
CANADA / JUDGMENT

Wardrop v. Gleeson

2021 BCSC 972

COURT

Supreme Court of British Columbia

DECIDED

20 May 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 972 Wardrop v. Gleeson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wardrop v. Gleeson,

2021 BCSC 972

Date: 20210520

Docket: M210244

Registry: New Westminster

Between:

Josephine Wardrop

Plaintiff

And

Gary Gleeson and Action Enterprises Ltd.

Defendants

- and -

Docket: M185635

Registry: Vancouver

Between:

Gary Gleeson

Plaintiff

And

Josephine Wardrop and Darryl's Best Buys Auto Sales Ltd.

Defendants

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Plaintiff, Josephine Wardrop, in action M210244:

J.A. Pankiw-Petty

A. Walia

Counsel for the Defendant, Gary Gleeson and Action Enterprises Ltd., in action M210244:

B.J. Lorimer

Counsel for the Plaintiff, Gary Gleeson, in action M185635

L. Luciani

Counsel for the Defendant, Josephine Wardrop and Darryl's Best Buys Auto Sales Ltd., in action M185635

J.S. Sheikhupura

Place and Date of Trial:

Port Coquitlam, B.C.

April 19 - 21, 2021

Place and Date of Judgment:

New Westminster, B.C.

May 20, 2021

Introduction

- [1] On February 2, 2017, at approximately 1:30 p.m., a Ford van driven by Gary Gleeson struck a Nissan motor vehicle driven by Josephine Wardrop ("the collision"). The collision occurred in the intersection of 144th Street and 64th Avenue in Surrey, British Columbia ("the intersection").
- [2] Mr. Gleeson and Ms. Wardrop each commenced separate actions. Pursuant to the order of Master Keim, I heard the liability issues in the two actions together.

Background

- [3] The intersection where the collision occurred is controlled by traffic control lights. The timing or sequencing of the lights is inconsistent and dependant upon the volume of traffic.
- [4] The intersection had two through lanes and one left turn lane for traffic that was eastbound on 64th Ave, and two through lanes and one left turn lane for traffic proceeding westbound on 64th Ave. There were also two through lanes and one right turn lane for traffic proceeding southbound on 144th Street, and two through lanes and one left turn lane for traffic proceeding northbound on 144th Street. Northbound traffic were also permitted to make right hand turns from the right through lane.
- [5] Ms. Wardrop was driving the Nissan vehicle with the consent of its owner, Darryl's Best Buys Auto Sales Ltd. Prior to the collision, she was proceeding eastbound on 64th Ave. It was her intention to turn left from 64th Ave to proceed north on 144th Street.
- [6] A vehicle proceeding eastbound immediately behind Ms. Wardrop was driven by Mr. Dwayne Arnold.
- [7] Mr. Gleeson was driving the Ford van with the consent of its owner, Action Enterprises Ltd. Prior to the collision, he was proceeding westbound on 64th Ave, intending to continue traveling in that direction beyond 144th Street.
- [8] A vehicle proceeding westbound immediately behind Mr. Gleeson was driven by Mr. Neal Munion.

The Evidence

- [9] Ms. Wardrop lives approximately one minute from the intersection and passes through it on her way to and from the school where she works on most working days. At the time of the collision, she picked up some lunch and was on her way home. She described the traffic as busy, the weather conditions as sunny and the road conditions as dry.
- [10] Ms. Wardrop gave evidence that as she approached the intersection, she moved into the left turn lane, and proceeded part way into the intersection while the light for traffic travelling in her direction was green. She said her turn signal was on, there were no cars ahead of her in the left turn lane, and she stopped to wait until it was safe for her to turn left.
- [11] It was Ms. Wardrop's evidence that when the light for traffic travelling in her direction turned yellow, westbound vehicles continued to go through the intersection. As she continued to wait, Ms. Wardrop said that she saw the Ford van maybe 45 meters from the intersection. By that time, she estimated that the light for traffic travelling in her direction had been yellow for a few seconds, and said "I thought he'd stop as he was so far back when the light turned yellow".

