FILED
FEB 25 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-616 / 91-449

RONALD E. GEIGER, CAROL GEIGER and **GREGORY P. GEIGER,**

Appellants,

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vs.

ANTHONY PARDUN and **NANCY PARDUN,**

Appellees.

Appeal from the Iowa District Court for Benton County, Thomas L. Koehler, Judge.

The plaintiff, Gregory P. Geiger, appeals from a judgment of the district court dismissing his claim for damages against the defendants resulting from a trampoline accident. **AFFIRMED.**

Morris L. Eckhart of Milroy and Eckhart, Vinton, for appellant.

Glenn Johnson, Diane Kutzko, and Kurt Kratovil of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for appellee.

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

DONIELSON, P.J.

The defendants, Anthony and Nancy Pardun, owned a home in Vinton, Iowa. The unfenced backyard of the home was adjacent to a large, open field where children frequently played. The Parduns had placed a large trampoline in their backyard, and children often jumped on the trampoline without obtaining permission. Concerned neighbors had complained about the unsupervised use of the trampoline by children, but the Parduns did very little to prevent it.

The frame of the trampoline had been equipped with pads when it was purchased, but due to extended exposure to the weather, the pads deteriorated and were removed when the trampoline was repainted. The Parduns did not replace the padding, nor did they cover the trampoline or take it down.

The Parduns did post rules on the trampoline, however. They typed the rules on 3" by 5" cards which were then placed on the frame. There was some dispute at trial concerning the exact content of the rules because the cards were nowhere to be found. The cards had eventually been torn off by children using the trampoline. No new cards had been posted.

On August 3, 1985, the plaintiff, Gregory Geiger, and two friends decided to go to the Parduns' yard to jump on the trampoline, despite the fact that they did not have permission. While two of the boys were bouncing at the same time, one, Gregory, sustained injuries. An effect of

the two bouncing simultaneously caused Gregory to bounce higher than expected and lose his balance. He landed on the bare metal frame of the trampoline, and as a result, he suffered a fractured heel and soft tissue injuries.

The case was tried to the district court on December 10, 1990, and the court entered its judgment on February 26, 1991. The court ruled the plaintiff could not rely on the doctrine of attractive nuisance because that doctrine is available only to children of "tender years". Gregory, at age fifteen, was held to be a young adult. The court also ruled the Parduns had no duty to warn Gregory of the open and obvious danger of jumping on the trampoline. Finally, the court ruled that even were such a duty to exist, that duty would not have been breached in the present case because the Parduns monitored the trampoline when they were at home and requested that nonfamily members obtain permission before using the trampoline. The district court, therefore, found for the defendants.

Gregory appeals, assigning four instances of error. First, he argues the district court should have applied section 339 of the Restatement (Second) of Torts. Second, he argues the district court applied the incorrect legal standard of proximate cause. Third, he argues the trial court's verdict is not sustained by substantial evidence. Finally he maintains the district court erred in admitting defendants' exhibit B.

Our scope of review in this action is for the correction of errors of law. Iowa R. App. P. 4. On our review, we need not address Gregory's arguments that the trial court applied incorrect legal standards. Gregory failed to file a motion pursuant to Iowa Rule of Civil Procedure 179(b) requesting the court to enlarge or amend its findings. Therefore, on appeal, any challenge to the trial court's findings can be based only on the issue of the sufficiency of the evidence supporting those findings. Iowa R. Civ. P. 179(b).

We do not find that Gregory carried his burden as a matter of law. When the trial court, following a bench trial, denies recovery because the plaintiff failed to carry his or her burden of proof on an issue, we will not interfere unless we find the plaintiff carried his or her burden as a matter of law. Whiteaker v. State, 382 N.W.2d 112, 114 (Iowa 1986). To find that the plaintiff has carried his or her burden as a matter of law, we must find that the evidence was so overwhelming on each critical fact issue that only one reasonable inference could be drawn and the trial court drew the wrong one. See id. We are unable to make such a finding on the record before us.

Finally, we do not believe the trial court abused its discretion in admitting defendants' exhibit B. The trial court has broad discretion in ruling on evidentiary issues. State v. Halstead, 362 N.W.2d 504, 506 (Iowa 1985). The trial court's rulings should not be disturbed

in the absence of a clear and prejudicial abuse of discretion. Carter v. Wiese Corp., 360 N.W.2d 122, 131 (Iowa App. 1984). We do not believe Gregory has made such a showing.

Defendants' exhibit B appears to be a phone message memorandum from the office of Gregory's doctor. The message indicates that Gregory called to ask his doctor for permission to go skiing. This call was made on a date when Gregory now claims to have been suffering from severe foot and ankle problems. Gregory asserts this exhibit contained inadmissible hearsay evidence and, therefore, was improperly admitted. We do not believe Gregory was prejudiced by the admission of this exhibit. The exhibit was only relevant to the issue of the amount of damages. The trial court found there was no liability on the part of the defendants.

The costs of this appeal are taxed to the plaintiff, Gregory P. Geiger.

For all the reasons stated, the judgment of the district court is affirmed.

AFFIRMED.