

## Lights Out

BY LAWRENCE SAVELL

We have made the point in prior columns that one tradeoff for the joy and satisfaction of owning a collector car may be having to live without technological innovations that were developed after your car was built. The case of *Dirickson v. Mings*, decided on January 16, 1996 by the Supreme Court of Oklahoma, implicitly raises the question whether there may be circumstances in which an old vehicle owner must take steps to compensate for such limitations.

According to the Court, shortly before midnight on February 3, 1993, Scott Alan Mings was driving his 1965 Ford pickup to work on Memorial Road in Oklahoma City when he experienced engine trouble. He coasted into the right hand lane and up against the curb. The Ford was not equipped with emergency flashers, and the vehicle lights were not designed to work when the ignition was off and the keys were out. Mings took the keys with him (there is no indication that he attempted to separate and leave the ignition key to possibly allow the lights to illuminate) to get into his place of employment, the grounds of which were only a few yards away. He summoned the plant tow truck, which came within ten minutes.

During these events and before the tow truck arrived, however, Jay E. Dirickson was returning home in his car, following another vehicle in the right hand lane of Memorial Road, traveling approximately between 40 and 45 miles per hour. The other car suddenly swerved into the left lane. Dirickson's car struck the rear of Mings' pickup. Dirickson, who did not remember seeing or striking the pickup, was injured.

Dirickson sued Mings and Dirickson's uninsured motorist carrier, Farmers Insurance Company, for negligence. The trial court granted summary judgment in favor of Mings and Farmers, finding that the parked pickup constituted merely a condition, and not a cause, of the accident. Dirickson appealed to the intermediate Court of Appeals, which affirmed the ruling.

Dirickson then appealed to the Oklahoma Supreme Court.

The Oklahoma Supreme Court reversed, and remanded (sent back) the case to the trial court for a trial.

The Supreme Court noted that the issue presented was whether parking a disabled vehicle on a city street constitutes a mere condition or the proximate cause (a legally-sufficient direct relation) of a traffic accident that subsequently occurs.

The Court conceded that it had held in some prior cases that a disabled and/or illegally parked vehicle constituted a mere condition, not a cause of an ensuing accident. It also conceded that the (federal) Tenth Circuit Court of Appeals had applied what it had called the Oklahoma "Mere Condition Rule" to rear end collisions with negligently parked ve-

hicles, sustaining trial court rulings that the act of negligent parking is non-actionable in view of the subsequent superseding act of the rear end collision. However, it observed that not everyone who negligently parks his or her vehicle is relieved of all liability when another negligently collides with it. An intervening act by the colliding motorist may or may not supersede the antecedent negligence of the parking motorist, depending upon the facts.

The Court observed that "parked car cases" are controlled by the general rules of negligence law. "Negligence is the failure to observe for the protection of the interests of another person, that degree of care, precaution and vigilance, which the circumstances demand, whereby such other person suffers injury." Under Oklahoma law, the elements of negligence are (1) the existence of a duty on the part of a defendant to protect the plaintiff from injury; (2) a violation of that duty; and (3) injury proximately resulting from the violation. A driver of a motor vehicle must, at all times, use that degree of care which is reasonable and prudent under the circumstances. Therefore, a failure to exercise that degree of care which results in injury to another is actionable negligence.

The Court pointed out that it had ruled in other cases that the operator of a parked vehicle constituting a source of danger to other vehicles is generally bound to exercise ordinary or reasonable care to give adequate warning or notice to approaching traffic, and that the duty exists regardless of the reason for stopping. The driver of the stopped vehicle must take precautions reasonably calculated to prevent injury, whether by the use of lights, flags, guards, or other practical means. A failure to give such warning may constitute negligence, even in the absence of any specific duty imposed by governmental regulation.

Moving beyond the initial requirement that Dirickson prove a violation of the duty of care by Mings, the Court noted that the law then required that Dirickson prove that his injuries resulted directly and proximately from the violation of the duty of care. The Court concluded: "There is a fact question as to whether or not Dirickson's ability to see Mings' pickup was obscured by the vehicle in front of Dirickson." Because this fact question remained, summary judgment was improper and a trial was necessary.

---

*Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior "Old Cars in Law" articles can be found on-line at <http://www.carcollector.com>* 