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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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KARL W. RINKLEFF and **HELEN A. RINKLEFF**, Husband and Wife,	)	
Plaintiffs-Appellants,	)	
vs.	)	
STEVEN W. HILL and **JUDITH M. HILL**, and **CITY OF CEDAR FALLS, IOWA**,	)	8-647 88-604
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Black Hawk County (67351), William G. Klotzbach, Judge.

Plaintiffs appeal the judgment entered and an order overruling their motion for additur and for a new trial. **AFFIRMED.**

John W. Holmes of Beecher, Beecher, Holmes & Rathert, Waterloo, for plaintiffs-appellants.

Cheryl L. Weber of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for defendant-appellee City of Cedar Falls.

Michael J. Coyle of Fuerste, Carew, Coyle, Juergens & Sudmeier, Dubuque, for defendants-appellees Hill.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

SCHLEGEL, P.J

In this slip-and-fall case, plaintiffs Karl and Helen Rinkleff appeal the judgment entered and from an order overruling their motion for additur and for a new trial. They claim: (1) the trial court incorrectly instructed the jury on comparative fault; and (2) the damage award entered in their favor is so grossly inadequate that it shocks the conscience. We affirm.

In May 1984, plaintiff Karl Rinkleff tripped and fell on an inadequately maintained public sidewalk in Cedar Falls, suffering injuries to his knee. A jury subsequently found that Rinkleff had been damaged in the sum of $12,000 and his wife, Helen, had been damaged in the sum of $1,000. The jury also found Rinkleff to be 50% at fault. The trial court then entered judgment against the City and in favor of Rinkleff for $6,000 and in favor of his wife for $1,000. Defendants Steven and Judy Hill, the owners of the real estate which abutted the sidewalk on which plaintiff fell, were found not at fault.

I. Rinkleff first contends that the trial court instructed the jury incorrectly on comparative fault by indicating that he could be found at fault for "failing to maintain a proper lookout" or "failing to take a safe alternate route." Rinkleff asserts that the "proper lookout" doctrine applies only to motorists, not pedestrians, and that he could not be required to detour around a hazard he did not see and was unaware of.

Rinkleff further claims that these jury instructions placed a duty on him beyond the requirements of the law.

A. "Proper Lookout" Instruction. In Schuller v. Hy-Vee Food Stores, Inc., 407 N.W.2d 347, 351 (Iowa App. 1987), our court stated the principles we must consider when determining the validity of challenged jury instructions:

> Under Iowa law, a trial court is not required to word jury instructions in any particular way. State v. Morrison, 368 N.W.2d 173, 175 (Iowa 1985);Knauss v. City of Des Moines, 357 N.W.2d 573, 577 (Iowa 1984). If an instruction correctly states the applicable law, it will be deemed proper even though an alternative is available. Morrison, 368 N.W.2d at 175. The trial courts therefore generally have much discretion in framing instructions. United States v. Robinson, 774 F.2d 261, 272 (8th Cir. 1985). In determining whether the trial court's instructions fairly submitted to the jury all factual issues which were properly pleaded and supported by substantial evidence, we view the evidence in a light most favorable to the party requesting the instruction. Knauss, 357 N.W.2d at 576. We look to the jury instructions as a whole in determining whether or not they are proper. Bossuyt v. Osage Farmers National Bank, 360 N.W.2d 769, 774 (Iowa 1985).

In applying the foregoing principles to the present case, we fail to find any merit in plaintiffs' argument. A review of the relevant case law indicates that the "proper lookout" doctrine is not limited to cases involving motorists, as the plaintiffs contend. To the contrary, the doctrine has been applied to many different fact patterns. See e.g., Schuller, 407 N.W.2d at 351 (grocery store customer fell over canister ashtray); Carter v. Weise, 360

N.W.2d 122, 136-38 (Iowa App. 1984) (ladder fell on truck driver); Childers v. McGee, 306 N.W.2d 778, 781 (Iowa 1981) (plaintiff fell down stairway).

The record here reveals that on the day he fell, Rinkleff was on his way home from the grocery store where he had purchased some yeast for his wife. He testified at trial that it was a nice warm day, that he was aware of the condition of the sidewalk at some point prior to the time of his fall as he had walked in this area three to four times previously, that he may have been "going a little fast," and that his eyes were not on the sidewalk at the time he fell. From these facts, reasonable minds could differ on the question of whether Rinkleff was negligent in failing to see or avoid the faulty sidewalk. We therefore find no error in the challenged jury instructions.

B. Alternate Route. The City of Cedar Falls asked for a separate jury instruction on the theory of a safe alternate route. The court instead chose to combine this theory as a specification to the comparative fault jury instruction. In addition to the facts already presented, Rinkleff admitted that he could have walked around the sidewalk. We believe that it was for the jury to decide whether Rinkleff should or could have taken a safe alternate route and we find no error in the court's inclusion of this theory in the comparative fault jury instructions.

II. The Rinkleffs further contend that the trial court erred in denying their motion for additur because the jury verdict is grossly inadequate and does not fairly compensate them for their proven damages.[1]

The Iowa Supreme Court has stated that "[t]he assessment of damages is traditionally a jury function and courts intervene only for compelling reasons. Where a verdict is within the evidence we will not disturb the jury's award." Haumersen v. Ford Motor Co., 257 N.W.2d 7, 16 (Iowa 1977). In fact, a jury verdict will not be set aside or altered unless it is: (1) flagrantly excessive or inadequate; (2) so out of reason as to shock the conscience or sense of justice; (3) raises a presumption it is the result of passion, prejudice or other ulterior motive; or (4) is lacking in evidential support. Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 632, 659 (Iowa 1969).

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1. In response to appellant's claim on this issue, appellee City of Cedar Falls points out in their brief that since they filed a motion to extend time for cross-appeal and a motion to dismiss the case, plaintiffs' motion for new trial and additur is moot. Appellee City apparently claims that, based upon the supreme court's ruling in Betsworth v. Morey's and Raymond's, 423 N.W.2d 196 (Iowa 1988), the City was not properly a party, as the statute of limitations had run at the time plaintiffs amended their petition to include the City as a defendant in this lawsuit. While it is true that subject matter jurisdiction may be raised at any time on appeal, see Pierce v. Pierce, 287 N.W.2d 879 (Iowa 1980), we believe that Iowa Rule of Civil Procedure 89 provides authority for plaintiffs' amendment to "relate back" in time to the filing of the original suit. See Iowa R. Civ. P. 89; Jacobson v. Union Story Trust and Sav. Bank, 338 N.W.2d 161, 163 (Iowa 1983).

We find that the jury verdict was well within the range of the evidence presented at trial. Rinkleff was awarded $12,000 in damages before considering comparative fault. His medical expenses totaled $10,851. He presented further evidence, all of which was contradicted, related to past and future pain and suffering. The evidence also indicates that Rinkleff suffered some knee injuries prior to this incident, the extent of which was disputed. Based upon this evidence, we find the jury verdict to be reasonably related to plaintiffs' losses, including Helen's claim for loss of consortium, and we see no merit to plaintiffs' claim.

We affirm the trial court in toto.

AFFIRMED.