FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

BARBARA ANN MOORE, Administrator of the Estate of GARY R. MOORE, Deceased,	)	
Plaintiff-Appellee,	)	Filed May 31, 1979
vs.	)	
INTERSTATE POWER COMPANY,	)	19 2-61825
Defendant-Appellant.	)	

Appeal from Cerro Gordo District Court - L. E. Plummer, Judge.

Defendant appeals from judgment entered against it for wrongful death of plaintiff's decedent. Affirmed.

Walter C. Schroeder, of Winston, Schroeder & Reuber, of Mason City, for appellant.

John L. Butler, of Lundy, Butler, Wilson & Hall, of Eldora, and Michael J. Cross, of Coonley & Coonley, of Hampton, for appellee.

Heard by Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

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DONIELSON, J.

Defendant Interstate Power Company appeals from judgment entered against it following jury trial for the wrongful death of plaintiff's decedent, Gary R. Moore. Moore was an apprentice lineman employed by L. E. Myers Co. pursuant to contract with defendant to construct a power transmission line and relocate existing electrical transmission lines owned by defendant. On September 30, 1970, while Moore was relocating a utility pole, a portion of a truck came in contact with a charged line, and he was electrocuted. Suit for Moore's wrongful death was brought by Barbara Moore, his surviving spouse and administrator of his estate.

Defendant appeals from its adverse verdict, contending that the trial court erred in (1) not allowing the jury to consider the remarriage of decedent's surviving spouse in determining damages; (2) submitting to the jury the issues of defendant's negligence to adequately supervise and inspect the construction site; (3) not specifically answering a question submitted by the jury during its deliberations; and (4) instructing the jury that a presumption of negligence under what is now section 478.16, The Code 1977, was applicable. We affirm.

Prior to trial, Barbara Moore remarried. The first issue raised by defendant concerns the failure of the trial court to allow mention of the fact of the surviving spouse's remarriage in the presence of the jury. Plaintiff moved in limine that references to the remarriage be excluded as irrelevant and immaterial under Iowa's wrongful death statutes. The trial court sustained the motion, recognizing that the question had not been answered in Iowa and a division of authority existed in other jurisdictions.[1] See Dutcher v. Lewis, 260 N.W.2d 404, 405 (1977); 88 A.L.R. 3d 926 (1978).

Ordinarily the granting or rejecting of a motion in limine cannot by itself constitute reversible error. A subsequent record may not be required to preserve error, however, where the motion in limine is granted on hearing which is evidentiary in nature, the court is completely apprised of the factual situation and nothing occurs at trial to change the posture of the parties. State v. Garrett, 193 N.W.2d 852, 854 (Iowa 1971); Gustafson v. Iowa Power & Light Co., 183 N.W.2d 212, 214 (Iowa 1971). Here, no evidence was offered showing that the remarriage of the surviving spouse had in any way mitigated damages to decedent's estate. The trial court had before it only the

[1] Subsequent to the trial court's ruling and the submission of this appeal, the supreme court decided Groesbeck v. Napier, 275 N.W.2d 388 (Iowa 1979), holding that evidence of a plaintiff's remarriage is not admissible in a wrongful death action for the death of a spouse as it relates to section 147.136, The Code 1975, and the collateral source rule for mitigation of damages.

stipulated fact of remarriage when it sustained the motion. Defendant made no offer of proof even after evidence was admitted concerning the value of decedent's services in the home and marital relationship. We find error has not been preserved on this issue.

For its second issue, defendant contends the trial court erred when it overruled defendant's motion for directed verdict and submitted to the jury for its consideration the issues of defendant's negligence in failing to adequately supervise and inspect the construction site. The trial court has a duty to submit to the jury all issues presented by the pleadings and upon which there is supporting evidence. Dobson v. Jewell, 189 N.W.2d 547, 556 (Iowa 1971); Oltmanns v. Driver, 252 Iowa 1066, 1074, 109 N.W.2d 446, 451 (1961). The trial court is vested with considerable discretion in determining whether evidence is sufficient to submit an issue to the jury. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376, 384 (Iowa 1975). In a close case, doubt as to whether evidence is sufficient should be resolved in favor of submission to the jury. McGrean v. Bos Freight Lines Inc., 240 Iowa 318, 322, 36 N.W.2d 374, 377 (1949).

Prior to trial, in response to plaintiff's request for admissions, defendant admitted that there were special dangers inherent in decedent's work and that defendant had taken no special precautions for the protection of decedent against electrocution. Testimony at trial revealed that defendant's employees had visited the job site and had participated in some inspections and some supervision of L. E. Myer's Co.'s work. Defendant's safety rules were introduced with testimony concerning the expectation that such rules would be followed. Finally, the trial court found that because of the peculiar risks involved in decedent's job, defendant had a duty of due care. We find no error in submitting this issue of defendant's negligence to the jury.

Defendant next contends that the trial court erred when it failed to specifically answer, to defendant's prejudice, a question submitted by the jury. During its deliberations, the jury sent a note to the trial court which read, "We are making the assumption that because L. E. Myers was under contract by Interstate Power negligence on the part of L. E. Myers is automatically transferred to Interstate Power. Is this a correct assumption?" Trial court answered the jury by instructing them to "read and be guided by the instructions."

Defendant contends the question demanded a specific answer and failure to specifically answer the jury's question constituted reversible error, citing Cowman v. La Vine, 234 N.W.2d 114, 120 (Iowa 1975). The instructions here, unlike those in Cowman, supply the correct rule of law and the answer to the jury's question. Instructions 8, 9, and 10 indicated that the duty for due care rested upon the owner and could not be delegated to the contractor because of the peculiar risk of harm which existed in the work being performed. The trial court told the jury to read and be guided by the instructions. There is no reason to believe that in their further deliberations the jurors misunderstood the instructions or the law which was correctly stated therein. See Anderson v. Goodyear Tire & Rubber Co., 259 N.W.2d 814, 820 (Iowa 1977); Rancho Grande v. Iowa State Highway Commission, 261 Iowa 861, 868, 156 N.W.2d 293, 298 (1968). There was no error requiring reversal.

Finally, defendant contends that the trial court erred in its finding and subsequent instruction to the jury that the presumption of negligence in what is now section 478.16 applied. Section 478.16 reads as follows:

> Injury to person or property. In case of injury to any person or property by any such transmission line, negligence will be presumed on the part of the person or corporation operating said line in causing said injury, but this presumption may be rebutted by proof. Such presumption shall not exist in favor of employees of the person or corporation operating said transmission line who are charged with or engaged in the construction, reconstruction, repair, or maintenance thereof, unless otherwise provided by the employers liability and workers' compensation laws of the state. (Emphasis added)

Defendant contends that decedent was engaged in construction of the transmission lines at the time of his death and fell within the exception for the presumption. Decedent was an employee of an independent contractor undertaking to repair and construct the lines, not an employee of defendant, the "person or corporation operating said transmission line." The statute has been held to apply to workmen in the area of transmission lines as well as to the passing public. See Neighbors v. Iowa Electric Light and Power Company, 175 N.W.2d 87, 102 (Iowa 1970). We find it applies to employees of independent contractors engaged under contract with the line's operator to work on the transmission lines. Defendant was operating the transmission lines and decided whether or not they should remain "hot" while the independent contractor relocated utility poles. There was no error by the trial court requiring reversal.

After review of issues presented, the judgment is affirmed.

AFFIRMED.