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Boulevard Law Extended - Shriner v. Mullhausen

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Boulevard Law Extended

Shriner v. Mullhausen[1]

At 11 A.M. on January 5, 1953, Mrs. Pauline M. Shriner was driving an automobile owned by her husband, Mr. Marlin L. Shriner, east along a hard paved, public highway. Evidence was conflicting as to the speed at which she was driving. The weather was clear and the road was dry. As she drove over the crest of a hill she saw ahead a tractor with a manure spreader attached, blocking the highway. The entire piece of equipment measured twenty-three feet eleven inches in length and weighed approximately 7,200 pounds. The equipment had just entered the highway from a private dirt driveway belonging to Mr. Joseph H. Mullhausen. The equipment also belonged to Mr. Mullhausen and his son was at the wheel. The two vehicles collided at the intersection.

Mrs. Shriner brought suit against both Mullhausens in the Circuit Court of Carroll County for personal injuries

[1] 210 Md. 104, 122 A. 2d 570 (1956).

resulting from the accident. The defendants filed a general issue plea and, in addition, Joseph, the father, filed a counter-claim for damages to his tractor. Mr. Shriner sued the defendants for the loss of his wife's services, expenses of medical treatments and damages to his automobile.

The cases were tried together before a jury which rendered verdicts in favor of all defendants; judgments for costs were entered against the Shriners. A verdict on the counter-claim by Mr. Mullhausen was entered in favor of Mrs. Shriner; judgment for costs was rendered in her favor. No appeal was taken by the father on the judgment against him for costs on his counter-claim. On appeal by the Shriners from the Circuit Court's denial of a prayer for directed verdict,[2] the Court of Appeals *held*, per Collins, J., reversed and remanded. The Court, in extending the decisions construing the boulevard stop statutes[3] to the statute dealing with unpaved or private roads intersecting unmarked paved highways,[4] reasoned that since the younger Mullhausen moved slow and bulky farm equipment onto a paved public highway from a private road and did not yield the right of way to the oncoming vehicle, he was guilty of negligence as a "matter of law",[5] the same as if he had moved the equipment from a "stop" street onto a through highway. Further, there being insufficient evidence to

[2] *Ibid*, 113.

[3] *Ibid*, 114. The "Boulevard Law" consists of the following statutes: Md. Code (1951), Art. 66½:

"198. (Vehicle Entering Through Highway or Stop Intersection.) (a) The driver of a vehicle shall come to a full stop as required by this Article at the entrance to a through highway and shall yield the right of way to other vehicles approaching on said through highway."

"207. (Vehicles Must Stop at Through Highways.) (a) The State Roads Commission with reference to State and county highways, and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

* * * * * *

"(c) Every driver of a vehicle shall come to a full stop at such sign or at a clearly marked stop line before entering an intersection and yield the right of way to vehicles approaching on the intersecting highway except when directed to proceed by a peace officer or traffic control signal."

[4] Md. Code (1951), Art. 66½, Sec. 199:

"(Entering Paved Public Highway From Unpaved or Private Road.) The operator of a vehicle entering a paved public highway, which is hereby defined to be a highway having a hard, smooth surface, composed of gravel, shells, crushed stone, paving blocks, asphalt, concrete or other similar substance, from an unpaved public highway, or from a private road or drive, shall come to a full stop upon reaching the intersection, and yield the right of way to all vehicles approaching on such paved public highway."

[5] *Supra*, n. 1, 118.

prove Mrs. Shriner guilty of contributory negligence or negligence under the doctrine of "last clear chance", verdicts should have been directed in favor of the Shriners.

To this extension of the interpretation of the "boulevard law" Judge Hammond entered a vigorous dissent,[6] stating that he "would remand the case for new trial on proper instructions to the jury".[7]

Streets and intersections are generally governed by the statutory rule of right of way.[8] By statute,[9] however, the general rule has been modified,[10] in the case of through highways.[11] In a series of cases[12] which defined the "boulevard law", the Maryland Court of Appeals construed the purpose[13] of the statute as designed "to accelerate the flow

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[6] *Ibid, dis. op.* 120.

[7] *Ibid,* 126.

