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MAR 31 1980

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IN THE COURT OF APPEALS OF IOWA SUPREME COURT

RICHARD KARLL & BARBARA KARLL,)

Plaintiffs-Appellants,)

vs.)

Filed March 31, 1980

MCDONOUGH POWER EQUIPMENT CO.)
INC., FUQUA IND. INC. & SHAWVER CO.,)

Defendants-Appellees.

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2-61976

Appeal from Scott District Court - Lowell Phelps, Judge.

Plaintiffs appeal from judgment following jury verdict for defendants in products liability case arising out of lawnmower accident. - Affirmed.

Robert V. P. Waterman and Thomas J. Shields, of Lane & Waterman, Davenport,
for plaintiffs-appellants.

Larry L. Shepler & Roger A. Lathrop, of Betty, Neuman, McMahon, Hellstrom &
Bittner, Davenport, for defendants-appellees.

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

PER CURIAM

Plaintiffs appeal from a judgment entered following a jury verdict in favor of defendants in a products liability case arising out of a lawnmower accident. Plaintiffs contend that the trial court erred in excluding evidence of prior accidents involving the same type of lawnmower, that the trial court abused its discretion in not granting plaintiffs' motion for a new trial, that the trial court erred in directing a verdict for defendant on the wife's claim for loss of consortium, and that the trial court erred in giving certain instructions. We affirm.

This case arose out of a lawnmower accident in which plaintiff injured his foot while operating a riding lawnmower manufactured and distributed by defendants. Plaintiffs' suit is grounded solely in strict products liability, alleging that the lawnmower was defective in not being provided with adequate safety guards. Prior to trial, the trial court granted defendants' motion in limine precluding plaintiffs from introducing evidence of prior lawsuits involving injuries sustained as a result of the use of similar lawnmowers. During trial, plaintiffs made an offer of proof of evidence of a prior lawsuit involving a similar injury sustained through the use of a similar lawnmower manufactured and distributed by defendants. Prior to submission of the case to the jury, the trial court granted a directed verdict for defendants on the wife's loss of consortium claim. The trial court then instructed the jury, with certain instructions being objected to by plaintiffs. The jury returned a verdict for defendants. Plaintiffs filed a combined motion for judgment notwithstanding the verdict and motion for new trial which was denied by the trial court.

I. We conclude that plaintiffs' assertion of error for failure to admit the evidence of prior similar litigation must fail for their failure to properly preserve error. Plaintiffs offered the evidence "for the limited purpose of showing that McDonough Manufacturing Company, as of shortly after May 26, 1970, they were notified of a suit instituted against it." However, knowledge or notice of a dangerous condition is not an issue in strict liability cases. Eickelberg v. Deere & Co., 276 N.W.2d 442, 445 (Iowa 1979). Thus, even though the evidence may have been admissible for some other purpose, plaintiffs cannot rely on their offer for a limited purpose that was not relevant

to the case to properly preserve the error. See Lemke v. Mueller, 166 N.W.2d 860, 870-71 (Iowa 1969). Plaintiffs' contention that the trial court abused its discretion in denying their motion for a new trial on this same ground must fail for the same reason.

II. Plaintiffs claim the trial court erred in granting a directed verdict in favor of defendants on the wife's claim for loss of consortium. Since the wife's claim for loss of consortium was coexistent with the husband's claim for damages against defendants, the wife's claim would have failed along with the husband's claim. Jansen v. Harmon, 164 N.W.2d 323, 324-25 (Iowa 1969). Since the husband's claim did in fact fail by virtue of the jury verdict in favor of defendants, we conclude that any error predicated on the direction of a verdict in favor of defendant on the wife's loss of consortium claim was harmless. Cf. Olson v. Truax, 250 Iowa 1040, 1043-44, 97 N.W.2d 900, 902-03 (1959) (direction of verdict for defendant on plaintiff's claim was not prejudicial error when jury returned verdict for defendant on his counterclaim). For the same reason, the trial court did not err in refusing to give plaintiffs' requested instruction on the wife's loss of consortium claim to the jury.

III. Plaintiffs contend that the trial court's instruction on the general law of strict products liability was prejudicial to them because of references to misuse or mishandling of the product which would excuse the manufacturer from liability. Plaintiffs assert that the giving of this instruction was error since there was no evidence of mishandling or misuse. However, misuse is an issue that is an element of plaintiffs' prima facie case. Hughes v. Magic Chef, Inc., No. 63279, slip op. at 6 (Iowa, filed Feb. 20, 1980). It is to be treated in connection with plaintiffs' burden of proving an unreasonably dangerous condition and legal cause. Id. at 8. As part of plaintiffs' prima facie case, they had to show that the product was put to a normal use that was reasonably foreseeable by the manufacturer. Id. at 6. Since misuse is an issue that goes to that element of plaintiffs' prima facie case, the trial court, in fulfilling its duty to thoroughly and fully present the issues to the jury to ensure their proper understanding of the law of strict liability, properly included a reference to that issue in its instruction. See Robeson v. Dilts, 170 N.W.2d 408, 414 (Iowa 1969).

Furthermore, any prejudice that may have arisen out of the giving of such an instruction, because of the lack of evidence on the issue of misuse, was negated by the

instruction that immediately followed the challenged instruction. While the challenged instruction was a statement of the general law of strict products liability, the following instruction was more closely tailored to the specific evidence in the case in delineating what plaintiffs had to establish to prove their case. In light of the proposition that instructions are to be considered in their entirety rather than individually, id., we conclude that any prejudice emanating from the challenged instruction was cured by the following instruction.

IV. Plaintiffs also contend that the trial court erroneously instructed the jury that in determining whether the lawnmower was in a defective condition, they could consider certain standards applicable to the lawnmower in question that were introduced into evidence. Plaintiffs assert that the instruction constituted a misstatement of the evidence since it allowed the jury to consider standards that were not applicable to the particular part of the lawnmower where the injury took place. However, the standards were introduced into evidence by plaintiffs themselves for the purpose of establishing the "state of the art" in lawnmower manufacturing at the time the lawnmower in question was manufactured. The instruction simply allowed those standards to be considered in determining whether the lawnmower was in a defective condition. Plaintiffs cannot assert that an instruction allowing consideration of evidence they introduced for the purpose of a theory that they proposed at trial was erroneously given to the jury. There is no support for plaintiffs' contention that the instruction misstated the evidence. The trial court did not err in submitting the instruction to the jury.

AFFIRMED.