

**IN THE COURT OF APPEALS OF IOWA**

No. 7-473 / 96-1897

000211

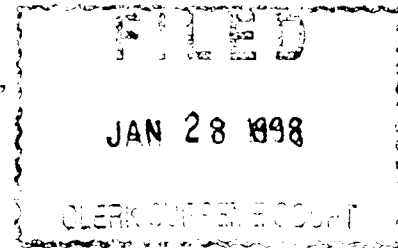
**KENNETH HASKIN and SHARON HASKIN,**

Plaintiffs/Defendants to Counterclaim-Appellees,

vs.

**SHAWN WILSON and HEATHER POWELL,**

Defendants/Counterclaimants-Appellants.



---

Appeal from the Iowa District Court for Black Hawk County, William G. Klotzbach, Judge.

The defendant tenants appeal from the district court's judgment for the plaintiff landlords in their tort action seeking recovery for damages to the leased premises resulting from a fire. **AFFIRMED.**

Ted J. Wallace, Bettendorf, for appellants.

Timothy W. Hamann of Clark, Butler, Walsh & Hamann, Waterloo, for appellees.

Considered by Streit, P.J., Mahan, J., and McCartney, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

**McCARTNEY, S.J.**

The defendants, Shawn Wilson and Heather Powell, appeal from a decision of the trial court in which it found that the defendant Heather Powell (Powell) was negligent in causing a fire, and that the plaintiffs, Kenneth Haskin and Sharon Haskin (Haskins), were not negligent in any regard. Based on these findings the trial court entered judgment against Powell and in favor of the Haskins. The defendant Shawn Wilson (Wilson) was found not to be negligent, but he appeals from the dismissal of his counterclaim against Haskin.

We affirm.

The Haskins own an apartment building situated in Cedar Falls, Iowa. Wilson leased one of the apartments in June of 1993. Powell was not a party signatory to the lease. Haskins had owned the property for a number of years prior to the execution of this lease.

On April 5, 1994, a fire occurred in a bedroom closet in the apartment rented by Wilson, who occupied the apartment with Powell.

Considerable damage was done both to the structure and to the personal property owned by Wilson and Powell.

Haskins filed suit against both Wilson and Powell for the damages incurred, and the defendants counterclaimed for their losses.

The parties stipulated as to the facts, including in their stipulation as exhibits the rental agreement and the incident report prepared by the Cedar Falls Fire

Department. In addition thereto, the defendants asked the trial court to take judicial notice of the housing codes of the City of Cedar Falls which had in turn adopted a federal housing code in 1990. The plaintiffs, Haskins, concurred in this request, and it is apparent from the decree of the trial court that the trial court did in fact consider the said codes.

The cause was then submitted to the court based upon the said stipulation of facts which were adopted by the court and upon written briefs and arguments.

The fire commenced in a bedroom closet of the apartment occupied by Wilson and Powell. Powell had turned on a closet light bulb and had stacked denim clothing on a shelf, such clothing being no less than two inches from the light bulb. The incident report of the Cedar Falls Fire Department determined that the cause of the fire was the ignition of this clothing by the light bulb, which fact was also adopted by the parties in their joint stipulation.

The parties further stipulated that Haskins suffered damages in the amount of \$35,208.19, and that Wilson and Powell suffered damages from the fire in the amount of \$26,540.00.

Based upon the foregoing, the trial court found that Haskins were not negligent and dismissed the counterclaim of Wilson and Powell. It further found that Wilson was not negligent and dismissed Haskins' petition insofar as Wilson was concerned, but found that Powell was negligent and entered judgment against her and in favor of Haskins in the amount of their loss.

Our review is for error at law. Iowa R. App. P. 4. Findings made by the trial court are the equivalent of a jury verdict and are binding upon appeal if there is substantial evidence to support such a verdict. Iowa R. App. P. 14(f)(1). The same rule defines “substantial evidence” as a finding may be supported by substantial evidence if it can be reasonably inferred from such evidence. *Heick v. Bacon*, 561 N.W.2d 45, 47 (Iowa 1997).

