NOT DESIGNATED FOR PUBLICATION

No. 125,038

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

MAZIN AQL,
Appellant,

v.

DEREK PETERSON and
FIRST MANAGEMENT, INC,
Appellees.

MEMORANDUM OPINION

Appeal from Douglas District Court; MARK A. SIMPSON, judge. Opinion filed May 12, 2023. Affirmed.

Leah M. Mason, of Edelman & Thompson, LLC, of Kansas City, Missouri, for appellant.

Samuel A. Green, of Fisher, Patterson, Sayler & Smith, L.L.P., of Topeka, for appellees.

Before ATCHESON, P.J., SCHROEDER and GARDNER, JJ.

PER CURIAM: A jury sitting in Douglas County District Court found Mazin Aql entirely at fault for injuries he suffered in a motor vehicle mishap in a parking lot on the University of Kansas campus. Accordingly, Aql recovered no damages in this personal injury action he brought against Derek Peterson and Peterson's employer First Management, Inc. On appeal, Aql contends the district court erred both in refusing to instruct the jury on the statutory duty of drivers approaching an unregulated intersection at the same time and in allowing the jury to consider whether he bore some causative

fault. We find neither contention meritorious and, therefore, affirm the jury's verdict and the district court's judgment against Aql based on the verdict.

FACTUAL AND PROCEDURAL HISTORY

In November 2017, Aql attended the University of Kansas and played on the football team. Having finished football practice about 9:15 a.m. on a weekday, he was late for his first class as he rode his moped from a large parking lot near the stadium. The parking lot has two extended lanes along one edge—the inner lane serves as the main route from the entrance, and the outer lane is the main way back to that point to exit. Multiple parallel channels extend from one side of the ingress and egress lanes and are flanked by lined parking spaces that compose the lot.

Aql was riding his moped in the outer main lane toward the parking lot exit at less than 10 m.p.h., according to his trial testimony, when he saw Peterson's pickup in one of the channels moving toward the two main lanes. Peterson worked as a landscaper for First Management and had just finished several tasks near the stadium. Peterson drove a large company pickup with landscaping equipment in the back. At the trial, Peterson testified he had done work on the KU campus for years and knew that students would regularly drive or walk through the parking lot. He told the jury he was always cautious in pulling out from one of the channels—particularly so that day because he had to look around the parked cars. According to Peterson, he saw Aql on the moped and stopped the pickup before entering the main exit lane.

Aql, however, testified that the pickup had begun to pull into the exit lane. Aql told the jury he feared the moped would flip if he braked abruptly. So, Aql explained, he turned hard to the right to avoid the pickup. In the process, the moped slid over on its side, crushing Aql's foot. The injury required corrective surgery, and Aql ended his

football career. The trial testimony from both Aql and Peterson leaned to the inexact about when each saw the other, the speed of the vehicles, and their relative locations.

Aql filed this action in January 2019 naming Peterson and First Management as defendants. The parties undertook discovery. The jury heard the case over three days in late October 2021. The district court instructed the jury it could consider whether Peterson was at fault for failing to keep a careful lookout, failing to yield, driving too fast, or pulling out in front of a moving vehicle and whether Aql was at fault for failing to keep a careful lookout, driving too fast, or failing to keep his moped under control. The jury returned a verdict finding Aql to be 100 percent at fault. After denying Aql's motion for a new trial, the district court entered judgment for Peterson and First Management. Aql has appealed.

LEGAL ANALYSIS

On appeal, Aql replays his failed argument to the district court that statutory rules of the road—and, in particular, the rule pertaining to motor vehicles approaching an unregulated intersection—apply in the KU parking lot. And he says, in turn, the jury should have been instructed on that right-of-way rule. We, too, find the argument unpersuasive and see no error in declining to instruct the jury on the rule.

We use a four-part test to review claimed instructional errors: (1) Was the instructional issue raised and the error preserved in the district court?; (2) Was the proposed instruction legally proper?; (3) Was the proposed instruction factually appropriate, given the evidence?; and (4) Did the omission of an otherwise suitable instruction compromise the trial process in a way that undermined the adverse verdict, recognizing that the requisite degree of prejudice depends upon preservation? *Siruta v. Siruta*, 301 Kan. 757, 771-72, 348 P.3d 549 (2015). Aql preserved the error, and we assume without deciding that an instruction of the kind he sought would be factually

appropriate based on the trial testimony that the pickup and the moped essentially arrived simultaneously at the point where the channel and the main lanes meet. Legal propriety, however, is another matter.

