

A Sheepish Decision

Driving Animals On The Highway

As we approach the holiday season, we anticipate reports of a certain age-old reindeer-powered vehicle streaking through the late December nighttime sky. This month, we offer the somewhat more pedestrian situation of animals traveling along an earth-based highway and an encounter with an old vehicle.

The case is *Adamson vs. Blanchard*, decided on December 9, 1999, by the Supreme Court of Idaho.

According to the Court, shortly after sunrise one morning, Reyes Orozco was driving his 1971 two-ton Chevrolet flatbed truck on Highway 20 near Chester, Idaho. Orozco was unfortunately traveling at a rate of speed so high that when he unexpectedly came upon the stopped pickup of David Adamson he was unable to stop in time. Orozco's Chevrolet slammed into the rear of Adamson's vehicle, severely injuring Adamson.

Adamson had stopped because two other cars ahead of him had stopped. They had stopped upon encountering a band of approximately 900 sheep, which were being driven (in the herding sense) on the highway by their owners, Arlo Dee and Richard Blanchard.

The purpose of the drive was to move the sheep from one pasture to another located two to three miles away. The Blanchards drove a pickup in front of the sheep with emergency flashers activated and with a passenger holding a red flag attached to a wooden stick out the window. Behind the sheep, the Blanchards utilized a pickup towing a stock trailer, both with emergency signals activated. The Blanchards also had a sheriff's deputy drive a patrol vehicle with emergency lights activated.

Adamson sued Orozco and the Blanchards in federal court for negligence. Orozco defaulted. The Blanchards moved for summary judgment, asserting the Idaho Code barred Adamson's negligence claim. Section 25-2119 provides that "no person owning, or controlling the possession of, any domestic animal lawfully on any highway, shall be deemed guilty of negligence by reason thereof."

The district (trial) court postponed ruling on the motion until the Idaho Supreme Court answered a "certified" question of state law: Does the statutory provision grant absolute immunity from liability for negligence to an owner of domestic animals involved in an accident on a public highway, where the owner of those animals has established that they

were "lawfully" on the highway at the time of the accident?

The Idaho Supreme Court answered the question affirmatively, and thus in the Blanchards' favor.

The Court preliminarily noted that "[t]he Court's primary duty in interpreting a statute is to give effect to the legislative intent and purpose of the statute."

"As a preliminary matter, it should be noted that the Court does not seek to determine the meaning of the phrase 'lawfully on the highway'.... 'Lawfully' is not defined in the statute and the district court determined, as a matter of law, that the Blanchards' sheep were lawfully on Highway 20."

The legislature's deliberations in enacting the provision were unfortunately of little assistance. Therefore, the Court reviewed its decisions on animal/automobile accidents before enactment of the provision, to establish the historical context in which the legislature acted.

Although there were such cases, they dealt with unattended horses or livestock which were on the highway at night—a significantly different situation. In those cases, the Court ruled "that the presence of livestock unattended upon a heavily traveled highway in the nighttime raises an inference of negligence on the part of the owner. In the absence of any satisfactory explanation by the owner of the presence of the animals thus on the highway at night unattended, a jury would be justified in finding that the presence of such animals on the highway was the result of negligence on the part of the owner."

The Court observed that, "[i]n determining legislative intent we also look to other...[s]tatutes which relate to the same subject...." The legislature had simultaneously enacted section 25-2118: "No person owning, or controlling the possession of, any domestic animal running on open range, shall have the duty to keep such animal off any highway on such range, and shall not be liable for damage to any vehicle or for injury to any person riding therein, caused by a collision between the vehicle and the animal."

Given this context, the Court noted that "the legislature intended to grant owners absolute immunity from any liability for damages in the open range, I.C. section 25-2118, and to grant absolute immunity from liability for negligence in order to preserve an owner's right to drive animals on the highway in a herd district, I.C. section 25-2119....By adding the requirement that the livestock must be 'lawfully on any highway,' the legislature was...speaking to those instances where animals were properly on the highway, e.g. during the day and while attended and driven or trailed down the road. We therefore conclude that the legislature...intended to [grant] absolute immunity from negligence."



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