IN THE COURT OF APPEALS OF IOWA

No. 1-134 / 00-1093
Filed April 27, 2001

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CLERK SUPREME COURT

SANDRA VAN ROEKEL and
PAUL VAN ROEKEL,
Plaintiffs-Appellants,

vs.

CASEY'S GENERAL STORES, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, David L. Christensen, Judge.

Sandra and Paul Van Roekel appeal following the district court's grant of a motion for summary judgment and a denial of a motion for leave to amend.

AFFIRMED.

William D. Olson of Charnetski, Olson, Lacina & Garland, L.L.P., Grinnell, for appellant.

Dale A. Knoshaug and Lu Ann White of Hanson, Bjork & Russell, L.L.P., Des Moines, for appellee.

Heard by Sackett, C.J., and Huitink and Streit, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Sandra Van Roekel and her husband, Paul, sued Casey's General Stores, Inc. (CGS) for personal injury damages allegedly caused when Sandra fell at a Casey's store in New Sharon on July 11, 1997. Their petition, filed July 9, 1999, named CGS as the defendant owner of the New Sharon store premises.

CGS denied ownership of the New Sharon Casey's store. In its motion for summary judgment CGS cited a May 1, 1995 transfer of the store and its premises to its wholly owned subsidiary, Casey's Marketing Company (CMC). As neither the owner nor occupant of the New Sharon store at the time Sandra fell, CGS argued it could not be liable under the Van Roekels' premises liability theory.

In their resistance and separate motion for leave to add CMC as a defendant, the Van Roekels argued that CGS and CMC should be treated as the same entity. They cited a number of factors supporting this contention including an accident report form bearing CGS's name prepared by the management of the New Sharon store, negotiations with CGS's insurer, and a common registered office and attorney for both corporations.

The district court denied the Van Roekels' request to add CMC as a defendant. The court concluded that CMC "cannot be added as a Defendant since the statute of limitations has run with respect to that entity." The court also determined:

> Plaintiffs have not supported any conclusion that Defendant has retained any occupation and control of the property in question

> while it has not retained ownership, and they have certainly not pled to that effect.

CGS's motion for summary judgment was granted, resulting in the dismissal of Van Roekels' claims. On appeal the Van Roekels contend the district court's disposition of both motions should be reversed. Their only argument is that the court should pierce CMC's corporate veil and designate CGS as the real party defendant.

II. Standard of Review.

Our scope of review is for errors of law. Iowa R. App. P. 4.

III. Error Preservation.

It is a fundamental rule of appellate practice that questions not presented to and passed on by the trial court cannot be raised or reviewed on appeal. *Cole v. City of Osceola*, 179 N.W.2d 524, 527 (Iowa 1970). The theory under which a case was submitted in the trial court will be the theory upon which our appeal is based. *Davidson v. Van Lengen*, 266 N.W.2d 436, 439 (Iowa 1978). Additionally, a motion pursuant to Iowa Rule of Civil Procedure 179(b) is essential to preservation of error in a summary judgment ruling when a trial court fails to resolve an issue, claim, defense, or legal theory properly submitted to it for adjudication. *Farmers State Bank v. United Cent. Bank*, 463 N.W.2d 69, 72-73 (Iowa 1990).

The theory Van Roekels advance on appeal is that the court should pierce CMC's corporate veil because it is a mere shell or an alter ego of its controlling parent corporation, CGS, with no legitimate business purpose of its own. *See generally Northwestern Nat'l Bank of Sioux City v. Metro Center, Inc.*, 303

N.W.2d 395 (Iowa 1981). A careful examination of the summary judgment record, rulings on the motions at issue, and the Van Roekels' 179(b) motion indicates that this was not the theory advanced below. Under our interpretation of the record, the Van Roekels' legal argument and supporting factual references were intended to establish that CGS retained control of the operations of the New Sharon Casey's store. If they had successfully established this proposition, CGS would have been assigned the duty of care ordinarily assigned to owners and occupiers of business premises with the attendant liability for breach of that duty. *See e.g., Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 812-13 (Iowa 1994).

The distinction between the two theories of corporate liability the Van Roekels cite is illustrated by the nature of proof necessary to pierce the corporate veil. The factors which may be considered in determining whether a corporation is merely an alter ego of its controlling owner include:

> (1) the corporation is undercapitalized; (2) it lacks separate books; (3) its finances are not kept separate from individual finances, or individual obligations are paid by the corporation; (4) the corporation is used to promote fraud or illegality; (5) corporate formalities are not followed; and (6) the corporation is a mere sham.

In re Marriage of Ballstaedt, 606 N.W.2d 345, 349 (Iowa 2000). In the absence of any significant evidence or argument below implicating any of these factors, we conclude the Van Roekels have failed to preserve this issue for appellate review. The judgment of the district court is therefore affirmed.

AFFIRMED.