- [12] When the light for traffic travelling in her direction turned red, Ms. Wardrop gave evidence that she took her foot off her brake and began to make her turn. By that time, she said, the Ford van was about two car lengths behind the stop line for westbound traffic, and she thought it was going to stop. Ms. Wardrop said that as she was making her left turn, she looked where she was heading, and only saw the Ford van just before it collided with her vehicle. The Ford van struck her vehicle and drove it across the intersection where it came to rest adjacent to a pole.
- [13] Ms. Wardrop said that after the collision, she was able to get out of her vehicle on her own, albeit with some difficulty.
- [14] In cross examination, Ms. Wardrop gave evidence that she thought that the Ford van was slowing down and was going to stop.
- [15] Mr. Munion gave evidence that prior to the collision, he was travelling westbound in the middle through lane on 64th Ave. He gave evidence that both his vehicle and the Ford van, which was roughly two to three car lengths ahead of him, were travelling at the same speed as the rest of the traffic, which he roughly estimated to be 65 to 70 kilometers per hour. Mr. Munion's evidence was that the Ford van neither accelerated nor slowed as it approached the intersection.
- [16] Mr. Munion said the light for traffic travelling in his direction was still green when he was six to seven car lengths from the intersection, but changed to yellow as he got closer to the intersection. He said the light for traffic travelling in his direction was changing from yellow to red as he approached the intersection. He said that he heard rather than saw the collision.
- [17] Mr. Arnold gave evidence that prior to the collision, he was travelling eastbound in the middle through lane on 64th Ave, intending to turn left from 64th Ave to proceed north on 144th Street. He was positioned behind Ms. Wardrop's vehicle in the left turn lane. He gave evidence that both his vehicle and the Nissan vehicle stopped at the intersection, the Nissan in the intersection itself, with his vehicle just partly into the intersection.
- [18] Mr. Arnold said that the light for traffic travelling in his direction turned red before the brake lights on the Nissan ahead of him went off, and its driver began her turn. Mr. Arnold said that a split second later, the westbound Van, coming at a "good clip" hit the Nissan vehicle. He said that he knew the Ford Van was not going to stop.
- [19] Mr. Arnold's vehicle was equipped with a dash-cam video that was operating before and at the time of the collision. The video footage was introduced into evidence. It had been transferred from one format to another with the result that it is not entirely accurate, but does confirm some of the evidence of some of the witnesses. The footage shows that the traffic control light for westbound traffic is green before Ms. Wardrop entered the intersection, and her rear brake lights are activated as she waits within the intersection. However, the traffic light is not visible at the time Ms. Wardrop made her turn nor at the time of the collision.

- [20] Mr. Gleeson was a professional set decoration driver at the time of the collision. He said that he was well familiar with the intersection as it was on a route that he often took for his work.
- [21] Mr. Gleeson gave evidence that before reaching the intersection, he was travelling along 64th Ave with the flow of traffic. He said that the light for traffic travelling in his direction was green as he approached the intersection, and that he did not apply his brakes before or as he entered the intersection. Mr. Gleeson said that as he was crossing the crosswalk to the east of the intersection, the traffic light for those travelling in his direction changed from green to amber, and he thus entered the intersection on an amber light.
- [22] It was Mr. Gleeson's evidence that he never saw the Nissan vehicle until after the collision, but he conceded that there was nothing obstructing his view of the eastbound left turn lane as he approached the intersection.
- [23] Mr. Gleeson gave evidence that he would have stopped before entering the intersection if the light for traffic travelling in his direction was red or if it turned yellow before he reached the intersection.
- [24] Mr. Gleeson gave evidence that Ms. Wardrop had to be helped from her vehicle, and was dazed, but as she was being removed she said "the light was amber".
- [25] Mr. Jonathan Gough is a professional engineer who was accepted as an expert in accident reconstruction. He prepared a report and gave evidence, but had very little to work with. He was unable to examine either of the vehicles involved in the collision. There are no police measurements or drawings of the scene. The dash cam video camera's altered formatting made it unreliable for the determination of vehicles speeds.
- [26] Mr. Gough did give evidence that the collision occurred approximately 2.6 seconds after Ms. Wardrop's vehicle started its turn. He said that the impact occurred when Mr. Gleeson's van was 12 meters into the intersection, or 12 meters west of the westbound stop line.
- [27] Mr. Gough estimated that at a speed of 50 kilometers per hour (14 meters per second), Mr. Gleeson's van would have been approximately 36 meters from point of impact, or 24 meters east of the westbound stop line on 64th Ave, at the time Ms. Wardrop's vehicle started its turn.
- [28] Mr. Gough testified that drivers who need to react to changing lights in order to brake and stop typically require 1.3 seconds to do so. If a driver was confronted with an object in their path, the reaction time would reduce to roughly 1.1 seconds if the brakes were applied forcefully.
- [29] Mr. Gough also said that the average distance required to stop a vehicle travelling at 50 kilometers per hour would be approximately 45 meters, and if confronted with an object in their path, the vehicle could stop within 29 meters if the brakes were applied forcefully. At 60 kilometers per hour (the posted speed limit), the minimum stopping distance would obviously be greater.

