

LYONS v. MIDNIGHT SUN TRANSP. SERVS. INC.

Supreme Court of Alaska, 1996.
928 P.2d 1202.

PER CURIAM.

Esther Hunter-Lyons was killed when her Volkswagen van was struck broadside by a truck driven by David Jette and owned by Midnight Sun Transportation Services, Inc. When the accident occurred, Jette was driving south in the right-hand lane of Arctic Boulevard in Anchorage. Hunter-Lyons pulled out of a parking lot in front of him. [Jette braked and tried to steer around Hunter-Lyons, but his truck collided with her car and she was killed. There was disputed evidence that Jette was speeding and that his maneuver to avoid striking Hunter-Lyons was inadequate.]

Over Lyons's objection, the jury was given an instruction on the sudden emergency doctrine. [The instruction read in part: "In an emergency, a person is not expected or required to use the same judgment and care that is required in calmer and more deliberate moments. If, in an emergency, a person acts as a reasonably careful person would act in a similar emergency, there is no negligence even though afterwards it might appear that a different course of action would have been better and safer."]

The jury found that Jette, in fact, had been negligent, but his negligence was not a legal cause of the accident. Lyons appeals, arguing that the court should not have given the jury the sudden emergency instruction.

The sudden emergency doctrine is a rule of law which states that a person confronted with a sudden and unexpected peril, not resulting from that person's own negligence, is not expected to exercise the same judgment and prudence the law requires of a person in calmer and more deliberate moments. The person confronted with the imminent peril must, however, act as a reasonable person would under the same conditions....

We find that Lyons has little cause to complain of the sudden emergency instruction because the jury decided the issue in his favor.... Although the jury found Jette to have been negligent, it also found that this negligence was not the legal cause of the accident. Duty, breach of duty, causation, and harm are the separate and distinct elements of a negligence claim, all of which must be proven before a defendant can be held liable for the plaintiff's injuries. The sudden emergency instruction addresses only the standard of care imposed on all people to act as a reasonable person would under the circumstances. The instruction could not have infected the jury's finding that Jette was not the legal cause of Ms. Hunter-Lyons's death....

Although any possible error resulting from the use of the sudden emergency instruction was rendered harmless by the jury finding that

Jette's negligence was not a legal cause of the accident, we take this opportunity to disapprove of the instruction's further use. It adds nothing to the established law that the duty of care, which all must exercise, is to act reasonably under the circumstances. The instruction is potentially confusing. Although we cannot say that the instruction is never appropriate, we discourage its employment. In support of this admonition, we offer the following background . . .

Although not inherently inconsistent with modern methods of apportioning liability, the sudden emergency instruction has, nevertheless, come under criticism, and some states have limited or abolished it. Reasoning that because the standard of care is expressed in terms of a reasonable person under the circumstances, several courts have concluded that the instruction is wholly redundant. Mississippi eliminated the instruction in *Knapp v. Stanford*, 392 So.2d 196 (Miss.1980), because the court believed the instruction only served to obfuscate the operation of the comparative negligence statute, and was often interpreted as requiring a higher standard of proof for a finding of negligence. . . . Montana's supreme court, in *Simonson v. White*, 220 Mont. 14, 713 P.2d 983 (1986), found no reason to give the sudden emergency instruction in an automobile accident case stating that the instruction adds nothing to the applicable law in any negligence case, that a driver must exercise due care under the circumstances, and that it tends to leave jurors with the impression that an emergency somehow excuses the driver from the ordinary standard of care. . . .

We believe that the sudden emergency instruction is a generally useless appendage to the law of negligence. With or without an emergency, the standard of care a person must exercise is still that of a reasonable person under the circumstances. With or without the instruction, parties are still entitled to present evidence at trial which will establish what the circumstances were, and are also entitled to argue to the jury that they acted as a reasonable person would have in light of those circumstances. Thus, barring circumstances that we cannot at the moment hypothesize, a sudden emergency instruction serves no positive function. Further, the instruction may cause confusion by appearing to imply that one party is less blameworthy than the other. Therefore, we hold that it should not be used unless a court finds that the particular and peculiar facts of a case warrant more explanation of the standard of care than is generally required.

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Notes

1. Does the standard of care change when the defendant is confronted with a sudden, unforeseeable emergency not of his own making?
2. Several courts, like Alaska, have now said that the idea behind the emergency instruction is adequately covered by the instruction defining the reasonable care standard and that the separate emergency instruction

should not be given. See DOBBS ON TORTS § 131 (2000). In such a jurisdiction, the trial judge must refuse to give the defendant's proffered emergency instruction. What should the judge do about the plaintiff's proffered instruction on commensurate care or care in keeping with the danger? Put more broadly, how exactly would you compare or contrast *Lyons* and *Stewart*?

3. Following up the ideas about how the standard of care should affect jury instructions, consider whether a lawyer could make a principled objection to an instruction that told the jury "The defendant is not liable for an unavoidable accident." See *Reinhart v. Young*, 906 S.W.2d 471 (Tex.1995).

4. In jurisdictions that reject the emergency instruction, is the *fact* that defendant acted in an unforeseeable emergency still relevant? If you represented the defendant, would you consider such a fact in determining what sum to offer in settlement? Would the emergency be any part of your closing argument to the jury?

5. A driver's car stalls at a light. He motions drivers behind him to go around. Some do, but several drivers must instead come to a quick stop because of traffic in the other lane. The defendant was the fourth driver compelled to come to a quick stop, but he was unable to do so without first crashing into the line of cars. In a state that continues to approve the emergency instruction in principle, should the instruction be given on these facts? *Beyer v. Todd*, 601 N.W.2d 35 (Iowa 1999).

6. Allen drives at a speed within the speed limit in a residential area. A number of children are playing soccer on a vacant lot. They appear to range in age from about 6 to about 15. Allen does not slow down. Baker, an 8-year old, runs into the street after the ball, and Allen is unable to stop in time. He would have avoided impact had he driven 5 miles per hour slower. What is the standard of care? Should the judge give any special instruction?