

The Colliding Camaro

Who's Got The Right Of Way

by Lawrence Savell

Although there were roads in existence prior to the development and widespread popularity of the automobile, such events certainly increased the need for and use of such avenues of travel. They also increased the need for "rules of the road," to facilitate the orderly and safe flow of traffic. Some of these rules were and are communicated by signs; others were and are (hopefully) commonly understood.

The application of one of the "rules of the road," specifically the yielding of right of way based on relative position in an intersection, was explored in the context of an accident involving an old car in *Salazar vs. Nemeç*, decided on April 8, 1997 by the Nebraska Court of Appeals.

According to the Court, Amy Nemeç was driving her 1969 Chevrolet Camaro westbound on Vinton Street in Omaha, when she reached the intersection of Vinton and 32nd Avenue. Both are paved two lane streets with one lane traveling each direction. Vinton Street runs east and west; 32nd Avenue runs north and south. The intersection is regulated by four way stop signs.

Nemeç testified that she stopped at her stop sign, looked and saw no other traffic approaching, and proceeded into the intersection.

Genevieve Salazar testified that she was traveling southbound on 32nd Avenue in her vehicle. When she approached the intersection, she also stopped at her stop sign, looked in all directions, saw no other traffic, and proceeded into the intersection.

The cars collided approximately in the middle of the intersection. Salazar's vehicle was struck on the left rear, and Nemeç's vehicle was struck on the front end. Salazar sued Nemeç, alleging that Nemeç's negligence had caused the collision and resulting damage. Nemeç denied the allegations and asserted the defense of contributory negligence.

At trial, the parties discussed with the district court the instructions on the law that the judge would give for the jury to apply in their deliberations. Salazar requested the general right of way instruction: "Nebraska statutes provide that when two vehicles come to an intersection at approximately the same time and there is no traffic control device to the contrary, then the vehicle on the right has the right of way[.] Drivers on the right may assume that their right of way will be respected by drivers on the left, but they are not relieved of their duty to exercise reasonable care." The court refused, reasoning that this was a four way intersection controlled by signage. The jury returned a verdict for Nemeç and against Salazar. Salazar appealed, claiming the district court erred in refusing to give her proposed instruction. In its decision, the Court of Appeals reversed the ruling of the district court, and remanded the case back to the lower court for a new trial.

It began by noting that, to establish reversible error from a court's failure to give a requested instruction, an appellant must show that: (1) the tendered instruction was a correct statement of the law; (2) the tendered instruction was warranted by the evidence; and (3) the appellant was prejudiced by the court's failure to give the tendered instruction.

The court first concluded that Salazar's proposed instruction was a correct statement of the law. The instruction generally followed the language of a Nebraska statute, which provided: "When two vehicles approach or enter an intersection from different roadways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right."


The court then examined whether an instruction regarding the directional right of way had been warranted in such a case where the collision occurred at an intersection regulated by four way stop signs. It

conceded that the issue has not been previously addressed by it or the Nebraska Supreme Court.

Different states have taken different positions on this question. Some, including Missouri and Michigan, have held that directional right of way statutes are applicable at four way stop intersections. Others, including Pennsylvania, Montana, and Ohio, have held that they are not.

The Court chose to follow the first position. "We are persuaded that the general right of way statute...applies at four way stop intersections...At four way stop intersections, like uncontrolled intersections, when two drivers on crossing streets approach an intersection at approximately the same time, each driver is in a similar situation and neither party is favored or has the "preferential right of way"...At such a four way stop intersection, such drivers are essentially in a standoff unless there is a rule of conduct to guide them."

"If the [jury] found that Salazar and Nemeç arrived at the intersection at approximately the same time and both stopped at their stop sign, [the trial court] provided no guidance to the jury regarding which party had the right to proceed first through the intersection. The right of way statute...and attending jury instruction address such a situation and provide that the driver on the left should yield the right of way to the driver on the right."

"We further conclude that Salazar, being the driver on the right, was prejudiced by the district court's failure to give her proposed instruction in this regard...Therefore, we reverse, and remand the case for a new trial." 

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 www.carcollector.com.