The Motor Vehicle Act

[30] I was referred to Sections 119(1), 128(1), 129(1), 144 and 174 of the Motor Vehicle Act, R.S.B.C., 1996, c. 318 [MVA].

[31] Section 119(1) defines intersection as follows:

119(1) "intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of the 2 highways that join one another at or approximately at right angles, or the area within which vehicles travelling on different highways joining at any other angle may come in conflict;

[32] Section 128(1)(a) deals with yellow lights:

128(1) When a yellow light alone is exhibited at an intersection by a traffic control signal, following the exhibition of a green light,

- a) the driver of a vehicle approaching the intersection and facing the yellow light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, unless the stop cannot be made in safety;

[33] Section 129(1) deals with red lights:

129(1) Subject to subsection (2), when a red light alone is exhibited at an intersection by a traffic control signal, the driver of a vehicle approaching the intersection and facing the red light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, and subject to the provisions of subsection (3), must not cause the vehicle to proceed until a traffic control signal instructs the driver that he or she is permitted to do so.

[34] Section 144(1) prohibits careless driving:

144(1) A person must not drive a motor vehicle on a highway

- (a) without due care and attention,
- (b) without reasonable consideration for other persons using the highway, or
- (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.

[35] Section 174 deals with vehicles turning left across traffic:

174 When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.

Discussion

- [36] Drivers in British Columbia are entitled to assume, within reason, that other users of the roads will obey the law and exercise reasonable care in so doing.
- [37] Ms. Wardrop argued that the collision was entirely the fault of Mr. Gleeson, because he ran a red light. She contended that she entered the intersection on a green light, waited, looked and assessed that Mr. Gleeson would stop for the light. She contends that Mr. Gleeson failed to follow the rules of the road and the relevant provisions of the MVA.
- [38] It was Mr. Gleeson's position that he entered the intersection just as the traffic light for westbound traffic on 64th Ave turned amber. As such, he says he was the dominant driver when Ms. Wardrop began her left turn. He contends that as he was approaching the intersection from the opposite direction he was so close as to constitute an immediate hazard when she began her turn. Thus, he says, Ms. Wardrop is wholly liable for the collision.
- [39] In *Miller v. Dent*, 2014 BCCA 234, at para. 16, Madam Justice Garson, for the Court, explained that the appropriate analysis before applying s. 174 of the MVA is to first consider of the evidence of the colour of the light as the respective vehicles entered the intersection. If the light is green for the through driver when they enter the intersection, then that driver is the dominant driver with the right-of-way and s. 174 of the MVA is engaged. If the light is red for the through driver before they enter an intersection, s. 129(1) of the MVA requires the through driver to stop.
- [40] In *Lee v. Tse*, 2013 BCSC 1740, Mr. Lee proceeded to make a left hand turn at an intersection against a green light. He proceeded about half way into the intersection and stopped to wait for oncoming traffic to pass through until the light facing him turned amber. He saw Mr. Tse's vehicle approaching the intersection from the opposite direction a good four to five car lengths back from the intersection. Mr. Tse claimed that he entered the intersection on an amber light, and that it was after he entered the intersection that Mr. Lee started to turn left.
- [41] Mr. Lee said that it was when the light facing him turned red, that he made his left turn, colliding with the Mr. Tse's vehicle.
- [42] Madam Justice Fleming found Mr. Tse solely responsible for the collision. At para. 45, she held:
- [45] Based on the opinion evidence of Mr. Brown and Mr. Bowler regarding the location of the defendant's vehicle at the time the plaintiff commenced his left turn, and the testimony of the plaintiff, all of which I accept, I find the defendant was at least 45.3 metres back from the intersection after the light had turned yellow and just before the left turn commenced. Given the evidence of the plaintiff that he waited for some seconds after the light turned yellow before commencing his turn, I find the defendant was even further back when the light first turned yellow. It was at this point, and not the point at which the plaintiff commenced his turn, that the defendant ought to have applied his brakes and stopped for

