IN THE COURT OF APPEALS OF IOWA

No. 2-600 / 92-33

FILED
MAR 30 1993
CLERK SUPREME COURT

PATRICIA SAMOSKY,

Appellant,

vs.

JAMES E. DOLAN,

Appellee.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge.

The plaintiff appeals from the district court's ruling sustaining the defendant's motion for summary judgment in her negligence action for injuries sustained from her slip-and-fall on defendant's icy driveway. **AFFIRMED.**

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

Michael F. Lacey, Jr., and Ronald M. Rankin of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee.

Heard by Oxberger, C.J., and Hayden and Habhab, JJ.

OXBERGER, C.J.

The plaintiff, Patricia Samosky, brought a negligence action against the defendant, James Dolan, for injuries she sustained when she fell and broke her leg on Dolan's driveway. The driveway was extremely icy due to adverse weather conditions. Samosky was aware of the icy condition of the driveway and parked in a different location on the date of the accident to avoid the driveway. However, she later walked down the driveway to a neighboring grocery store for her coffee break.

As an affirmative defense, Dolan alleged Samosky's negligence caused the accident. At trial, evidence was presented regarding the condition of the driveway and Samosky's awareness of that condition. Dolan then moved for a directed verdict which the district court granted. The court concluded Samosky could not recover damages as a matter of law because she was aware of the condition and did not avoid it although she had avoided it earlier.

Samosky appeals.

Discussion

In considering the propriety of a motion for directed verdict, the court views the evidence in the light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). Generally, questions of negligence, contributory negligence and proximate cause are

for the jury; it is only in exceptional cases that they may be decided as a matter of law. Iowa R. App. P. 14(f)(10).

Samosky contends the issue of whether Dolan satisfied his duty of care was for the jury. Dolan contends Samosky's knowledge of the icy conditions precludes her from recovering damages as a matter of law.

We first review the duties of a possessor of land and a business invitee. The occupier of land is under a duty of reasonable care to keep the premises in a reasonably safe condition for business invitees. Schnoor v. Deitchler, 482 N.W.2d 913, 916-17 (Iowa 1992). The possessor is required to use reasonable care to ascertain the actual condition of the premises. Konicek v. Loomis Bros., Inc., 457 N.W.2d 614, 618 (Iowa 1990). Inherent in this duty is the requirement the possessor make the area reasonably safe or to give warning of the actual condition and risk involved. Id. See also Restatement (Second) of Torts § 343 cmt. d (1965).

However, this general rule carries important limitations:

> The possessor of land, however, is not liable when the injuries sustained by a business invitee were caused by a known or obvious danger. The word known denotes "knowledge of the existence of the condition ... [as well as an] ... appreciation of the danger it involves." To appreciate the severity of the danger, the business invitee must recognize the condition as dangerous and understand "the probability and gravity of the threatened harm." An obvious danger "means that both the condition and the risk are apparent to and would be recognized by a" reasonably prudent person.

Konicek, 457 N.W.2d at 618 (citations omitted); see also Restatement (Second) of Torts § 343A cmt. e (1965).

The record indicates Samosky was aware of the icy conditions present on the driveway the morning of the day she fell. She parked in a different parking lot in order to avoid walking on the icy driveway. She also testified she knew the driveway had not been sanded or salted during the previous four to five days, although she knew it had been icy on those days. In addition, other reasonably convenient exits were available to her. Finally, Samosky's husband testified he told her the driveway was very icy as they were exiting the building moments before she fell.

Based on the rule set forth in Schnoor and Konicek, and clear evidence of Samosky's knowledge of the icy condition immediately prior to her decision to use that particular exit, we find no reversible error.

AFFIRMED.