[8] Md. Code (1951), Art. 66½, Sec. 196:

"(Vehicle Approaching or Entering Intersection.) (a) Except as hereinafter provided, all vehicles or trackless trolleys shall have the right of way over other vehicles or trackless trolleys approaching at intersecting public roads from the left, and shall give right of way to those approaching from the right.

"(b) The foregoing rules are modified at through highways and otherwise as stated in this Article."

See also: Rabinovitz v. Kilner, 206 Md. 455, 112 A. 2d 483 (1955); Legum v. Hough, 192 Md. 1, 63 A. 2d 316 (1949). This subject is discussed in, Due and Bishop, *Automobile Right of Way in Maryland,* 11 Md. L. Rev. 159 (1950). As to pedestrians right of way, see Md. Code (1951), Art. 66½, Sec. 201, and State v. Belle Isle Cab Co., 194 Md. 550, 71 A. 2d 435 (1950), noted in 13 Md. L. Rev. 64 (1953). This subject is discussed in, Due and Bishop, *Motorists and Pedestrians — A Study of the Judicial Process in Relation to the Statutory Right of Way Law in Maryland,* 11 Md. L. Rev. 1 (1950).

[9] For statutes, see ns. 3 and 4, *supra.*

[10] Modifications to create preferences in certain streets must be made by statute in Maryland. Carlin v. Worthington, 172 Md. 505, 508, 192 A. 356 (1937); see also: 5 AM. JUR. 668, Automobiles, Sec. 301.

[11] Md. Code (1951), Art. 66½, Sec. 2, sub-sec. 59:

"(Through Highway.) Every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required to stop and yield right-of-way before entering or crossing the same and when stop signs are erected as provided in this Article."

Greenfeld v. Hook, 177 Md. 116, 131, 8 A. 2d 888, 136 A. L. R. 1485 (1939), noted in 4 Md. L. Rev. 207 (1939), provides:

". . . the general right of way rule at intersections, cannot be accepted as controlling the decision here, [a 'boulevard' case] because under the statute a special and more positive right of way rule controlling traffic on and across 'stop' streets supersedes the general right of way rule to which they apply."

[12] Greenfeld v. Hook, *ibid;* Pegelow v. Johnson, 177 Md. 345, 9 A. 2d 645 (1939); Carlin v. Worthington, 172 Md. 505, 192 A. 356 (1937); Blinder v. Monaghan, 171 Md. 77, 188 A. 31 (1936); Motor Tours v. Becker, 165 Md. 32, 166 A. 434 (1933).

[13] It is interesting to note that the Court in Blinder v. Monaghan, *ibid,* 83, referred to it as the "manifest" purpose; in Greenfeld v. Hook, *supra,* n. 11, 125, as the "obvious and essential" purpose; and in Brooks v. Childress, 198 Md. 1, 10, 81 A. 2d 47 (1951), as the "primary" purpose. The characterization of "primary" purpose has since been repeated. Shriner

of traffic over through highways"[14] on "which traffic may move without interruption or delay".[15] To carry out this intent, the mandatory duties of stopping and yielding the right of way are correlated and coordinated so that the unfavored driver enters the intersection at his risk.[16] He must come to a full stop at "stop" streets[17] and ascertain, through the use of reasonable care and diligence, whether traffic is approaching thereon.[18] If any traffic is approaching, he must yield the right of way.[19] He is not negligent in entering the through highway if, after following the procedure set out above, the way is clear;[20] but if in fact the way is not clear the failure to yield the right of way after stopping is negligence. If for any reason the unfavored driver's view of the thoroughfare is obstructed so that he cannot observe traffic approaching thereon, it is his duty to wait until the obstruction clears, or to take adequate measures to overcome or compensate for such obstruction so as to determine if the way is clear.[21] The duty of yielding the right of way to vehicles on the favored way persists throughout the passage across it.[22] The unfavored driver must always bear in mind that the favored drivers have superior rights and will proceed rapidly, expecting to travel along uninterruptedly.[23]

Therefore, where the unfavored driver enters a boulevard disregarding these explicit and mandatory rules, and collides with a traveller on the through highway, the col-

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v. Mullhausen, 210 Md. 104, 117, 122 A. 2d 570 (1956); Sonnenburg v. Monumental Tours, 198 Md. 227, 235, 81 A. 2d 617 (1951).

