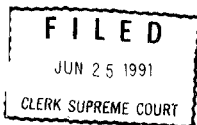


IN THE COURT OF APPEALS OF IOWA

No. 0-554 / 89-1542



DOROTHY JOHNSON and FRED JOHNSON,

Appellants,

vs.

121

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE
UNITED STATES and GENERAL GROWTH MANAGEMENT, INC.,

Appellees.

Appeal from the Iowa District Court for Woodbury
County, Terry L. Huitink, Judge.

In this tort suit the jury returned a verdict for the
defendants, and the plaintiffs have appealed. **AFFIRMED.**

Robert W. Green of Green, Faith & Hendrickson,
Sioux City, for appellants.

Scott A. Hindman and Michael R. Hellige of Shull,
Cosgrove, Hellige, DuBray & Lundberg, Sioux City, for
appellees.

Considered by Donielson, P.J., and Schlegel and Hayden,
JJ.

HAYDEN, J.

On August 26, 1986, Dorothy Johnson was injured when she fell in one of the corridors at Southern Hills Mall in Sioux City, Iowa. Defendant Equitable Life Assurance Society of the United States is the owner of Southern Hills Mall. Defendant General Growth Management, Inc. is the managing agent.

Dorothy brought this tort suit against the defendants. She claimed one of the floor tiles had become sunken or depressed and she had caught the heel of her shoe on the tile. She claimed defendants were negligent in allowing the floor tile to become depressed. Her husband, Fred Johnson, brought a claim for loss of consortium. Defendants alleged Dorothy's negligence in not keeping a proper lookout was the proximate cause of her injuries.

The case was tried to a jury. The court included an instruction, No. 19, dealing with sole proximate cause. This instruction provided:

The defendants claim the sole proximate cause of the plaintiff's damage was the conduct of the plaintiff. Sole proximate cause means the only cause. The defendant must prove this claim.

The jury returned a verdict for defendants on a special verdict form. The jury responded in the negative to the first question, "Were the defendants at fault?" and thus did not proceed to the other questions.

The district court denied plaintiffs' request for a new trial and entered judgment on the jury verdict. Plaintiffs now appeal.

Our scope of review is on assigned errors only. Iowa R. App. P. 4.

Plaintiffs contend the court erred in submitting Instruction No. 19 to the jury. Jury instructions are designed to explain the applicable law to the jurors so the law may be applied to the facts proven at trial. State v. Freeman, 267 N.W.2d 69, 71 (Iowa 1978). It is the trial court's duty to submit to the jury all issues presented by the pleadings upon which there is evidence tending to support them, and it constitutes error to instruct on an issue having no substantial evidentiary support. Dobson v. Jewell, 189 N.W.2d 547, 553 (Iowa 1971). Conversely, law inapplicable to the issues should not be included in the instructions. Hoekstra v. Farm Bureau Mutual Insurance Co., 382 N.W.2d 100, 110 (Iowa 1986).

Generally, the defense of sole proximate cause introduces an issue of a third party's conduct or a separate event into the case. Sponsler v. Clarke Electric Cooperative, Inc., 329 N.W.2d 663, 665 (Iowa 1983). The doctrine of "Act of God" is an example of the defense of sole proximate cause. Id. Cases where the defense is based on the plaintiff's conduct are distinguishable. Id.

The case of Teeling v. Heles, 195 N.W.2d 704, 707-708 (Iowa 1972), provides the issue of sole proximate cause in addition to the issue of direct negligence on the part of the plaintiff should not be submitted to the jury. We find the district court erred in submitting the instruction on

sole proximate cause to the jury because it contains law inapplicable to the issues in this case.

However, this error by itself does not justify a reversal. See Teeling v. Heles, 195 N.W.2d at 708. Error in giving or refusing to give an instruction does not require reversal unless the error is prejudicial. Stover v. Lakeland Square Owners Association, 434 N.W.2d 866, 868 (Iowa 1989).

The jury specifically found defendants were not at fault. Therefore, the jury did not need to reach the question of plaintiff's negligence or the question of causation. We hold any error in giving the instruction on sole proximate cause in this case was nonprejudicial to plaintiffs. We affirm the judgment of the district court.

AFFIRMED.