IN THE COURT OF APPEALS OF IOWA

No. 3-085 / 92-1150

FILED
MAY 25 1993
CLERK SUPREME COURT

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KAREN A. DIGMAN and **MELVIN T. DIGMAN,**

Appellants,

vs.

ROBERT SCHOENAUER and **JUNE SCHOENAUER,**

Appellees.

Appeal from the Iowa District Court for Dubuque County, Joseph C. Keefe, Judge.

Plaintiffs appeal the district court's ruling that the defendants were not liable for plaintiffs' injuries. **AFFIRMED.**

Michael J. Coyle of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellants.

Chadwyn D. Cox of Reynolds & Kenline, Dubuque, for appellees.

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

HABHAB, J. 000100

Plaintiffs Karen and Melvin Digman appeal a district court ruling holding defendants Robert and June Schoenauer were not liable for personal injuries Karen suffered in a fall on defendant's premises.

On June 30, 1989, June Schoenauer phoned her friend Karen Digman and asked her to return a roaster she had borrowed. Since June would not be home and her husband Robert would be sleeping, June asked Karen to leave the roaster on the patio at the rear of the house. Karen and her husband Melvin arrived at the Schoenauer home between 9:45 and 10:15 p.m.

Upon arrival, Karen and Melvin walked to the gate in front of the house. Karen stayed by the gate while Melvin returned the roaster. Karen then turned around to return to the car. On her walk to the car, Karen tripped and broke her ankle. A neighbor assisted them and Karen was taken to the hospital.

Thereafter, the Digmans filed a petition against the Schoenauers seeking damages associated with Karen's injury. The Digmans alleged the Schoenauers negligently allowed their lawn to contain an indentation they should have known created a hazardous condition. The case proceeded to a bench trial.

After trial, the court ruled in the Schoenauers' favor. The Digmans appeal. We affirm.

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Findings of facts in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. Grinnell Mut. Reins. Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the district court's judgment. Id. We are prohibited from weighing the evidence or the credibility of the witnesses. Id.

> A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978).

"Evidence is substantial or sufficient when a reasonable mind could accept it as adequate to reach the same findings." Waukon Auto Supply v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 846 (Iowa 1989) (citation omitted). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reins. Co., 431 N.W.2d at 785 (citation omitted).

With these principles in mind, we turn to the issue raised on appeal.

The Digmans claim the Schoenauers were negligent.

> Negligence is predicated upon an unperformed duty. The possessor of real estate is under a duty to use reasonable care to keep his premises safe for use by invitees. Failure to do so

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> constitutes negligence. The standard of reasonable care does not require the premises to be free from all defects so as to guarantee or insure the safety of all invitees.

Franz v. Knights of Columbus, 205 N.W.2d 705, 708-09 (Iowa 1973).

The elements of a landowner negligence claim are well established. A landowner is liable to an invitee[1] if the landowner:

> (a) knows or by the exercise of reasonable care would discover the condition and should realize that it involves an unreasonable risk of harm to an invitee, and (b) should suspect that an invitee will not discover or realize the danger, or will fail to protect himself from it.

Devilbiss v. Brenton Nat'l Bank of Perry, 451 N.W.2d 198, 199 (Iowa App. 1989) (quoting Byers v. Contemporary Indus. Midwest, 419 N.W.2d 396, 397 (Iowa 1988)).

The district court found that the Digmans failed to prove the yard contained a defect and that the Schoenauers knew of the defect. Substantial evidence supports this finding.

After the incident neither Karen nor Melvin examined the area where Karen fell. However, Robert Schoenauer testified that the day after the accident he examined the grounds in question and found no indentation that would require any type of repair. Karen could only testify that she stepped into some type of "indentation." She argued at

1. The district court found that Karen was an invitee. This finding was not challenged on appeal.

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trial that she fell over a tire track. Both June and Robert testified, without contradiction, that there had been no vehicles on the ground in question. June admitted that a truck probably drove over the area when delivering some furniture when they first moved into the house, but that was fourteen years earlier.

Photographs of the lawn showed it was well groomed. All parties agreed that the photographs accurately depicted the condition of the lawn at the time of the accident.

June and Robert mow the lawn weekly, including the portion where Karen fell. As the Digmans themselves note in their brief, "the [lawnmower] operator is more familiar with the lay of the ground beneath the mower, and the weight and handle of the mower further provide some support against falling. Imperfections would naturally be more obvious and less hazardous to one mowing the lawn." If any defect in the lawn were present, the Schoenauers would likely have noticed it when using the mower. Neither June nor Robert had any difficulty walking or operating the lawn mower in the area in question. The district court found the Schoenauers credible on this point.

We therefore find that there was substantial evidence to support the district court's conclusion that the Digmans failed to prove the essential elements of their claim.

AFFIRMED.