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Boulevard Rule Overextended?

*Eastern Contractors v. State*¹

A ten-wheel truck was proceeding on Bell Grove Road in an easterly direction toward a dirt road which intersected it, while a payscraper (a giant piece of earthmoving equipment) moved noisily north on the dirt road. The vehicles collided at the intersection which was regulated by a traffic signal and the impact threw the truck into the decedent, a special police officer directing traffic. Decedent's widow and children brought a "wrongful death action" against the driver of the truck, the driver of the payscraper and their respective employers, while the truck driver's employer brought an action against the payscraper driver's employer. These actions were consolidated for trial. The insurer of the owner of the payscraper paid \$10,000 to decedent's widow and children and entered as plaintiff's subrogee in the wrongful death action. Each driver claimed that the green light was in his favor, but there was evidence in the case from an eye-witness motorist which supported the contention of the truck driver, and in addition showed that the truck had been waved on by the decedent. The driver of the payscraper ignored the signal of decedent when he entered the intersection. The trial judge charged the jury that the truck, even if it approached a green light, was required to cross the intersection heeding traffic conditions, and that failure to do so would require a verdict against it. The Court of Appeals, dividing 4-3, held that the instruction was improper and remanded the case for a new trial.

The majority held the trial court's instruction to be in error as no reference was made to proximate cause, thus, in effect, directing a verdict against the favored driver. The situation presented was analogized to the boulevard cases because both the traffic signal and the boulevard cases involve a peremptory duty to stop at an intersection. If the truck driver approached a green light, he might assume that the payscraper would stop, as the truck driver's testimony, if believed, would indicate that the payscraper was very far from the intersection when he first became aware of its presence. Not until an instant before the collision when it was too late to stop did the truck driver realize the imminent danger, thus indicating no negligence on the part of the truck driver that would be a proximate cause of the fatal injury.

¹ 225 Md. 112, 169 A. 2d 430 (1961).

The minority, speaking through Chief Judge Brune, felt that the majority was sanctioning a rule which told "the driver of a car just getting the green light . . . that he may wear blinders and ear muffs and go right ahead."² The minority reasoned that the boulevard rule was not applicable to situations presented by automatic signal devices (traffic lights) because that rule was designed to expedite traffic on a favored highway, while in traffic light situations there is no one "favored" highway — rather an alternately favored highway. The real test for the minority was what a reasonable man would have done in the truck driver's position, and the minority said it was incomprehensible that "a reasonable, prudent man could fail to see or hear a huge, roaring piece of earthmoving equipment approaching the intersection that he is about to enter, or how, if he did see or hear it, . . . [could sensibly assume it would stop]."³

The boulevard rule has developed mainly from cases construing 6 Md. CODE (1957) Art. 66½, § 233(a):

"The driver of a vehicle shall come to a full stop . . . at the entrance to a through highway and shall yield the right of way to other vehicles approaching on said through highway."

and Section 233(b), containing a similar provision relating to intersections controlled by a stop sign.

As those sections have been construed, the failure of the unfavored driver⁴ to stop and yield the right of way to traffic on the favored street is negligence.⁵ The favored driver may assume that the unfavored driver will perform his duty by stopping.⁶ Because the favored driver may make this assumption he need not slow down at intersections.⁷ However, the favored driver's right to proceed is not an absolute one and there seems to be a certain point

² *Id.*, 136.

³ *Ibid.*

⁴ The term "unfavored driver" usually refers to the driver who has the duty to stop, while the "favored driver" is one on the through street who has no such duty.

⁵ *Rinehart v. Risling*, 180 Md. 668, 26 A. 2d 411 (1942); *Madge v. Fabrizio*, 179 Md. 517, 20 A. 2d 172 (1941); *Greenfeld v. Hook*, 177 Md. 116, 8 A. 2d 888 (1939), noted in 4 Md. L. Rev. 207 (1940).

⁶ *Shriner v. Mullhausen*, 210 Md. 104, 122 A. 2d 570 (1956), noted in 17 Md. L. Rev. 68 (1957); *Sun Cab Company, Inc. v. Cusick*, 209 Md. 354, 121 A. 2d 188 (1956); *Sonnenburg v. Monumental Tours*, 198 Md. 227, 234, 81 A. 2d 617 (1951); *Greenfeld v. Hook*, *supra*, n. 5; *Carlin v. Worthington*, 172 Md. 505, 192 A. 356 (1937).

