

IN THE COURT OF APPEALS OF IOWA

No. 9-035 / 98-810

Filed July 23, 1999

**JAMES COBB, As Executor of the Estate of CAROL COBB, Deceased,
and on behalf of, JAMES COBB, Individually; ANDREA LEIGH COBB,
Individually and JAMES CURTIS COBB, Individually,**

Plaintiffs-Appellants,

vs.

PELLA COOPERATIVE ELECTRIC ASSOCIATION,

Defendant-Appellee.

Appeal from the Iowa District Court for Marion County, Richard D. Morr,
Judge.

The plaintiffs appeal from a jury verdict entered in the defendant's favor.

AFFIRMED.

J. Terrence Denefe of Kiple, Kiple, Denefe, Beaver & Gardner, L.L.P.,
Ottumwa, for appellants.

Fred L. Dorr of Wasker, Dorr, Wimmer & Marcouiller, P.C., Des Moines, for
appellee.

Considered by Vogel, P.J., Zimmer, J., and Peterson, S.J.* Streit, J., takes no
part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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PETERSON, S.J.

The plaintiffs-appellants appeal from a jury verdict entered in the defendant-appellee's favor. They claim the court should not have submitted the issue of sole proximate cause to the jury and the court should have instructed the jury to determine the negligence claim before determining the propriety of the sole proximate cause defense. We affirm.

Carol Cobb died as a result of being electrocuted when she came into contact with the air conditioning unit located outside of her home. Pella Cooperative Electric Association had installed a new electric water heater approximately ten months before. After Carol's death, an employee of a plumbing and heating company inspected the air conditioning unit, and discovered the ground wire for the central air conditioning unit was not hooked up to the bus bar in the circuit breaker panel. It was theorized that Pella employees unhooked the ground wire for the central air conditioning unit and attached the ground wire for the water heater in its place when they installed the water heater and the subbox to the existing breaker panel.

Carol's estate, her husband James, and their two children sued Pella for causing Carol's death. Pella filed affirmative defenses, including comparative fault and sole proximate cause.

At trial, plaintiffs presented evidence that Carol was electrocuted because the air conditioning unit was not properly grounded, Pella had installed the hot water heater and subbox to the breaker panel, no other persons had worked on the breaker panel or air conditioner, and James did not realize the significance of the minor shock

he received from the unit the evening before Carol's death. Pella presented expert testimony the cause of Carol's death was a short circuit in the condenser unit fan motor, which caused the outside case to become electrified when the oversized circuit breaker did not cut power to the unit.

The jury returned a verdict for the defendants, finding the sole proximate cause of Carol's death was due to an event, not chargeable to Pella, or conduct of parties other than Pella. The court denied the plaintiffs' posttrial motions for JNOV and for a new trial.

The plaintiffs appeal. They claim the sole proximate cause defense should not be available in comparative fault cases and request that this court overrule cases holding otherwise. They also argue, even if the sole proximate cause defense is allowable, James's conduct in failing to react to the mild shock is not sufficient to be an intervening or superseding cause. They do not address the evidence the electric shock was caused by the faulty air conditioning unit. Additionally, they contend the trial court erred in arranging the jury verdict form so that the jury considered the sole proximate cause defense before addressing the merits of the claims.

Pella responds the plaintiffs have challenged only one theory of sole proximate cause—James's conduct—but have failed to address the evidence which supports causation by a faulty motor fan and an oversized circuit breaker. Pella argues the plaintiffs did not preserve error on the issue of the jury verdict form because that issue was not raised before the trial court, either at trial or in the posttrial motions. It also

states the comparative fault defense was withdrawn and this is not a comparative fault case. The verdict form does not contain any statements regarding comparative fault.

Parties have a right to have their legal theories submitted to the jury as long as they are supported by the pleadings and substantial evidence. *Anderson v. Low Rent Housing Comm'n*, 304 N.W.2d 239, 249 (Iowa), cert. denied, 454 U.S. 1086, 102 S. Ct. 645, 70 L. Ed. 2d 621 (1981); *Cerro Gordo Hotel Co. v. City of Mason City*, 505 N.W.2d 509, 511 (Iowa App. 1993). Our decision on the appellants' claim the district court should not have submitted the sole proximate cause defense to the jury is controlled by *Baker v. City of Ottumwa*, 560 N.W.2d 578, 583 (Iowa 1997) and *Sponsler v. Clarke Electric Cooperative, Inc.*, 329 N.W.2d 663, 665 (Iowa 1983). We are obliged to decline appellant's invitation to overrule these cases. *See State v. Hughes*, 457 N.W.2d 25, 28 (Iowa App. 1990) (quoting *State v. Eichler*, 248 Iowa 1267, 1270, 83 N.W.2d 576, 578 (Iowa 1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.")). We conclude the district court did not err in submitting the defense of sole proximate cause to the jury.

The appellants next claim the court erred in its arrangement of items on the jury verdict form. Iowa Rule of Civil Procedure 196 provides the court shall give counsel a reasonable time to make objections to jury instructions once the court has prepared their final form. It expressly precludes asserting objections after the time allowed or their being considered on appeal. *Id.* Any objection not made during the time allowed is waived. *Farm-Fuel Products Corp. v. Grain Processing Corp.*, 429 N.W.2d 153, 160 (Iowa 1988). We do not find any objection to the arrangement of

items on the verdict form in the record, including the post-trial motions. We do not consider claims raised for the first time on appeal. *In re C.D.*, 508 N.W.2d 97, 100 (Iowa App. 1993).

AFFIRMED.