



IN THE COURT OF APPEALS OF IOWA

GLORIA RICHARDSON TAYLOR and
GLEN TAYLOR,

Plaintiffs-Appellants,

vs.

SUTHERLAND BUILDING PRODUCTS,
INC.,

Defendant-Appellee.

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Filed October 29, 1985

5-444
84-934

Appeal from the Iowa District Court for Polk County - Anthony M. Critelli,
Judge.

Plaintiffs appeal pro se from a judgment in their favor in this tort suit
arising from a slip and fall on a sidewalk in winter. **AFFIRMED.**

Gloria Richardson Taylor, pro se.

David L. Brown and John E. Swanson of Hansen, McClintock & Riley,
Des Moines, Iowa, for defendant-appellee.

Heard by Snell, P.J., Schlegel, and Hayden, JJ.

PER CURIAM

The plaintiffs appeal pro se from a judgment in their favor in this tort suit arising from a slip and fall on a sidewalk in winter. They challenge the sufficiency of the evidence to support the jury's finding that the plaintiff who fell was 70 percent at fault. They also challenge the instructions on the subject of comparative negligence.

The defendant-appellee contends the plaintiffs should be denied interest on their judgment for the period while this appeal was pending. The defendant-appellee argues that the plaintiffs are precluded from such interest because they rejected a check tendered in satisfaction of the judgment and interest. We affirm.

The plaintiff, Gloria Richardson Taylor, slipped and fell on a sidewalk on the premises of the defendant, Sutherland Building Products. Taylor sued to recover for her injuries, and her husband sued to recover for loss of consortium.

The jury found that Gloria Taylor had sustained damages of \$5,316.51 but had been 70 percent at fault. The jury therefore awarded her a verdict of \$1,594.95. The jury declined to award Gloria's husband any damages on his claim for loss of consortium. The Taylors have appealed from the resulting judgment.

The Taylors first claim that evidence was insufficient to support a finding of comparative negligence.

Initially, we point out that our review of this matter is necessarily limited in scope. When an action is brought at law, an appellate court will not try the facts anew. Iowa R. App. P. 4. The trier of fact, in this case a jury, has had the opportunity to hear the evidence, observe witnesses and make credibility determinations which we are not able to make on appeal. As such, we afford considerable deference to the findings of fact that were made at trial. As long

as the jury's determination is supported by substantial evidence, this court will not interfere. Iowa R. App. P. 14(f)(1).

In reviewing the record now before this court, it is apparent that sufficient evidence exists to support a finding of comparative negligence. Testimony indicates that at the time of the accident the plaintiff was not watching where she was going. Moreover, during her deposition, plaintiff admitted that if she had not been thinking of other matters and had been paying attention to where she was walking she probably would not have fallen.

Based on the evidence presented at trial, it was proper for the jury to conclude that the plaintiff was negligent and that this contributed to the accident. The mere fact that the plaintiff chooses to draw a different conclusion from the record is not a sufficient ground for reversal.

The plaintiff also challenges the jury instructions 9 and 11, which relate to comparative negligence. She claims the trial court improperly assigned her the burden of disproving her negligence. We disagree.

The relevant jury instructions were as follows:

INSTRUCTION 9:

To entitle the Plaintiff Gloria Richardson Taylor to recover on her claim against the Defendant, Sutherland Building Products, Inc., the burden of proof is upon her to establish by a preponderance the evidence each of the following propositions:

1. That the Defendant, Sutherland Building Products, Inc., was negligent in a specification as claimed by said Plaintiff and as set forth in the statement of issues;
2. That such negligence, if any, was a proximate cause of the accident and resulting damage to said Plaintiff;
3. That the Plaintiff has suffered damage and the extent thereof.

If said Plaintiff has established all of the foregoing propositions by a preponderance of evidence, then said Plaintiff is entitled to recover in some amount and you

will then consider Defendant's assertion of said Plaintiff's negligence in accordance with other instructions herein.

If the said Plaintiff has failed to establish by a preponderance of the evidence any one or more of the following propositions, then said Plaintiff cannot recover and your verdict will be for the Defendant.

INSTRUCTION 11:

The law provides that if a person who has sustained damages is negligent, such negligence will not bar recovery; rather, the recovery shall be reduced in the proportion or percentage that such negligence bears to the total negligence that proximately caused the damages.

We believe these instructions accurately state the law. Instruction 9 merely places upon the plaintiff the burden of proving her claim against the defendant. Instruction 11 explains that a finding of comparative negligence results in a proportionate reduction in damages. Neither instruction requires plaintiff to prove that she was not negligent.

The final issue before this court is defendant's claim that plaintiffs should be denied interest on the judgment during pendency of the appeal.

Following the entry of judgment in this matter, the defendant tendered to the Taylors a check in the amount of \$2,102.63, representing the amount of the judgment plus interest. The Taylors apparently turned down this check at the time they filed their appeal. The defendant argues that this tender and refusal should preclude the Taylors from further interest. We agree.

The Iowa Supreme Court has previously indicated that the assessment of interest on judgments may be affected by an appeal. Muchmore Equipment, Inc. v. Grover, 334 N.W.2d 605, 610 (Iowa 1983). Depending upon the nature of the case, suspension of interest may be appropriate during pendency of the appeal. Id. We conclude that it would be appropriate under the circumstances of this case. Through their own actions, plaintiffs have delayed the finality of the judgment to which they are entitled. While it is not our intention to

discourage appeals, a party should not be able to refuse satisfaction of a judgment and then receive an additional pecuniary gain by bringing an appeal.

We therefore hold that plaintiffs are entitled to the statutory interest only up until the time the appeal was filed.

AFFIRMED.