⁷ *Sun Cab Company, Inc. v. Cusick*, *ibid.*; *Baltimore Transit Co. v. O'Donovan*, 197 Md. 274, 78 A. 2d 647 (1951); *Belle Isle Cab Co. v. Pruitt*, 187 Md. 174, 49 A. 2d 573 (1946).

where he may no longer assume that the unfavored driver will stop.⁸ For instance, if the favored driver had specific knowledge or should have known that the unfavored driver would not stop, his absolute right may be revoked under the last clear chance doctrine.⁹ Yet the presumption that the unfavored driver will stop is a weighty one. The court in *Belle Isle Cab v. Pruitt*¹⁰ stated that "in determining due care, the assumption that the unfavored driver will stop and yield the right of way is an important factor" and found the favored driver non-negligent even though he was warned by a sign labeling the intersection as "dangerous" and containing the word "slow."

Usually evidence that the favored driver is speeding or straddling the center line of the road or even driving on the wrong side of the road is not strong enough to be deemed the proximate cause of the accident and therefore will not make the favored driver contributorily negligent.¹¹ However, in a few circumstances it has been held for the jury to decide whether the favored driver's excessive speed was negligent.¹²

The likely import of the principal case is to make the boulevard rule applicable to intersections controlled by

⁸ The boulevard rule, according to some cases, is the statutory application of the "stop, look, and listen" rule in conjunction with railroad crossings; *Pegelov v. Johnson*, 177 Md. 345, 9 A. 2d 645 (1939); *Greenfield v. Hook*, *supra*, n. 5; *Carlin v. Worthington*, *supra*, n. 6. This rule stated:

"It is negligence *per se* for any person to attempt to cross tracks of a railroad without first looking and listening for approaching trains; and, if the track in both directions is not fully in view in the immediate approach to that point of intersection of the roads, due care would require that the party wishing to cross the railroad track should stop, look and listen before attempting to cross." *Carlin v. Worthington*, *supra*, n. 6, p. 509, quoting *Philadelphia, W.B.R. Co. v. Hogeland*, 66 Md. 149, 161, 7 A. 105 (1886).

In general though, cases where the railroad has been held non-negligent were instances in which the railroad had given adequate warning to the public at the crossroads in the form of a whistle, bells, or lights. "Even though it gives warning, a railroad still has an obligation to avoid injuring others, if it learns of their danger in time to do so." *Supra*, n. 1, 132.

⁹ *Fowler v. DeFontes*, 211 Md. 568, 128 A. 2d 395 (1957) (*dictum*); *Belle Isle Cab Co. v. Pruitt*, *supra*, n. 7 (*dictum*); *Greenfield v. Hook*, *supra*, n. 5.

¹⁰ *Belle Isle Cab Co. v. Pruitt*, 181 Md. 174, 180, 49 A. 2d 573 (1946).

¹¹ *Sun Cab Company, Inc. v. Cusick*, *supra*, n. 6; *Ness v. Males*, 201 Md. 235, 93 A. 2d 541 (1953).

¹² In *Green v. Zile*, 225 Md. 339, 170 A. 2d 753 (1961), the favored driver was proceeding at 30 miles per hour in a 25 mile zone. The unfavored driver of a tractor-trailer drove out of the side street controlled by a stop sign and was struck by the favored driver. Since the favored driver had a clear view of the intersection for three blocks before he reached it, the court held the question of the favored driver's contributory negligence one for the jury. See also *Harper v. Higgs*, 225 Md. 24, 34, 169 A. 2d 661 (1962).

automatic signal devices. These intersections are governed by statutes¹³ which deal specifically with traffic lights and are separate and distinct from the section dealing with the boulevard rule.¹⁴

A driver faced with a green light can assume that no one will unexpectedly drive across the intersection, but is still "required to use due care and caution to see that traffic in the intersection is such that he can proceed with safety. He must regard and heed actual traffic conditions. . . . If a motorist enters an intersection blindly, without anticipating traffic in the intersection, he is guilty of negligence, even though he has the green light or other signal to proceed."¹⁵