[14] Greenfeld v. Hook, *supra*, n. 11, 125.

[15] Blinder v. Monaghan, *supra*, n. 12, 83.

[16] Greenfeld v. Hook, *supra*, n. 11, 125.

[17] Carlin v. Worthington, *supra*, n. 10. However, the unfavored driver is not required to make two full stops, *i.e.*, at building line and then at the intersection. He need only stop at the intersection. See, Carrigan v. Ashwell, 147 Wash. 597, 266 P. 686 (1928). It should also be noted that the driver is not under a duty to stop at an intersection unless stop signs have been erected there by the proper authorities. Houlihan v. McCall, 197 Md. 130, 78 A. 2d 661 (1951).

[18] Greenfeld v. Hook, *supra*, n. 11, 132.

[19] *Ibid.*

[20] Carlin v. Worthington, *supra*, n. 10; McCulley v. Anderson, 119 Neb. 105, 227 N. W. 321 (1929).

[21] Blinder v. Monaghan, *supra*, n. 12, 83.

[22] Shriner v. Mullhausen, *supra*, n. 13, 114; Fowler v. De Fontes, ... Md. ..., 128 A. 2d 395, 398 (1957); Ness v. Males, 201 Md. 235, 239, 93 A. 2d 541 (1953); Brooks v. Childress, *supra*, n. 13, 10; Baltimore Transit Co. v. O'Donovan, 197 Md. 274, 277, 78 A. 2d 647 (1951); Shedlock v. Marshall, 186 Md. 218, 235, 46 A. 2d 349 (1946).

[23] Greenfeld v. Hook, 177 Md. 116, 8 A. 2d 888 (1939), noted 4 Md. L. Rev. 207 (1940).

lision will be attributed only to his negligence.[24] The Court "will not be diligent in submitting his [the unfavored driver's] case to the consideration of a jury simply because he unsuccessfully attempted to dodge the boulevard vehicle, for plainly, to send such a case to the jury renders the statute meaningless and the result is nothing more than statutory repeal by the judiciary".[25] Since the passage of the boulevard acts, the Maryland Court has consistently held that the proximate cause of a collision between favored and unfavored vehicles, is not the violation of some law by the favored driver, but the entry upon the boulevard by the unfavored driver in violation of the boulevard law.[26]

The favored driver[27] has many "rights" which are correlative to the "duties"[28] of the unfavored driver. The favored driver, without being considered negligent, may assume that a driver on the unfavored road, marked with a stop sign, will stop and yield the right of way.[29] He is not required to slow down at every intersecting road,[30] nor ordinarily, to anticipate that someone will negligently come into his path.[31] However, the statute was not "designed to

[24] Sun Cab Company, Inc. v. Cusick, 209 Md. 354, 121 A. 2d 188 (1956); Brooks v. Childress, 198 Md. 1, 81 A. 2d 47 (1951); State v. Gosnell, 197 Md. 381, 389, 79 A. 2d 530 (1951); Baltimore Transit Co. v. O'Donovan, *supra*, n. 22.

[25] Madge v. Fabrizio, 179 Md. 517, 521, 20 A. 2d 172 (1941).

[26] Madge v. Fabrizio, *ibid.* See also the cases cited in n. 24, *supra*.

[27] It is interesting to note that the Maryland Court recently held that a driver who made a left turn onto a boulevard from a stop street was the favored driver, where the jury decided that he had completed his turn, as to other vehicles or streetcars entering the intersection in an attempt to cross the boulevard from the opposite direction on the unfavored street. Baltimore Transit Company v. Sun Cab Company, 210 Md. 555, 124 A. 2d 567 (1956).

[28] The terms "rights", "duties", and "correlative" are used in the Hohfeldian sense. HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING (1923), which was discussed in Goble, *A Redefinition of Basic Legal Terms*, 35 Col. L. Rev. 535 (1935).

