

IN THE COURT OF APPEALS OF IOWA

No. 5-078 / 94-0095

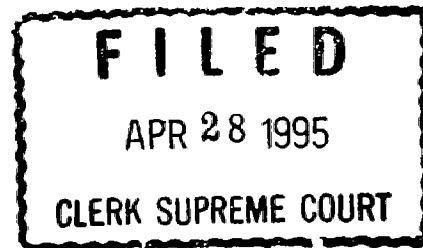
HAROLD E. ANDERSEN,

Plaintiff-Appellant,

vs.

**IBP, INC., and
GETTING, INC.,**

Defendants-Appellees.



Appeal from the Iowa District Court for Crawford County, Richard J. Vipond,
Judge.

Andersen challenges the orders entering judgment on an allegedly insufficient
jury verdict and directing a verdict for IBP. **AFFIRMED.**

Robert Kohorst and William T. Early of the Kohorst Law Firm, Harlan, for
appellant.

Michael R. Mundt of Frunck, Mundt & Frunck, Denison, for appellee IBP.

Philip Willson of Willson & Pechacek, P.L.C., Council Bluffs, for appellee
Getting.

Heard by Donielson, C.J., and Hayden and Sackett, JJ.

SACKETT, J.

Plaintiff-appellant Harold E. Andersen was delivering livestock to defendant-appellee IBP, Inc. Plaintiff had backed his straight truck to the loading dock and was attempting to get out of his truck when a semi-trailer owned by defendant-appellee Getting, Inc. pulled away from the dock, hitting and injuring plaintiff's arm.

Plaintiff sued both IBP and Getting. At the close of the evidence, the trial court sustained IBP's motion for directed verdict and submitted plaintiff's claim against defendant Getting to the jury. The jury found defendant Getting fifty-one percent at fault and plaintiff forty-nine percent at fault. The trial court totaled plaintiff's damages at \$10,000. The trial court entered a verdict for plaintiff and against Getting in the amount of \$5100.

Plaintiff has appealed. He contends: (1) the trial court erred in directing a verdict for IBP; (2) the trial court erred in refusing to allow him to introduce into evidence pharmaceutical bills; and (3) the trial court erred in entering judgment on the jury verdict because the verdict was not adequate to compensate plaintiff for his damages. We affirm.

Plaintiff first contends the trial court erred in sustaining defendant IBP's motion for directed verdict.

In granting the motion, the trial court found: (1) no evidence of any violation by IBP of any safety standard generally accepted in the industry; (2) the loading dock was constructed in the same manner as other docks in the industry; (3) there was no

accepted practice in the industry of assigning an employee to supervise the unloading of trucks; (4) plaintiff had unloaded cattle and livestock at a number of other packing plants and sale barns and none of those places supervised the parking of trucks at the loading dock; (5) there was no evidence the loading dock involved an inherent danger; and (6) there was no danger at the loading dock if trucks parked correctly. There was no evidence of other similar accidents.

The court considered both Restatement (Second) of Torts § 344 and § 343. The court then concluded there was no evidence from which a jury could find that in the exercise of reasonable care, IBP should have realized parking trucks would create an unreasonable risk to persons. We affirm on this issue.

Plaintiff next contends the trial court erred in granting a motion in limine excluding bills for prescription drugs that he had occurred. Defendant Getting moved to exclude the bills because they had not been produced in answers to interrogatories or at the stipulation or settlement conference required by the trial court in a pretrial order. The trial court found all but \$500 of the bills should be excluded. At trial, plaintiff made no attempt to lay a foundation or offer the bills in evidence and did not make an offer of proof. Generally, a ruling sustaining a motion in limine is not a ruling on the evidence but merely a procedural step to the offer of evidence. If the evidence is not offered, there is nothing preserved to review on appeal. *See Johnson v. State Farm Auto Ins. Co.*, 504 N.W. 2d 135, 138 (Iowa App. 1993). We affirm on this issue.

Plaintiff's last contention is the jury verdict was not adequate. The jury was asked to detail the amount of damages, if any, plaintiff sustained without taking into consideration reduction of damages due to his own negligence. The jury gave the following answer:

Past medical expenses	\$ 0
Past loss of earnings	\$ 0
Past loss of bodily function	\$2500
Past pain and suffering	\$2500
Loss of future earning capacity	\$ 0
Future loss of bodily function	\$2500
Future pain and suffering	\$2500

Defendant Getting contends the issue was not preserved for review because plaintiff did not raise any objections at the trial court level and did not file a motion for new trial. Error was not preserved. To preserve an issue for review, it must first be brought to the attention of the trial court and a ruling obtained. *See Shill v. Careage Corp.*, 353 N.W.2d 416, 420 (Iowa 1984).

AFFIRMED.