the light. The evidence of Mr. Brown and Mr. Bowler is that 3.2 seconds passed between the time the plaintiff started his turn and the collision. It being really late in the yellow before the plaintiff started his turn, I find the light was red while the plaintiff was turning left and at the time the defendant passed into the intersection. In reaching this conclusion I have also relied upon the undisputed evidence regarding the defendant's comments to the plaintiff shortly after the accident to the effect that he had the right of way, whether the light was red, yellow or green. I infer from this evidence the defendant knew he entered the intersection on a red light or at the very least he was uncertain about having done so.

[43] *Kokkinis v. Hall* (1996), 19 B.C.L.R. (3d) 273 (C.A.) [Kokkinis], involved circumstances similar to those before me. In that case, a collision occurred at an intersection where the plaintiff was turning left and was struck by the defendant who proceeded through the intersection when he should have stopped.

[44] The trial judge had apportioned liability equally as between the plaintiff and defendant. Madam Justice Newbury, for the Court, set aside the division of liability, and apportioned 100 per cent liability to the defendant. In reaching this decision, Newbury J. stated the following about the duty of drivers to stop at an amber light:

10 To say that the plaintiff can be found at fault because she relied on the assumption that [the defendant] would stop, and because she checked cross-traffic, would in my view subvert the duty on [the defendant] to bring his vehicle to a safe stop at the amber light as the other traffic did. An amber light is not, as the current witticism suggests, a signal to accelerate or to pass traffic that is slowing to a stop. Indeed, as Mr. Justice Esson [sic] noted in *Uyeyama*, in a busy city like Vancouver and at a busy intersection like 25th and Granville, an amber is likely the only time one can complete a left turn. Drivers approaching intersections must expect that this will be occurring. Putting a burden on a left-turning driver to wait until he or she sees that all approaching drivers have stopped would, in my view, bring traffic to a standstill. We should not endorse such a result.

[45] I turn now to the witnesses and their evidence.

[46] All parties referred me to the discussion of the well known factors to be considered in an assessment of credibility by Madam Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186. These include:

the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally...

[47] I find that there is no reason to question the credibility of Mr. Arnold.

