IN THE COURT OF APPEALS OF IOWA

No. 1999-504 (9-761) / 99-0510
Filed April 12, 2000

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CLERK SUPREME COURT

DANIEL CHRISTENSON, ROBERT CHRISTENSON, and DEBRA CHRISTENSON,
Plaintiffs-Appellants,

vs.

CITY OF MARSHALLTOWN,
Defendant-Appellee.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

Daniel Christenson and his parents, Robert and Debra Christenson, (Plaintiffs) appeal the district court's grant of summary judgment in favor of defendant, City of Marshalltown, in their personal injury action. **AFFIRMED.**

Theodore R. Hoglan of Fairall, Fairall, Kaplan, Hoglan & Condon, Marshalltown, for appellants.

Patrick W. Brooks of Brooks, Ward & Robertson, Marshalltown, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

PER CURIAM.

This case is an appeal from the district court's grant of summary judgment. Plaintiffs' son, Daniel, was driving home at 11:30 p.m. in January 1997. At a spot in the road where there was an accumulation of ice and snow, he lost control of the car, which left the roadway and struck a tree. Daniel was cited for failure to have control of the vehicle, but the charge was subsequently dismissed by the prosecutor who acknowledged a valid "sudden emergency" defense.

Daniel and his parents sued Marshalltown, alleging the City was negligent in not removing, treating, or warning of a dangerous condition caused by the accumulation of snow and ice on the roadway. Marshalltown filed a motion for summary judgment based on municipal immunity. The City engineer's affidavit in support of the motion claimed the City had adopted a Snow and Ice Control Plan ("Plan") which became effective November 11, 1996. The affiant further averred a snowstorm occurred on January 9, 1997; the City's work and response to the storm was completed on January 10, 1997; the City fully complied with the Plan before the motor vehicle accident in question occurred; and the City had no actual or constructive notice of the alleged dangerous roadway condition before the accident.

In its motion for summary judgment, the City claimed compliance with the Plan insulated it from tort liability. *See* Iowa Code § 668.10(2). With their resistance to the City's motion, plaintiffs submitted photographs taken at the accident scene by the police. Plaintiffs allege the photos create a genuine issue

of material fact about whether or not the City followed its snow removal policy. Plaintiffs also supported their resistance with the order dismissing the traffic charge against Daniel.

The district court granted the City's motion for summary judgment, concluding the photographs showed the street was not in perfect condition, but no substantial evidence was presented to demonstrate the City did not meet its standard of care.

We review for errors of law. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 354 (Iowa 1995). Summary judgment may be entered if the record shows "no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Iowa R. Civ. P. 237(c). "We examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law." *Benavides*, 539 N.W.2d at 354. We view the facts in the light most favorable to the party opposing the motion for summary judgment. *Anderson v. Miller*, 559 N.W.2d 29, 31 (Iowa 1997).

As in *Schoborg v. Anderson*, the question to be answered is "whether there is a factual dispute defendant [city] complied with its policy of snow and ice removal." *Schoborg v. Anderson*, 548 N.W.2d 180, 181 (Iowa App. 1996). Though the photographs clearly show snow on the ground in the vicinity of the accident, they do not clearly illustrate the condition of the street at the location of the accident. The plaintiffs submitted no affidavits, discovery responses, or deposition testimony describing the surface of the street at the time and place of

the accident. The record does not disclose whether witnesses at the scene detected salt or sand on the roadway. We are unable to determine how much snow or ice covered the road surface at that location. Plaintiffs failed to produce substantial evidence in the record tending to prove the snow and or ice cover on the street surface was so extraordinary as to generate an inference the City failed to comply with its Plan.

The dismissal of the traffic charge does not generate a fact question as to the City's liability in this case. The record fails to identify what information led the prosecutor to believe a sudden emergency defense may have been available to Daniel. Even if it were assumed Daniel faced an emergency arising from the condition of the road, rather than from some mechanical or other circumstance, we are unable to infer from the dismissal the City failed to comply with its Plan. The district court correctly concluded the plaintiffs did not generate a genuine issue of material fact as to the City's liability. Summary judgment was therefore proper.

AFFIRMED.