Under K.S.A. 8-1526(a), "[w]hen two (2) vehicles approach or enter an intersection from different highways 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." Failure to obey a statute setting out a driving rule typically amounts to negligence, and a jury may be so instructed. *Estate of Belden v. Brown County*, 46 Kan. App. 2d 247, 275, 261 P.3d 943 (2011); *Blackwell v. Gorrell*, No. 114,374, 2016 WL 5012446, at *4-5 (Kan. App. 2016) (unpublished opinion); PIK Civ. 4th 121.01 (2010) (instruction informs jurors "violation" of rules of road "is negligence"). The rule of the road in K.S.A. 8-1526(a) does not apply if traffic flow is otherwise regulated by signs or signals. See K.S.A. 8-1526(b); K.S.A. 8-1528(a) (stop signs and yield signs regulating right-of-way); K.S.A. 8-2008 (stop signs, yield signs, other traffic-control devices); see also *Ellis v. Sketers*, 1 Kan. App. 2d 323, 327, 564 P.2d 568 (1977) (construing legally comparable language in predecessor statute). Likewise, the rule applies only to uncontrolled intersections of "highways." So, as a necessary foundation for his argument, Aql must demonstrate that the entry and exit lanes of the parking lot, on the one hand, and the channels to the parking spaces, on the other, are "highways" for the purposes of K.S.A. 8-1526(a). If they are not, his argument for the jury instruction fails as a matter of law.

That foundational requirement turns on the proper reading of the statute and, thus, presents a question of law we review without deference to the district court. *Jarvis v. Dept. of Revenue*, 312 Kan 156, 159, 473 P.3d 869 (2020); *State v. Turner*, 293 Kan. 1085, 1086, 272 P.3d 19 (2012). Aql relies on two statutes defining "highway"—K.S.A. 8-1424 and K.S.A. 8-126(q)—and asserts either sufficiently supports his argument that the statutory right-of-way rule regulates traffic in the KU campus parking lot.

Before examining those statutes, we outline relevant principles guiding the judicial reading of statutes. Our overarching objective is to discern the legislative intent and purpose of a statute and to give effect to that intent and purpose. *State v. Keys*, 315 Kan. 690, 698, 510 P.3d 706 (2022); *State v. James*, 301 Kan. 898, 903, 349 P.3d 457 (2015). Judicial interpretation, therefore, should avoid adding something to the statutory language or negating something already there. *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, Syl. ¶ 6, 154 P.3d 494 (2007). Words in a statute typically should be given their common or everyday meanings. *Keys*, 315 Kan. at 698; *State v. Baumgarner*, 59 Kan. App. 2d 330, 335, 481 P.3d 170 (2021). Dictionaries, of course, readily furnish those usual meanings. *Midwest Crane & Rigging, LLC v. Kansas Corporation Comm'n*, 306 Kan. 845, 851, 397 P.3d 1205 (2017). But the Legislature sometimes crafts specific definitions, especially for terms used in a comprehensive statutory scheme, and those meanings necessarily control as to that enactment. See 306 Kan. at 851; Scalia & Garner, Reading Law: The Interpretation of Legal Texts, p. 225 (2012) ("Individual statutes often contain definition sections giving ordinary words a limited or artificial meaning.").

In the Kansas Uniform Act Regulating Traffic on Highways (the Act), of which K.S.A. 8-1526 is a part, "highway" is specifically defined as "the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." K.S.A. 8-1424. A highway, then, is a public "way" used for travel. But "way" is not a term defined in the Act. In this context, "way" has something of an old-time ring to it and means a through route to go from one place to another. See Webster's New World Collegiate Dictionary 1637 (5th ed. 2018) (def. 1) ("way" defined as "a means of passing from one place to another, as a road, highway, street or path"); Merriam-Webster's Collegiate Dictionary 1415 (11th ed. 2003) (def. 1a) ("way" defined as "a thoroughfare for travel or transportation from place to place"). Not to put too fine a point on it, the parking lot is not a highway and does not consist of highways. The two main lanes lead into and out of the parking lot without going anywhere else; they are neither "ways" nor "highways" by common or statutory

definitions respectively. The channels to the parking spaces similarly do not provide any sort of through passage and simply facilitate vehicular movement within the lot.

In short, Aql's notion the parking lot contains an intersection of highways and is, therefore, subject to the right-of-way rule in K.S.A. 8-1526 strains credulity and advances what ought fairly to be considered an implausible and unreasonable reading of the statutory language. We are not to reduce a statute to an implausibility unless the result is unavoidable. See *James*, 301 Kan. at 903 (court should construe statute "to avoid unreasonable or absurd results").