[29] Madge v. Fabrizio, *supra*, n. 25; Rinehart v. Risling, 180 Md. 668, 674, 26 A. 2d 411 (1942); Shedlock v. Marshall, *supra*, n. 22, 235; Belle Isle Cab Co. v. Pruitt, 187 Md. 174, 180, 49 A. 2d 537 (1946); Baltimore Transit Co. v. O'Donovan, *supra*, n. 22; State v. Gosnell, *supra*, n. 24, 390; Brooks v. Childress, *supra*, n. 24, 10; Sun Cab Co., Inc. v. Hall, 199 Md. 461, 86 A. 2d 914 (1952); Ness v. Males, *supra*, n. 22, 239; Hickory Transfer Co. v. Nezbed, 202 Md. 253, 261, 96 A. 2d 241 (1953).

[30] Sun Cab Co. v. Cusick, *supra*, n. 24, 359; Ness v. Males, *supra*, n. 22, 239; Shedlock v. Marshall, *supra*, n. 22; Rinehart v. Risling, *ibid*, 674; Madge v. Fabrizio, *supra*, n. 25. It should be noted that even slow, dangerous, and caution signs on the favored highway are of no effect and put no burden on the favored driver to slow down. Sonnenburg v. Monumental Tours, 198 Md. 227, 236, 81 A. 2d 617 (1951); Belle Isle Cab Co. v. Pruitt, *ibid*, 181.

[31] Hickory Transfer Co. v. Nezbed, *supra*, n. 29, 261; Shriner v. Mullhausen, 210 Md. 104, 116, 122 A. 2d 570 (1956); Sun Cab Co. v. Hall, *supra*, n. 29, 446.

change the established law of negligence so as to relieve the favored driver of all duty to use care".[32]

As an abstract proposition, it is said that he is liable for injuries or damages resulting from an accident proximately caused by his negligence in the operation of his car at an intersection, but, although the favored driver may have been negligent, he is not liable for injuries which were not proximately caused by his negligence.[33] However, in situations where the rule was tested, the Court of Appeals held that excessive speed,[34] reckless driving,[35] or driving to the left of the center of the road,[36] were not the proximate cause of the accident. It may safely be said therefore, that the favored driver can do no wrong, except when he observes the unfavored driver entering the boulevard in clear violation of the boulevard law; then if the favored driver has the opportunity to avoid a collision but does not, he is guilty of negligence.[37] This, therefore, embodies in the boulevard cases the philosophy of the doctrine of the last clear chance.[38]

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[32] Shriner v. Mullhausen, *ibid.* See also Hickory Transfer Co. v. Nezbed, *ibid*, 261, where the court said:

> ". . . while a driver on a boulevard is not relieved of the duty of exercising care, yet in determining what is due care his right to assume that he has the right of way is an important factor."

[33] Belle Isle Cab Co. v. Pruitt, *supra*, n. 29. Ordinarily these questions of proximate cause are for the jury, but they may be so clear as to be determinable by the court. See State v. Marvil Package Co., 202 Md. 592, 601, 98 A. 2d 94 (1953).

[34] Sun Cab Company, Inc. v. Cusick, 209 Md. 354, 121 A. 2d 188 (1956); Ness v. Males, 201 Md. 235, 93 A. 2d 541 (1953); Brooks v. Childress, 198 Md. 1, 81 A. 2d 47 (1951). Even to the extent of intentional racing, see State v. Gosnell, 197 Md. 381, 79 A. 2d 530 (1951).

[35] Sun Cab Company v. Cusick, *ibid;* Brooks v. Childress, *ibid;* State v. Gosnell, *ibid;* Belle Isle Cab Co. v. Pruitt, *supra*, n. 29.

[36] Md. Code (1951), Art. 66½, Sec. 182, provides that, subject to certain specific exceptions, a vehicle shall be driven upon the right half of all roadways of sufficient width. But a violation of this rule does not constitute negligence except when it is the direct and proximate cause of the injury or accident. Sun Cab Co. v. Cusick, *supra*, n. 34; Cocco v. Lissau, 202 Md. 196, 95 A. 2d 857 (1953); Crunkilton v. Hook, 185 Md. 1, 42 A. 2d 517 (1945).

