

Smith Freed & Eberhard P.C.

WASHINGTON CASE UPDATE

Deception Doctrine Inapplicable If Obstruction Will Move

case in point...

From the Desk of Joshua P. Hayward: Historically under Washington law, a driver who turned left against oncoming traffic and caused an accident could be found negligent per se, which would be a complete bar to recovery. The deception doctrine was developed to soften these harsh effects. This doctrine allowed the driver to recover in two situations. A driver could recover if he was either deceived by the other driver's actions or if he was unable to see a negligently operated vehicle because of a physical obstruction. This case discusses the application of the doctrine.

Claims Pointer: In this case arising out of a car accident, the Washington Court of Appeals held that the deception doctrine did not apply, and that the trial court properly dismissed the plaintiff's case. The case provides insight into the analysis of the deception doctrine and serves as an important reminder of how this doctrine is applied.

Colburn v. Trees, No. 74366-0-I, Washington Court of Appeals, Division One (October 17, 2016) (unpublished)

In August 2011, Billy Colburn and David Trees were involved in a car accident. Trees was traveling south in the left lane, and he changed lanes to go around a bus that was waiting at the intersection to turn left. Colburn was traveling the north and turned left, crossing in front of Trees. Trees attempted to swerve, but he was unable to avoid colliding with Colburn's vehicle. Because Trees was traveling straight through the intersection, he had the statutory right-of-way, making him the "favored driver." Colburn, who was turning left across traffic, was statutorily required to yield, making him the unfavored driver. Colburn sued Trees for personal injuries and damages caused by the accident. Trees moved for summary judgment, and the trial court granted Trees' motion. Colburn appealed.

On appeal, Colburn argued that there were a number of issues of material fact. First, he asserted that Trees was speeding and that his speeding was a proximate cause of the collision. The Court of Appeals noted, however, that under Washington law, a favored driver's speeding is not the proximate cause of a collision if his vehicle is where it is permitted

to be and the favored driver would have been unable to avoid the collision even if driving at a lawful speed.

As the disfavored driver, for Colburn to demonstrate that the Trees' speed was the cause of the collision, he would have to show that Trees should have realized Colburn was not going to yield. This moment of realization is called the "point of notice." Because Colburn failed to submit evidence establishing when and at what point on the roadway prior to the intersection Trees should have seen Colburn and recognized that Colburn was not yielding, he failed to distinguish Trees' behavior from that of a reasonable driver exercising ordinary care. Thus, he did not establish that Trees' speed was a proximate cause of the collision.

Colburn also contended that Trees negligently delayed use of his turn signal to change lanes, changed lanes unsafely, drove inattentively, and improperly swerved to the right to avoid a collision with Colburn. The Court of Appeals discredited each assertion as inadequately supported by the evidence.

Finally, Colburn asserted that his liability should be reduced and he should be allowed to recover under the "deception doctrine." Under Washington law, the deception doctrine



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provides that when a favored driver deceives a reasonably prudent disfavored driver into believing that he or she can make a left turn with a fair margin of safety. Such deception must be “tantamount to entrapment.” The deception doctrine specifically applies in two instances: (1) when the disfavored driver actually sees the favored vehicle and is deceived by the actions of the favored driver; and (2) when, on a clear stretch of road, the disfavored driver cannot see a negligently operated favored vehicle because of a physical obstruction upon or about the roadway.

The Court of Appeals determined that neither situation applied to this case. Notably, while a physical obstruction—the bus that was turning left—did prevent Coburn from seeing Trees’ vehicle, where the obstruction is one that can reasonably be expected to move (such as another occupied vehicle), then the disfavored driver is required to wait for the impairment to move on so he can see the road more clearly. Because the bus obstructing Colburn’s view would have eventually cleared the intersection and provided Colburn with an unobstructed view, the “clear stretch of road” version of the deception doctrine did not apply.

Neither did Colburn establish that he was deceived by Trees’ actions. While Colburn alleged he saw Trees’ vehicle in the left-hand lane without a turn signal, that was not enough. The record showed that Trees never indicated an intention to stop behind the bus, and Colburn was not entitled to rely on his own speculation as to Trees’ intentions in order to show deception.

Because Colburn did not demonstrate a genuine issue of fact, the trial court did not err in granting summary judgment in favor of Trees. The trial court was affirmed.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

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