Our conclusion is buttressed by the statutorily defined scope of the Act. In K.S.A. 8-1501, the Legislature directed that the Act "refer[s] exclusively to the operation of vehicles upon highways" with two exceptions. First, a section will apply elsewhere if it specifically identifies "a different place." K.S.A. 8-1501(a). By its own terms, K.S.A. 8-1526(a) governs only intersections of highways, so that exception is inapplicable. Second, the sections outlining serious traffic offenses—reckless driving, driving under the influence, and fleeing or attempting to elude a law enforcement officer—apply "upon highways and elsewhere throughout the state." K.S.A. 8-1501(b). Consistent with the expanded scope of coverage in subsection (b), this court has recognized that parking lots are not highways under the definition in K.S.A. 8-1424. *State v. Patton*, 26 Kan. App. 2d 591, 593-94, 992 P.2d 819 (1999) (appellate court reverses conviction for driving while suspended when defendant cited for driving in parking lot rather than highway).

Shifting focus, Aql also cites the definition of "highway" in K.S.A. 8-126(q) as supporting his request for a jury instruction based on the statutory rules of the road. This statute defines "highway" as "every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel" but "does not include a roadway or driveway upon grounds owned by private owners, colleges, universities or

other institutions." K.S.A. 8-126(q). This alternative pitch rests on both a misapplication and an unpersuasive reading of K.S.A. 8-126(q).

First and most significantly, the definition of "highway" in K.S.A. 8-126(q) pertains specifically to what motor vehicles must be registered and display license plates, as regulated in article 1 of chapter 8. See K.S.A. 8-127(a) (owner of motor vehicle "intended to be operated upon any highway in this state. . . shall apply for and obtain registration in this state. . . except as otherwise provided by law"). The definitions in K.S.A. 8-126 are confined to that purpose. K.S.A. 8-126 (terms are defined "[a]s used in this act"). By the same token, the defined terms used in article 15 codifying the rules of the road, including K.S.A. 8-1526, are set out in article 14—not article 1. See K.S.A. 8-1401; K.S.A. 8-2204 (Uniform Act Regulating Traffic on Highways consists of articles 10, 14 through 22, and 25 of chapter 8); *State v. Dumler*, 221 Kan. 386, 387, 559 P.3d 798 (1977) (noting Legislature recodified uniform traffic act in 1974 in what continues as overall structure of that statutory scheme).

Accordingly, there is no sound reason to use the definitions in K.S.A. 8-126 to construe terms used in the rules of the road in article 15 that are otherwise defined for that purpose in article 14. Aql offers nothing supporting a method of statutory construction that would transplant a word defined in one bounded statutory scheme to an entirely different statutory scheme. The proposition is even more dubious here because the definition to be transplanted would overlay or supersede a definition governing the statute at issue. We would, in effect, be rewriting K.S.A. 8-1524 by imputing a definition of "highway" the Legislature had adopted for another purpose in another set of statutes in place of the meaning of "highway" the Legislature actually intended. That fully disposes of Aql's argument that we consider K.S.A. 8-126(q) to hold the district court erroneously instructed the jury.

The argument, however, also fails when we look at the definition in K.S.A. 8-126(q) more myopically, essentially shorn of context—an exercise that simply underscores our conclusion that Aql's point is an empty one. The proper reading of a statute cannot, of course, be wholly divorced from its place in a regulatory scheme that commonly would lend focus to its purpose and meaning. Cf. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."); *In re Doll*, 57 F.4th 1129, 1140 (10th Cir. 2023); *Seife v. United States Food and Drug Administration*, 43 F.4th 231, 239 (2d Cir. 2022). Nonetheless, as defined in K.S.A. 8-126(q), a highway is a "way" or any other "place" open to the public for "vehicular travel." We have already outlined the common meaning of "way" and explained why it does not extend to parking lots. Similarly, a place for travel would not commonly include a parking lot, since "travel" entails the act of "traveling" or "go[ing] from one place to another; mak[ing] a journey." Webster's New World Collegiate Dictionary 542 (defining "travel"); see also Merriam-Webster's Collegiate Dictionary 1331 (noun "travel" defined as "a journey esp[ecially] to a distant or unfamiliar place : TOUR, TRIP"). A parking lot would seem to be the antithesis of a way or place for travel.

The exclusion of roadways and driveways on private property or the grounds of colleges, universities, and other institutions from the definition of "highway" in K.S.A. 8-126(q) also cuts against Aql's contention. The purpose of the statute is to identify motor vehicles that must be registered and tagged. So, a motor vehicle used exclusively on private property or within the confines of a college or university campus need not be registered. And that suggests the parking lot on the KU campus fairly comes within the exclusion—otherwise colleges and universities would have to register motor vehicles they own and use only on their campuses but from time to time park in lots on campus rather than in a driveway. A contrary reading of the statute, like the one Aql promotes,

would careen toward the unreasonable and, therefore, the legally unacceptable. *James*, 301 Kan. at 903.

