IN THE COURT OF APPEALS OF IOWA

No. 1999-564 (9-825) / 99-0184
Filed March 15, 2000

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CLERK SUPREME COURT

DAVID W. FRYE and KAREN FRYE,
Plaintiffs-Appellants,

vs.

BOSTROM'S INC., d/b/a BOSTROM'S SUPER-VALU,
Defendant-Appellee.

Appeal from the Iowa District Court for Fayette County, James L. Beeghly, Judge.

The plaintiffs appeal a district court judgment entered, following a jury trial, dismissing their action against the defendant for injuries sustained resulting from a slip and fall. **AFFIRMED.**

Benjamin W. Blackstock of Blackstock Law Offices, Cedar Rapids, for appellants.

Christopher L. Bruns of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellee.

Heard by Streit, P.J., Miller, J., and Schlegel, S.J.*, but decided by Huitink, P.J., and Streit and Miller, JJ.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

STREIT, J.

Stemming from his slip and fall at Bostrom's grocery store, appellant, David Frye, alleges the trial court made numerous errors in instructing the jury on the proper law of this state. As we find all allegations of error procedurally barred or harmless, we affirm the trial court.

I. Background Facts & Proceedings.

In the summer of 1995 David Frye went to Bostrom's Super-Valu in West Union to purchase supplies for a camping trip. Frye retrieved two bags of ice from the ice machine and noticed they were partially melted and dripping water. Frye began walking away from the machine, when he slipped on a small puddle of water and fell to the floor.

Although Frye complained immediately after the accident of severe back pain, he did not seek treatment until three weeks later. Over the next year, Frye was treated by a chiropractor. After being discharged from his chiropractor's care, Frye was treated by a medical doctor, who concluded he suffered a ten-percent permanent disability. Shortly thereafter, Frye reinjured his back while attempting to lift a case of motor oil.

In the summer of 1997 Frye sued Bostrom's for his injuries. At trial Frye submitted numerous jury instructions and broadly objected to several instructions claiming they did not adequately set forth Iowa law. The jury found Bostrom's was not at fault for Frye's injuries.

Frye appeals claiming the following jury instructions were incorrect statements of Iowa law: (1) the duty of a supermarket toward customers; (2) the

marshalling instruction; (3) admissions by the parties; (4) Frye's failure to avoid reinjury; (5) Frye's failure to obtain reasonable medical treatment; and (6) proper lookout. He additionally argues the district court erred in granting the defendant's motion in limine, which barred him from cross-examining one of Bostrom's medical experts regarding previous disciplinary action.

II. The Duty and Marshaling Instructions.

Frye first claims the duty and marshaling instructions adopted by the court were incorrect statements of Iowa law.

The duty instruction, number twenty-one read:

> The owner of a business is liable for physical harm caused to its customers by a condition on the premises, but only if, the owner:
>
> > (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 its customers, and
> >
> > (b) should expect that they [the customers] will not discover or realize the danger, or will fail to protect themselves against it, and
> >
> > (c) fails to exercise reasonable care to protect them against the danger.

The marshaling instruction, number twenty-two, read:

> The plaintiffs claim the defendant was at fault in the following particular:
>
> a. Negligence.
>
> > Negligence has been explained to you in another instruction. The plaintiffs must prove all of the following propositions:
> >
> > 1. The defendant knew or in the exercise of reasonable care should have discovered a condition on the premises that the defendant should realize involves an unreasonable risk of harm to a customer.

> 2. The defendant should expect a customer would not discover or realize the danger, or would fail to protect himself against it.
>
> 3. The defendant was negligent as explained in Instruction Nos. 17 and 21, in one or more of the following ways:
>
> a. Permitting water to accumulate on the floor where a customer would be expected to walk.
>
> b. Failing to warn of water on the floor where a customer would be expected to walk.
>
> c. Failing to remove water from the floor where a customer would be expected to walk.
>
> 4. The negligence was the proximate cause of the plaintiffs' damage.
>
> 5. The amount of damage.
>
> If the plaintiffs' have failed to prove any of these propositions, the plaintiffs are not entitled to damages. If the plaintiffs have proven all of the propositions, then you will consider the defense of comparative fault as explained in Instruction Nos. 14, 15, and 16.