Although there have been several cases involving intersections controlled by traffic lights, they do not seem to have relied on the boulevard rule as a basis for their result. *Valench v. Belle Isle Cab Co.*,¹⁶ involved a traffic light situation, but the driver facing the red light was already in the intersection before the light turned red. Thus the driver under Section 193(b) was lawfully in the intersection. The Court of Appeals held that the favored driver cannot proceed blindly through an intersection in disregard of those who may be *lawfully* in the intersection but left open the question of what the rule would be when the unfavored driver is *unlawfully* in the intersection,¹⁷ (which is the fact situation in the instant case). In *Sun Cab Co. v. Faulkner*,¹⁸ the plaintiff was a passenger in defendant's speeding taxicab which was travelling through an intersection having a "green" traffic light and collided there with another vehicle which had gone through the "red" light. The Court found that the defendant's negligence was not the proximate cause of the accident as the defendant had no reason to know of the vehicle's presence until an instant before the collision. The Court spoke solely in terms of proximate cause — that the injury must be the natural and proximate result of the negligence — and in no way mentioned the boulevard rule or suggested that the boulevard principle would be applicable to a traffic light situation. *Gudelsky v. Boone*¹⁹ involved a traffic light situation where both drivers were on the favored street

¹³ 6 MD. CODE (1957) Art. 66½, § 193(a), (b) and (c).

¹⁴ 6 MD. CODE (1957) Art. 66½, § 233.

¹⁵ 3 M.L.E. 375-376, Automobiles, § 127; See also *Valench v. Belle Isle Cab Co.*, 196 Md. 118, 75 A. 2d 97 (1950).

¹⁶ 196 Md. 118, 75 A. 2d 97 (1950), noted, 13 Md. L. Rev. 350 (1953).

¹⁷ 13 Md. L. Rev. 350, 357 (1953).

¹⁸ 163 Md. 477, 163 A. 194 (1932). This case represented a situation analogous to the majority's finding in the instant case.

¹⁹ 180 Md. 265, 23 A. 2d 694 (1942).

approaching each other and one driver made a left turn in front of the other. The Court again put its ruling in terms of proximate cause and contributory negligence distinctly stating that the "boulevard law, . . . does not apply when traffic at [an] intersection is controlled by traffic signals."²⁰ *Legum v. Hough*,²¹ cited by the majority in the instant case,²² involved an uncontrolled intersection so its statement that "a . . . stringent rule, comparable to the 'stop, look and listen' rule, has been applied in cases where traffic is controlled by lights" is merely *dictum*. Even so, as support for the statement, the Court in *Legum* used the *Faulkner* and the *Gudelsky* opinions as authority.

The majority relied also on *Sun Cab Co., Inc. v. Cialkowski*²³ to support its contention. However, in *Sun Cab* the plaintiff was a pedestrian crossing an intersection in the crosswalk and facing a green light. The defendant taxicab came through a red light and hit the plaintiff. The Court said that the conflicting evidence was sufficient to let the jury decide the issue of plaintiff's contributory negligence.

The majority, therefore, was not compelled by prior decisions to extend the boulevard rule to a traffic light situation, but appears to have done so by analogy for what it might have considered policy reasons.²⁴ A prudent driver on a favored boulevard could quite reasonably expect the same performance of a driver faced with a stop sign as a driver approaching a "red" traffic signal. This, however, goes somewhat beyond the policy behind the boulevard rule which was stated in *Blinder v. Monaghan*²⁵ as follows:

"The manifest purpose of the statute is to facilitate and expedite the movement of traffic within and between congested centers of population by setting aside selected highways as through roads over which traffic may move without interruption or delay. To accomplish that it dispenses with the right of way rules applicable to highways generally, and gives the right of way to all traffic on such highways and, as a necessary police measure for the protection of the travelling public, it provides that no one shall enter a highway without first stopping, and that having stopped, the operator of any vehicle approaching such a highway

²⁰ *Id.*, 268.

²¹ 192 Md. 1, 63 A. 2d 316 (1949).

²² *Supra*, n. 1, 123.

²³ 217 Md. 253, 142 A. 2d 587 (1958).

²⁴ See *Harper v. Higgs*, *supra*, n. 12, 33.

²⁵ 171 Md. 77, 83-84, 188 A. 31 (1936). (Court refers to the instant case as having "equated a road on which the light was green to a boulevard.")

shall yield the right of way to 'all vehicles approaching' thereon."

