

Hello again!

An interesting appellate court ruling from New Jersey came across my desk this week. The case, *Bialek v. Ford Motor Company*, is remarkable both for the extent of bias demonstrated by Superior Court (trial) Judge Carol Ferentz towards Ford and the appellate court's explicit finding of "antagonistic" comments by Judge Ferentz.

The case involved a traffic accident in which 15-year old Karen Bialek was severely injured while riding in the open cargo bed of a 1984 Ford Ranger pickup truck. The accident was caused by a drunken driver (ironically named John J. **Pinto!**) whose vehicle collided with the Ford pickup. Bialek sued both drivers and Ford. The claim against Ford was that it failed to give adequate warning of the danger of riding as a passenger in the cargo bed of the pickup. The drivers settled before trial leaving Ford as the only trial defendant.

There were two principle issues at trial: (1) whether Ford had warned adequately and (2) whether Bialek would have heeded an adequate warning if one were given. At the close of the evidence, Judge Ferentz ruled as a matter of law that Ford has not overcome New Jersey's "heeding presumption" (a legal rule shifting the traditional burden of proof by creating a presumption that a plaintiff will follow an adequate warning unless the defendant presents sufficient evidence to the contrary). Thus issue (2) was decided against Ford without even being considered by the jury. Thereafter, the jury was unable to agree as to whether the warnings which Ford had given were adequate. Rather than declare a mistrial and order a new trial on issue (1), Judge Ferentz then found that Ford's warning was inadequate as a matter of law and entered judgment against Ford as to liability. Consideration of damages was postponed pending appeal.

In a brief *per curiam* decision, the appellate court found that there was sufficient evidence as to adequacy of the warning and as to whether plaintiff would have heeded an adequate warning for both of these issues to have been decided by the jury. Therefore, Judge Ferentz erred in not permitting the jury to consider issue (2) and in not ordering a new trial before another jury as to issue (1). In an unusual but understated comment, the appellate court also found, "The trial judge's comments were sufficiently antagonistic towards Ford and its ... counsel...to create a perceived predisposition in favor of plaintiff. Accordingly, we think it prudent that the remanded proceedings be conducted by another judge." Unfortunately, probably to avoid any further controversy, the appellate court did not quote the comments it found to be "antagonistic."

The moral of the story is that while trial judges may occasionally be biased and unfair, a dispassionate appellate court will more often than not "do the right thing" in the end.

Hope this is helpful. Let me know if you have questions or comments.

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