FILED
MAR 22 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

243

GEORGE ANDERSON,
Plaintiff-Appellee,

vs.

ARTHUR KRAMERSMEIER,
Defendant-Appellant.

Filed March 22, 1979

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2-62005

Appeal from Kossuth District Court - Richard W. Cooper, Judge.

Defendant-employer appeals from jury verdict and judgment against him in a personal injury tort action by a former employee on the ground of insufficient evidence to generate jury question as to defendant's negligence. AFFIRMED.

Ryan J. Lynch and Martin W. Peterson of Lynch and Peterson, Algona, Iowa, for appellant.

Francis Fitzgibbons of Fitzgibbons Brothers, Estherville, Iowa, for appellee.

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

PER CURIAM

Defendant, Arthur Kramersmeier, appeals from an adverse jury verdict and judgment for $4,000.00 for plaintiff, George Anderson, alleging that there was insufficient evidence as a matter of law to establish a prima facie case of negligence on the part of defendant and that trial court erred in failing to grant his motions for a directed verdict and judgment n.o.v. We affirm.

I. Applicable Rules on Appeal

The alleged errors turn on whether there was substantial evidence of defendant's negligence to generate a jury question. See Dobson v. Jewell, 189 N.W.2d 547, 555 (Iowa 1971). On review this court does not make a determination of negligence or lack thereof but only tests the record to determine if a jury question was generated. McCaull v. Universal Mfg. Co., 218 N.W.2d 592, 594 (Iowa 1975). We view the evidence in the light most favorable to the judgment and construe trial court's findings liberally to support the judgment. Koehler v. State, 263 N.W.2d 760, 761 (Iowa 1978). Since a motion for a directed verdict was made at the close of plaintiff's case and a motion for a judgment n.o.v. after return of the jury verdict, we also apply Iowa R. App. P. 4(f)(2) which requires this court to view the evidence in the light most favorable to the plaintiff as the party against whom the motion was made. McCaull, 218 N.W.2d at 593; Greenwall v. Meredith Corp., 189 N.W.2d 901, 906 (Iowa 1971).

Generally questions of negligence and proximate cause are for the trier of fact; it is only in an exceptional case that these issues can be decided as a matter of law. Iowa R. App. P. 4(f)(10); Koehler v. State, 263 N.W.2d at 761; Meade v. Roller, 212 N.W.2d 426, 429 (Iowa 1973); Dobson v. Jewell, 189 N.W.2d at 556 (Iowa 1971). Deciding these questions as a matter of law requires trial court to find that reasonable minds could not draw different inferences or conclusions from the facts presented. McCaull, 218 N.W.2d at 593; Dobson, 189 N.W.2d at 556. However, to warrant submitting the question to a jury there must be substantial evidence and not mere speculation or conjecture. Greenwall, 189 N.W.2d at 907; Simpson v. Skelly Oil Co., 371 F.2d 563, 568 (8th Cir. 1967).

II. Review of the Evidence

The evidence in the instant case establishes that plaintiff had been employed as a farmhand by defendant for approximately two years preceding the accident. On the day of the accident, defendant and plaintiff had ground feed on defendant's home farm, then proceeded, according to routine, to another farm to grind feed. A slight sleet had begun

to fall and continued to fall as plaintiff worked as directed. Plaintiff ground the feed, a job which ordinarily required about one-half hour to complete. Plaintiff then proceeded to get the grinder ready to move into a nearby cattle lot while defendant put away the rest of the equipment. Plaintiff noticed an ice accumulation on the grinder, but not on the tractor drawbar or axle. As plaintiff began to mount the tractor he stepped on the drawbar and fell, injuring his knee. At trial plaintiff stated there was nothing unusual about the tractor and that such work was normal and customary in the farming community; that he had never experienced slipping on prior occasions when using such machinery; and that he knew defendant was a person who would have no hesitancy in firing him if he hesitated in the performance of the job which defendant expected him to perform. Plaintiff also stated that the only thing defendant could have done to make the operation safer was to have delayed the grinding operation until the weather conditions were less hazardous.

III. Duty of Care

It is admitted that plaintiff and defendant were in an employee-employer relationship; therefore, the rules applicable to such a relationship control. The employer must furnish his or her employee with a reasonably safe place to work and reasonably safe tools and equipment with which to perform the work. Van Aernam v. Nielsen, 261 Iowa 1115, 1117, 157 N.W.2d 138, 140 (1968). The law requires the employer to exercise that degree of care which a person of ordinary care and prudence would exercise under the same or similar circumstances. The duty of care becomes more imperative as the risk increases. Id. at 1118, 157 N.W.2d at 140.

IV. Conclusion

The facts of the instant case do not involve a situation where the injured plaintiff has failed to allege safer alternative arrangements for working conditions or materials as in Dobson v. Jewell, 189 N.W.2d 547 (Iowa 1971), nor is it a case where the injured plaintiff on his own volition acted in direct violation of posted safety warnings absent any showing of an unsafe working area. See Knudtson v. Swenson, 261 Iowa 929, 155 N.W.2d 756 (1968). Rather plaintiff placed in issue the duty of his employer, defendant, to not require or direct him to work in known adverse conditions. See Van Aernam v. Nielsen, 261 Iowa 1115, 157 N.W.2d 138 (1968).

There is no assertion that the evidence in this case overwhelmingly points to defendant's negligence. However, if there is sufficient evidence to establish facts from which reasonable minds might draw different inferences, a jury question is generated. Meade v. Roller, 212 N.W.2d at 429.

While we might reach a different conclusion upon examination of the record than the jury reached, we find that trial court did not err in submitting the issues to the jury.

AFFIRMED.