As the dissent in the instant case points out, at an intersection controlled by traffic lights, there is no highway selected as a through road since the favored and unfavored highways alternate every few seconds with the changes in the traffic signal. Thus, the driver approaching a green light should expect that at any instant it may turn "amber" and then "red." If he is speeding, or not paying attention to the light, it is possible that he will not be able to stop in time if the light does change to "red." He will then be *unlawfully* in the intersection as defined by § 193(c). It may be argued that a rule which condones the right of the favored driver to speed when faced with a "green" light may lead the favored driver into a hazardous or untenable position should the light suddenly change. This seems to be what the minority feared would result from the majority's approach.²⁶

BLASHFIELD, *CYCLOPEDIA OF AUTOMOBILE LAW*,²⁷ states that a favored driver at an intersection controlled by traffic signals may assume an opposing driver will not enter the intersection, and it is not negligence for the favored driver

²⁶ The rights of favored and unfavored drivers in jurisdictions other than Maryland at both "stop sign" and "traffic light" controlled intersections is dealt with extensively in an annotation in 164 A.L.R. 8 (1946) and extending for more than 300 pages. The ambiguities arising from the relatively few Maryland decisions on the subject are amplified into confusion when the numerous cases from other jurisdictions are examined together.

Although generalizations are difficult, the annotation states on page 251 that the decisions involving a favored driver at "stop sign" controlled intersections tend to operate "to prevent a holding that he was guilty of negligence or contributory negligence as a matter of law. . . ."; but qualifies this by stating on page 257 that "[u]nder the facts appearing in some cases it has, of course, been recognized that a vehicle driver may be found guilty of negligence or contributory negligence although he approached the intersection where the accident occurred along a street or highway protected by stop signs." Also the fact that a driver is faced with a green light "has been seized upon by courts as operating, or at least tending, to free him as a matter of law of the charge of negligence or contributory negligence." (page 242). This statement is later modified on page 244 with the condition that "[u]nder the facts appearing in many cases, of course, it has been recognized that a pedestrian or vehicle driver was guilty of negligence or contributory negligence under circumstances shown, or, at least, was guilty of conduct from which the trier of the facts could find him negligent or contributorily negligent, despite the fact that he approached or entered an intersection with a favorable traffic signal."

It would seem therefore, that the conclusion to be drawn, if any, would be to examine the facts of each situation carefully, compare them with previous decisions in the jurisdiction and to consider the facts with applicable local statutes controlling intersections in mind.

²⁷ 2 BLASHFIELD, *CYCLOPEDIA OF AUTOMOBILE LAW* (1951) § 1028, pp. 304-307.

to assume this, yet after acquiring knowledge to the contrary he must exercise the care of an ordinary prudent person. In *Eastern Contractors*, the truck driver testified that he knew giant payscrapers crossed the intersection, and that he heard one approaching as the decedent waved him through but did not look. Perhaps a jury, even believing the testimony of the truck driver, might have found that he had, or as a reasonably prudent driver should have, "acquired knowledge to the contrary" in time to stop and that as a reasonably prudent driver he would not have proceeded through the intersection.

While the majority and minority appear to be diametrically opposed, and the minority objects to the seeming extension of the boulevard rule to the instant case, it is doubtful if the applicability or non-applicability of the boulevard rule fully explains the result and the dissent therefrom. The divergence really seems to be one of interpretation of the facts, and the extent to which the question of how a reasonably prudent driver would have reacted under all the circumstances. Perhaps under the boulevard rule, or any other rule that does not impose absolute liability, the credence to be given to testimony and the ultimate resolution of any disputed fact should be left to the jury, under instructions which clearly and completely state the law. However, the sharp division of the judges as to the applicability of the boulevard rule to traffic light situations may suggest that where responsibility for injury is so difficult to assess, a rule of comparative liability would yield a fairer result and that legislative investigation of the need for a rule of comparative negligence for appropriate cases is called for.²⁸

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²⁸ See Comment, *From Contributory to Comparative Negligence: A Needed Law Reform*, 11 U. of Florida L. Rev. 135 (1958); Comment, *Comparative Negligence A Survey for Arkansas Lawyers*, 10 Arkansas L. Rev. Bar Ass'n Journal 54 (1956); Comment, *Comparative Negligence*, 51 Michigan L. Rev. 465 (1953).
