STATE OF MICHIGAN

COURT OF APPEALS

LOUIS SHATRAU and SANDRA SHATRAU,

Plaintiffs-Appellants,

v

FRANK RAYMOND CATANZARITE,

Defendant-Appellee.

UNPUBLISHED
December 29, 1998

No. 198385
Oakland Circuit Court
LC No. 95-502100 NI

Before: Jansen, P.J., and Holbrook, Jr., and MacKenzie, JJ.

PER CURIAM.

In this negligence action, plaintiffs appeal as of right from a judgment in favor of defendant following a jury trial. We affirm.

This cause of action stems from an automobile accident that occurred on September 19, 1992. At approximately 4:30 p.m. that afternoon, both plaintiffs and defendant were traveling south on Haggerty Road in Novi. The parties agree that the weather at the time of the accident was clear and sunny. Defendant testified at trial that as he was traveling at approximately 40 miles per hour in a 45 mile per hour zone on a two-lane section of the road, he was startled when a white van that was approximately four car lengths in front of him suddenly and unexpectedly swerved onto the shoulder of the road. Defendant testified that the next thing he noticed was plaintiffs' pick-up truck, stopped in the road right ahead of him. Defendant testified that he slammed on his brakes, but could not stop before crashing into plaintiffs' truck at about 10 miles per hour.

Plaintiff Louis Shatrau testified that he did not see the white van described by defendant, and that he was in the left-hand turn lane of a four-lane section of the road when the accident occurred. Neither plaintiff observed defendant's approach. Plaintiff Louis Shatrau testified that the force of the collision caused the back of the truck's seats to break, shattered the rear window, and "totaled" the truck. Plaintiffs' complaint alleged that the injuries sustained by Sandra Shatrau rose "to the level of a permanent impairment of an important bodily function."[1] Plaintiff Louis Shatrau sought damages for loss of consortium.

The sole issue we are presented with on appeal concerns the jury instructions given by the trial court. Plaintiffs argue that the trial court erred when it refused their request to give SJI2d 12.01 (violation of a statute). "We review jury instructions as a whole to determine whether the instructions adequately informed the jury of the applicable law, given the evidentiary claims of the case." *Holland v Liedel*, 197 Mich App 60, 65; 494 NW2d 772 (1992).

> It is within the trial court's discretion whether a proposed instruction is applicable and accurately states the law. Further, the refusal to give even an applicable standard jury instruction will not result in error requiring reversal unless the failure to give the requested instruction so unfairly prejudiced one of the parties that the failure to vacate the jury's verdict would be inconsistent with substantial justice. [*Eide v Kelsey-Hayes Co*, 154 Mich App 142, 150-151; 397 NW2d 532 (1986) (citation omitted), modified on other grounds *Eide v Kelsey-Hayes Co*, 431 Mich 26; 427 NW2d 488 (1988). Accord *Johnson v Corbet*, 423 Mich 304, 327; 377 NW2d 713 (1985).]

Plaintiffs argue that because the evidence indicated that defendant did not maintain a safe stopping distance between his car and plaintiffs' truck, SJI2d 12.01 should have been given to the jury. Appropriately modified, SJI2d 12.01 provides:

> We have a state statute which provides that [a person driving a vehicle on a highway shall drive at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other condition then existing. A person shall not drive a vehicle upon a highway at a speed greater than that which would permit a stop within the assured, clear distance ahead].[2]
>
> If you find that the [defendant] violated this statute before or at the time of the occurrence, you may infer that the [defendant] was negligent.

We find that the above instruction does not accurately state the applicable law. Accordingly, we conclude that the trial court did not err in refusing to give this instruction. The use note to SJI2d 12.01 states, "If a sudden emergency or other excuse for the violation of the statute is an issue in this case, [a court should] omit the last sentence of this instruction and add SJI2d 12.02." Modified to fit the circumstances of this case, SJI2d 12.02 provides:

> However, if you find that defendant used ordinary care and was still unable to avoid the violation because of [the occurrence of a sudden emergency,] then his violation is excused.
>
> If you find that defendant violated this statute and that the violation was not excused, then you must decide whether such violation was a proximate cause of the occurrence.[3]

In *Vander Laan v Miedema*, 385 Mich 226, 231; 188 NW2d 564 (1971), the Michigan Supreme Court observed that the assured clear-distance statute is inapplicable "when a collision is shown to have occurred as the result of a sudden emergency not of defendants' own making." The *Vander Laan* Court further noted that the sudden emergency doctrine applies when the circumstances surrounding the accident are either "'unusual or unsuspected.'" *Id.* at 232, quoting *Barringer v Arnold*, 358 Mich 594, 599; 101 NW2d 365 (1960). "'Unsuspected'" . . . connotes a potential peril within the everyday movement of traffic. To come within the narrow confines of the emergency doctrine as 'unsuspected' it is essential that the potential peril had not been in clear view for any significant length of time, and was totally unexpected." *Id.*[4]

After reviewing the evidence, we believe that there existed a question of fact on whether the sudden emergency doctrine should apply. Defendant stated that his view of plaintiffs' truck was blocked by the white van. When the van suddenly swerved onto the shoulder, defendant was unexpectedly confronted with the danger of a stopped vehicle in the road ahead. We believe that the sudden emergency instruction is warranted in these circumstances. *Farris v Bui*, 147 Mich App 477, 480; 382 NW2d 802 (1985). Therefore, it would have been error for the trial court to give SJI2d 12.01 without deleting the last sentence and adding SJI2d 12.02. MCR 2.516(D)(2); *Cox v LaLonde*, 101 Mich App 342, 349; 300 NW2d 564 (1980) (observing that given the circumstances of that case, it would have been error for the court to give a requested instruction that omitted a reference to "the law of sudden emergency").

Furthermore, we note that because the trial court failed to give either SJI2d 12.01 or SJI2d 12.02, neither party can be said to have been "so unfairly prejudiced . . . that the failure to vacate the jury's verdict would be inconsistent with substantial justice." *Eide*, 154 Mich App at 151. Accord *Johnson, supra*, 423 Mich at 327.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie

[1] See MCL 500.3135(1); MSA 24.13135(1).

[2] The record does not contain the precise wording requested by plaintiffs. However, on appeal plaintiffs have provided us with their version of the requested instruction. The instruction provided is a word-for-word copy of SJI2d, as modified by the inclusion of the relevant language from MCL 257.627(1); MSA 9.2327(1) (the assured clear distance statute). Defendant does not argue that the instruction provided is different from that requested below. Accordingly, we will proceed on the presumption that the instruction quoted in the text above comports with that requested at trial. The relevant statutory language is found in the brackets.

[3] The bracketed language contains the excuse raised by defendant at trial.

[4] Because both parties agree that the weather was not a factor, the circumstances at the time of the accident were not "unusual" as that term has been defined. See *Vander Laan, supra* at 232.