questionnaire. This Court should affirmed the trial court's decision.

DATED this 10th day of December, 1997.

PERRY, MALMBERG & PERRY


Jan P. Malmberg

CERTIFICATE OF MAILING

I hereby certify a true and correct copy of the foregoing Brief of Appellee was mailed, postage pre-paid, this 10th day of December, 1997 to the following parties through their counsel of record as follows:

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