Perhaps sensing infirmity, Aql contends the exclusion does not cover public colleges, universities, and institutions. That is, the term "private" in the exception applies to each of the listed categories. But then the inclusion of colleges, universities, and institutions at all would be superfluous, since they would be encompassed in the phrase "grounds owned by private owners." We avoid reading statutes in ways that render some of their words or terms vestigial. See *Fisher v. Kansas Crime Victims Comp. Bd.*, 280 Kan. 601, 613, 124 P.3d 74 (2005); *State v. Van Hoet*, 277 Kan. 815, 826-27, 89 P.3d 606 (2004) ("The court should avoid interpreting a statute in such a way that part of it becomes surplusage."). We do so here and reject Aql's proposed interpretation.

Having examined Aql's challenge to the district court's ruling on his requested jury instruction from each of the angles he has offered on appeal, we find no error. Instructing the jury on the right-of-way rule in K.SA. 8-1524 would have been legally inappropriate because the incident occurred in a parking lot and not at an intersection of highways. Given Aql's statutory argument, we need not and do not consider what common-law duties may govern drivers in parking lots or what sources may define or inform such a duty.

Aql next contends the jury heard insufficient evidence to warrant the defense's requested instruction outlining ways in which he ostensibly was negligent in operating his moped leading up to the mishap in the parking lot. Under Kansas comparative fault law, a jury considers the negligent conduct of both the plaintiff and the defendant and, in some circumstances, nonparties as well, in causing the claimed injury or harm. In its verdict, the jury then apportions a percentage of fault to each of the negligent actors. If the plaintiff's fault is 50 percent or more, he or she cannot recover damages. See K.S.A. 2022 Supp. 60-258a; *Nail v. Doctor's Bldg., Inc.*, 238 Kan. 65, 66-68, 708 P.2d 186

(1985) (effect of 50 percent finding of fault); *Wooderson v. Ortho Pharmaceutical Corp.*, 235 Kan. 387, 411-12, 681 P.2d 1038 (1984) (purpose of comparative fault statute).

We review this issue using the four-part test we have already described for jury instruction challenges. Preservation is undisputed. Likewise, the asserted grounds for comparative fault on Aql's part are legally proper in a motor vehicle mishap resulting in personal injury. The dispositive inquiry rests on factual appropriateness. A district court should instruct on a party's theory of liability or defense in a civil case if some evidence when taken as true would permit a reasonable jury to find for that party on the theory. *Foster v. Klaumann*, 296 Kan. 295, 302, 294 P.3d 223 (2013); *Dickerson v. St. Luke's South Hospital, Inc.*, 51 Kan. App. 2d 337, 347, 346 P.3d 1100 (2015) (district court must consider evidence in best light for requesting party in determining factual appropriateness of jury instruction). In deciding whether to instruct, the district court may not weigh the evidence generally or make specific credibility determinations, since those are jury functions.

Although the broad contours of the mishap were undisputed during the trial, Aql and Peterson offered accounts that differed in material detail. And the differences tended to substantively shift fault from the one testifying to the other. Neither side had strong corroborating evidence, such as an independent witness or some kind of video recording. In short, two witnesses with vested interests in the outcome of the case provided conflicting (and somewhat inexact) versions of a quickly unfolding event. Peterson's recollection supported the grounds of fault the defense attributed to Aql, and Aql's recollection supported the grounds of fault he attributed to Peterson. In that circumstance, the district court properly instructed the jury on the competing claims of fault. In short, there was evidence, if believed, to support fault on Aql's part, as set out in the instruction. It was for the jury to sort out the conflicting accounts and in so doing to make credibility determinations. See *Dalton v. Battaglia*, 402 F.3d 729, 735 (7th Cir. 2005) ("[A] witness's potential self-interest in testifying about matters for which he or she has direct

knowledge goes to the weight and credibility of the testimony[.]"); *Wilson v. McDaniel*, No. 109,898, 2014 WL 3019946 at *12 (Kan. App. 2014) (unpublished opinion) (Atcheson, J., concurring in part and dissenting in part) (credibility of interested witness should be left for fact-finders, especially where witness' account of material events lacks substantial corroboration or is directly disputed).

For his last point, Aql says the district court erred in denying his motion for a new trial challenging the adverse jury verdict. But Aql relies on the district court's rulings on the issues he has otherwise raised in this appeal. We have found the district court correctly handled those issues. Accordingly, we must also conclude the district court properly denied the motion for a new trial.

Affirmed.