Iowa Rule of Civil Procedure 196 requires all objections regarding the proposed jury instructions must specify the matter objected to and on what grounds. "[T]he objecting party must identify the particular points of law or questions of fact on which the court supposedly erred by failing to instruct." *Bauer v. Cole*, 467 N.W.2d 221, 224 (Iowa 1991). An objection is sufficiently specific if it alerts the trial court as "to the basis of the complaint so that if error does exist the court may correct it before placing the case in the hands of the jury." *Moser v. Stallings*, 387 N.W.2d 599, 604 (Iowa 1986).

Frye's objections to jury instructions twenty-one and twenty-two were too vague to alert the trial court of any specific legal error and are therefore waived

under Iowa Rule of Civil Procedure 196. Counsel broadly objected to instructions twenty-one and twenty-two as being incorrect and a misstatement of what his client was required to prove. Counsel did not articulate what specific portion of the instruction contained the alleged misstatement of the law. Such bare assertions did not grant the trial court an opportunity to appropriately relieve the instructions of any alleged errors prior to the submission of the case to the jury. *See Sievers v. Iowa Mut. Ins. Co.*, 581 N.W.2d 633, 638 (Iowa 1998) (ruling an objection to an instruction as "confusing, unfairly defense-oriented and improperly present[ing] nearly impossible burdens of proof to the plaintiff," too vague and generalized to preserve error).

Even assuming, arguendo, that error had been properly preserved, our examination of the submitted instructions convinces us that both instructions correctly state the applicable law in Iowa. We find no error with instructions twenty-one and twenty-two.

III. The Admissions Instruction.

Frye next claims the trial court abused its discretion in failing to alter the instruction explaining admissions by a party. The instruction, number thirteen, read:

> You have heard evidence claiming David Frye made statements before this trial while under oath and while not under oath. These statements are called admissions. If you find an admission was made, you may consider it as if made during this trial. Decide whether to consider the admission for any purpose and what weight to give it.

Frye objected to the instruction claiming the instruction should be crafted more broadly as to incorporate the admissions of all the parties involved rather than him alone. The court declined to make such a revision.

We review objections to jury instructions for errors at law. Iowa R. App. P. 4; *Franklin v. Andrews*, 595 N.W.2d 488, 489 (Iowa 1999). "Parties are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record." *Beyer v. Todd*, 601 N.W.2d 35, 38 (Iowa 1999) (citation omitted). A court's failure to give a requested jury instruction only warrants reversal when it results in identifiable prejudice to the party requesting the instruction. *Id.*

Frye's claim of error fails on two grounds. First, Frye fails to articulate to this court that his requested change was supported by substantial evidence. Frye did not direct this court to any point in the record where there was evidence of admissions made by Bostrom's. It is not incumbent on a court of review to search, sua sponte, through a voluminous record in hopes of gleaning some evidence to support the alleged error. *See* Iowa R. App. P. 14(g). Additionally, Frye fails to alert this court of the specific prejudice he suffered as a result of the trial court's alleged error. If Bostrom's or its representative made some kind of admission, the trial court's failure to instruct the jury was insignificant without more of a showing as to the statements or admissions made.

IV. Claims of Error Surrounding Comparative Fault and Damages.

Frye also claims numerous errors involving those jury instructions implicating comparative fault and damages as well as evidentiary errors pertaining to damages.

When a case is submitted to a jury on special interrogatories and the jury finds the defendant not at fault, any alleged error regarding a jury instruction that addresses comparative fault becomes moot as there can be no resulting prejudice. *Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993). The same holds true with those jury instructions implicating damages. *Gore v. Smith*, 464 N.W.2d 865, 868 (Iowa 1991). Similarly, a trial court cannot commit reversible error by improperly excluding evidence pertaining to damages when the jury finds in favor of the defendant on the issue of liability. *Bingham v. Marshall & Huschart Mach. Co.*, 485 N.W.2d 78, 82 (Iowa 1992). Because Frye could not have suffered prejudice regardless of the merits of his specific allegations, we will not address his claims of error regarding comparative fault and damages.

Having considered all claims of error, we find no reversible error. The trial court is affirmed.

AFFIRMED.