FILED
JUN 25 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DOUGLAS C. JACKSON,

Plaintiff-Appellant,

vs.

ROBERT DEAN DAVIS, RANDY R. REED, RICHARD BROUGHAM and JOHN REED,

Defendants-Appellees.

Filed June 25, 1985

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Appeal from the Iowa District Court for Pottawattamie County - Keith Burgett, Judge.

Plaintiff deputy sheriff appeals from order granting directed verdict in favor of defendants in a personal injury action arising out of an altercation between defendants and plaintiff while plaintiff was on duty. AFFIRMED.

James M. Haney, Council Bluffs, for plaintiff-appellant.

Gregory L. Waggoner and Scott Hughes, of Waggoner & Walters, Council Bluffs, and J. Joseph McQuillan, Omaha, Nebraska, for defendants-appellees-Reed.

Considered by Snell, P.J., and Hayden, and Sackett, JJ.

**SACKETT, J.**

Plaintiff Douglas Jackson was employed as a Pottawatamie County Deputy Sheriff. In September of 1982, while on patrol, Deputy Jackson responded to a call and found an unconscious young man lying in the street in front of defendant John Reed's residence. John Reed had hosted a wedding reception for his son Randy and some of the guests were still there. When the ambulance arrived, the injured man, later identified as Richard Brougham, refused to go to the hospital. Jackson determined Brougham to be intoxicated and informed Brougham he must either go to the hospital or to jail.

Brougham broke away and entered Reed's yard with the deputy in pursuit. A scuffle then developed between Jackson and Brougham. Sometime during the altercation, Robert Davis also became involved in the scuffle. Randy Reed then attempted to move the fighting men away from his car.

Eventually Jackson subdued Brougham and arrested all three. As a result of the incident, the deputy received back and neck injuries. Jackson filed a claim against the three men for his injuries suffered as a result of their assault and battery, and also filed a claim of negligence against John Reed arising from his liability as landlord.

At trial the court directed a verdict for defendant John Reed at the close of plaintiff's evidence and directed a verdict for defendant Randy Reed at the close of all the evidence. Default judgment was entered against defendants Brougham and Davis, and they are not parties to the appeal.

Plaintiff contends the trial court erred in directing verdicts for the Reeds. In considering the propriety of a motion for directed verdict, this court views the evidence in the light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f).

## I. John Reed

The evidence concerning John Reed is undisputed. Plaintiff's injuries were received on John Reed's property at the hands of persons invited there by Reed.

Plaintiff relies on the Restatement of Torts to substantiate his claim that Reed had a duty as a landowner to intervene in the struggle and protect plaintiff.

> If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor (a) knows or has the reason to know that he has ability to control the third person, and (b) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) of Torts §318 (1965).

Iowa has, however, adopted the "fireman's rule" limiting the landowner's liability for certain negligent or wrongful conduct causing on-the-job injuries to firefighters or policemen. In Pottebaum v. Hinds, 347 N.W.2d 642 (Iowa 1984), the court determined public policy demanded such a rule, explaining:

> . . . public policy supports adoption of a narrow rule denying recovery to a firefighter and policeman whenever their injuries are caused by the very wrong that initially required the presence of an officer in his official capacity and subjected him to harm. . . .

Id. at 643.

> Citizens should be encouraged and not in any way discouraged from relying on those public employees who have been specially trained and paid to deal with these hazards. . . . [A] citizen does not have the right to exclude public safety officers from emergency situations or to control their actions once they have been alerted to an emergency and arrive on the scene. Indeed, a citizen may have a legal duty to summon a public safety officer in some instances and to say he may, in the course of discharging that duty, risk tort liability to officers who are specially trained and hired to cope with these hazards, strikes us as inconsistent and unfair.

Id. at 645.

Recovery is therefore denied when the injuries are caused by the same wrong that required the officer to be there.

> The relevant inquiry is whether the negligently created risk which resulted in the fireman's or policeman's injury was the very reason for his presence on the scene in his professional capacity. If the answer is yes, then recovery is barred; if no, recovery maybe had.

Id. at 646.

Deputy Jackson was called to investigate an unconscious Brougham. He followed Brougham on the property and was injured in the process of making an arrest. Jackson's injuries resulted from the very reason for his being on Reed's property in his professional capacity.

Under these circumstances, application of the "fireman's rule" is appropriate and recovery from John Reed is barred. The trial court properly sustained the motion for directed verdict for this defendant.

**II. Randy Reed**

The trial court did not direct a verdict for Randy at the close of plaintiff's evidence, but did sustain the motion at the close of all the evidence. Sitting as the trier of fact, the court made findings of fact and dismissed the cause against Randy. We view the final ruling as a verdict on the merits rather than a directed verdict as a matter of law, see Henschel v. Hawkeye-Security Ins. Co., 178 N.W.2d 409, 414-15 (Iowa 1970); and our standard of review is therefore different. If the verdict is supported by substantial evidence and justified as a matter of law, the findings of fact made by the trial court are binding on this court and will not be set aside unless based on an erroneous application of law. Id. at 415.

The court found and the record supports that while Randy may have interfered with the officer in his official duties by attempting to move the scuffle away from his car, he immediately retreated when ordered to do so by the officer. His actions were not the proximate cause of Deputy Jackson's injuries.

Plaintiff argues that Randy was attempting to prevent Brougham's arrest. As such, he was a joint tortfeasor with Brougham and jointly and severally liable for the injuries. See Rozevink v. Faris, 342 N.W.2d 845, 846-47 (Iowa 1983) (defendants who act in concert may be joint tortfeasors, jointly and severally liable for a plaintiff's entire loss). Plaintiff's argument is unconvincing. The record includes testimony by at least five witnesses, one an ambulance driver called by plaintiff, who stated that defendant was not helping Brougham but merely attempting to move the fight away from his car. The evidence overwhelmingly supports Randy's position that he was not acting in concert with the other tortfeasors and not a proximate cause of plaintiff's injuries.

We affirm the trial court ruling granting a directed verdict for defendant John Reed and a verdict on the merits for defendant Randy Reed.

AFFIRMED.