- [48] Mr. Munion was frank to say that his recollection of events was a little hazy. He would have had no reason to focus on where either the Ford van or his own vehicle were during the changing light sequence, and I find that Mr. Munion relied on a reconstruction of events as opposed to his memory.
- [49] I find that his estimate of the location of his vehicle when the traffic light for westbound traffic turned from green to amber placed it closer to the intersection than it was at that time.
- [50] Mr. Gough also gave evidence that he had confirmed that the posted speed limit for east and westbound traffic on 64th Ave near 144th Street was 60 kilometers per hour at the time of the collision. I find that Mr. Munion's estimate of the speed at which both the Ford van and he were travelling along 64th Ave is higher than the speed that they were travelling, which I find to be at the posted speed limit of 60 kilometers per hour.
- [51] I find that both Ms. Wardrop and Mr. Gleeson gave evidence based upon what they each believe to have occurred. Both were firm in the areas where their evidence conflicts, and there was a degree of harmonization in Ms. Wardrop's evidence with that of Mr. Munion and Mr. Arnold.
- [52] I am not persuaded that either Ms. Wardrop or Mr. Gleeson engaged in any deliberate modification of their recollections, or changed their testimony when giving evidence. For the most part the evidence and demeanour of each was reasonable, and I find that both of them were honest.
- [53] I do find that Ms. Wardrop did not have any basis upon which to conclude that she thought Mr. Gleeson's Ford van was slowing down as it approached the intersection. In my view, she simply assumed that it would, given her appreciation of the traffic control for vehicles eastbound on 64th Ave. I reject that part of her evidence as an unconscious human tendency to reconstruct and distort what she did recall to accord with what she in fact thought at the time she began her left turn.
- [54] I do not accept that Ms. Wardrop said "the light was amber" when she was being removed from her vehicle. As he was in shock at this time, I find that Mr. Gleeson was in error in that recollection. Even if Ms. Wardrop did make such an utterance, her condition was such that I would not rely on it to determine liability.
- [55] I am unable to reconcile Mr. Gleeson's utter failure to even notice Ms. Wardrop's Nissan vehicle until he struck it with either his duty under s. 144 of the MVA to drive with due care and attention, or an appreciation of the traffic control lights as he approached and entered the intersection.
- [56] The weight of the evidence before me has led me to the conclusion that Mr. Gleeson's recollections about the timing of his entry into the intersection and the state of the traffic lights at that time are incorrect.

- [57] At 60 kilometres per hour, a vehicle would travel about 17 meters per second. In that case, if the Ford van was travelling at or near the posted speed limit, it would have been a little further away from the westbound stop line when the Nissan vehicle began its left turn than Mr. Gough calculated.
- [58] At 60 kilometers per hour, the Ford van would have travelled approximately 44 meters after the light for westbound traffic turned red. Accepting that the impact occurred when the Ford van was 12 meters into the intersection, it would have travelled approximately 32 meters before entering the intersection. If forceful application of its brakes required 29 meters to stop a vehicle at 50 kilometers per hour, even the forceful application of his brakes would not have permitted Mr. Gleeson to stop his vehicle before it entered the intersection, but would have permitted him to stop within the first 12 meters of the intersection, before he struck Ms. Wardrop's vehicle.
- [59] But assuming that the amber light for westbound traffic was displayed for even three seconds, Mr. Gleeson would have had an additional 50 meters to react to the light change, and would not have needed to enter the intersection on the red light, which I find he did. Thus, I find that he was in breach of s. 128(1) of the MVA for not stopping when the light turned amber.
- [60] By entering the intersection after the light for westbound traffic on 64th Ave had turned red, Mr. Gleeson did not enjoy the position of dominant driver at that time, and was in breach of s. 129(1) of the MVA.
- [61] As in Kokkinis, I find that Ms. Wardrop should not be faulted for not waiting to see if the Ford van would run the light, or would otherwise pose a threat to her turn, before she turned left. Given the past decisions of this Court and the Court of Appeal, to say that Ms. Wardrop can be found at fault because she relied on the assumption that Mr. Gleeson would stop, would subvert the duty on Mr. Gleeson to prepare to bring his vehicle to a safe stop when the light for westbound traffic on 64th Ave turned amber, and to bring his vehicle to a stop before entering the intersection once that light turned red.
- [62] I therefore find that the collision in this case was solely due to the negligence of Mr. Gleeson.
- [63] In the result Ms. Wardrop's claim is allowed, and Mr. Gleeson's claim is dismissed.

"The Honourable Chief Justice Hinkson"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/09/2021BCSC0972.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/wardrop-v-gleeson-2021>

Prepared on 29 October 2026 · Esheria