[37] State v. Marvil Package Co., *supra*, n. 33; Sun Cab Co., Inc. v. Hall, *supra*, n. 29; Shedlock v. Marshall, 186 Md. 218, 48 A. 2d 349 (1946). On the extreme difficulty of proving the negligence of a statutorily "favored" driver in Maryland, see Recent Decision, 16 Md. L. Rev. 175 (1956).

[38] Defined and discussed in PROSSER, LAW OF TORTS (2d ed., 1955) 291-296, and in articles and notes referred to herein, *supra*, ns. 8 and 11.

In the most recent cases on the doctrine of the *last clear chance* the Court of Appeals has said:

> ". . . that the doctrine is only applicable when the defendant's negligence in not avoiding the consequences of the plaintiff's negligence is the *last* negligent act; and, cannot be invoked when plaintiff's own act is the final negligent act, or is *concurrent* with defendant's negligence."

Meldrum v. Kellam Distributing Company, ... Md. ..., 128 A. 2d 400, 404 (1957). In a companion case, which concerned the unfavored driver's duty

In the *Shriner* case, the Court relied upon the general proposition of statutory construction that court decisions construing a statute become part of it until the statute is changed by the Legislature.[39] Because the wording of Section 199[40] is practically identical with the boulevard statutes, the Court reasoned by analogy that the interpretations of the latter apply equally to the former.[41] The result of this extension of the rights and duties under the boulevard cases is that a driver on a private or unpaved road or driveway, unmarked by stop signs, who enters a paved road and collides with a vehicle traveling thereon, is guilty of negligence as a matter of law.[42]

The extension of the boulevard cases to unpaved or private roads appears to be sound as a matter of logic. In both cases the unfavored driver must stop and yield the right of way before entering the favored way. The fact that the unfavored road is unpaved or privately owned should give the same degree of notice of these duties as does a stop sign. Since the primary duties of the unfavored driver in the unpaved or private road situation are the same as those of the unfavored driver in the stop sign situation, and, the wording of the statutes creating those primary duties are "practically identical",[43] it follows that the same construction ought to apply.

Judge Hammond's fears that the policy is an unwise one when applied to the shell roads of the tidewater areas and

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to yield the right of way to the favored driver as persisting throughout his passage across the boulevard, the Court held that:

> "One is guilty of concurrent negligence who negligently occupies a position of known danger, and continues to occupy it until injury results, when he could by reasonable care and diligence have escaped therefrom in time to have avoided the injury, and where the other person, the defendant, although he knew of plaintiff's position, may reasonably have inferred that he would move to a place of safety in time to escape injury."
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> Fowler v. De Fontes, ... Md. ..., 128 A. 2d 395, 399 (1957).

[39] What is presently Md. Code (1951), Art. 66½, Sec. 199 (*supra*, n. 4), came into being in the Acts of 1943, Chap. 1007, Sec. 179. The wording of the boulevard statutes, dealing with the duty of stopping and yielding the right of way, appeared first in the Acts of 1929, Chap. 224, and, although there have been a large number of cases construing it, the Legislature has allowed it to remain unchanged.

> ". . . [W]here the Legislature has acquiesced in the judicial construction of a statute, there is a strong presumption that the intention of the Legislature and the words used by it have been correctly interpreted, and as said in Nutwell v. Board of Supervisors of Elections, 205 Md. 338, 343, 108 A. 2d 149, 151: '. . . such an interpretation ought not to be disregarded but upon the most imperious grounds'."
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> Shriner v. Mullhausen, *supra*, n. 32, 115.

[40] For text see n. 4, *supra*.

[41] Shriner v. Mullhausen, *supra*, n. 32, 115.

[42] *Ibid*, 118.

[43] *Ibid*, 114.

to the "up hill and down dale winding country roads of Garrett County or Carroll County"[44] appear to be a matter more for Legislative attention than judicial. One must not lose sight of the fact that a court in construing a legislative enactment must determine legislative intent and not the relative merits of one or more legislative policies.

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[44] *Ibid, dis. op.* 120. His argument in this instance would seem to be its own refutation. From a practical standpoint, is it not essential that a driver on one of these "washboard" roads, or on a hilly and winding road be able to focus his attention on the road itself, and not have to worry about others "popping out" from dirt roads or private driveways?