We are constrained to construe the evidence in the light most favorable to the judgment of the trial court, and we are to “broadly and liberally construe the findings of the trial court.” *Reiss v. ICI Seeds, Inc.*, 548 N.W.2d 170, 173 (Iowa App. 1996).

The appellants assert that the trial court erred in finding that Haskins were not negligent; that the trial court improperly failed to consider the issue of implied warranty of habitability in reaching its conclusions. They further assert that Powell’s conduct was not negligent.

In holding that Haskins were not negligent, the trial court did not accept the appellants’ argument that the closet light bulb was installed contrary to the Cedar Falls building code, which required incandescent lamps to be completely enclosed. The trial court found that the condition and position of the light bulb was in accordance with the code inasmuch as the installation of the fixture and light bulb in the closet had been in existence for years prior to the enactment or adoption of the code in 1992. In 1992, the City Code of Cedar Falls adopted the 1990 federal code as to building construction. Those codes, however, do not demand alterations of

building structures on the adoption of the code in order to comply with the newly-adopted code, but state that in the event of fire damage or alterations that require the replacement of fifty percent or more of the wiring equipment, then the entire building “shall be made to conform to the requirements of this code for new buildings.” Cedar Falls Code for Minimal Rental Housing §12-42.

The trial court held that this provision “grandfathered” in the existing light fixture and, since the building had not been previously damaged by fire or altered there was no violation of the building code.

The appellants argue that the lease, coming as it did in 1993 after the adoption of the code, was not entitled to the benefit of this provision of the building code. However, it is clear that it is the building that is “grandfathered” in and not leases that pre-existed the adoption of the code.

The lease provisions and the appropriate subsections of Iowa Code section 562A.15(1), (a) and (d), recite that the landlord shall “comply with the requirements of applicable building and housing codes” and shall “maintain in good and safe working order electrical . . . appliances.” We agree with the trial court that Haskins conformed to the building code and that the light fixture was appropriate under the circumstances then existing.

The appellants assume that there is an ambiguity because the lease is silent as to the grandfathering in of the appliance. We do not believe the lease need recite in detail all aspects of the building codes. Suffice it to say, that when the landlord agreed

to conform to building codes, that speaks to the entire building code including the provisions permitting the continued existence of the light fixture that was in the bedroom closet.

Wilson and Powell further assert that the trial court did not consider their claim of breach of implied warranty of habitability. The trial court did state in its ruling that it had considered the assertions of negligence on the part of Haskins as well as the allegations that they had breached the lease agreement with Wilson, which would include any assertion that the property was not habitable either as a breach of the written lease or as negligence on the part of Haskins. The trial court found against Wilson and Powell on this issue. The test upon appeal is whether or not the complaining party, here the appellants, have carried their burden as a "matter of law." *Johnson v. Svoboda*, 260 N.W.2d 530, 534 (Iowa 1977). In so doing they must show that their evidence is such that no other reasonable inference could be drawn. *Id.* at 534. Reviewing the evidence in the light most favorable to the findings of the court, we find there is sufficient evidence to support the trial court in this regard and that Wilson and Powell have not sustained their burden of proving the Haskins were negligent as a matter of law, or which would give rise to a breach of implied warranty of habitability.

We note in this regard that Wilson had examined the premises prior to signing the lease and agreed they were in a "reasonable and acceptable condition of habitability" according to the lease terms.

Finally, Powell asserts that the trial court erred in finding that she had acted negligently in stacking the clothing as close as she did to the light bulb and in leaving the light bulb on.

Again, a finding by a trial court or by jury verdict is not disturbed on appeal assuming there is adequate evidence to support the finding. Iowa R. App. P. 14(f)(1). Wilson and Powell argue that Powell could not have foreseen danger in placing the clothing as close as she did to the lit light fixture.

We agree with the trial court that placing inflammable materials close to a source of combustion represents a reasonably foreseeable danger that fire could ensue. We believe this evidence, including the report of the incident made by the Cedar Falls Fire Department, is sufficient to sustain the trial court in this regard.

Based upon the foregoing, the judgment of trial court is affirmed.

**AFFIRMED.**