IN THE COURT OF APPEALS OF IOWA

No. 1-452 / 91-153

FILED
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CLERK SUPREME COURT

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JARED E. JOHNSON and **PEARL JOHNSON,**

Appellees,

vs.

CITY OF OAKLAND, IOWA, A Municipal Corporation,

Appellant.

Appeal from the Iowa District Court for Pottawattamie County, J. C. Irvin, Judge.

The City of Oakland appeals from a judgment entered by the district court, following a jury trial, finding that the City's negligence caused plaintiff's slip and fall injuries. **AFFIRMED.**

Philip Willson of Smith, Peterson, Beckman & Willson, Council Bluffs, for appellant.

Peter J. Peters of Peter J. Peters, P.C., Council Bluffs, and Jacob J. Peters of The Peters Law Firm, P.C., Council Bluffs, for appellee.

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

DONIELSON, P.J.

On March 3, 1989, Jared E. Johnson went to the City Clerk's office of the City of Oakland, Iowa, in order to pay his water bill. As he left the building he slipped on the icy sidewalk and steps. The city owned the building which abutted the icy sidewalk. Johnson was injured.

Johnson and his wife brought this suit against the city, alleging that the city was negligent in failing to remove the ice from the premises. The case was tried to a jury. The jury assigned fault 40% to Johnson and 60% to the city. The jury found Johnson's damages were $43,000; 60% of this amount is $25,800. The jury also awarded Johnson's wife damages of $5,000 on her loss of consortium claim. The district court entered judgment on the verdict and denied the city's motion for a new trial. The city now appeals.

Our scope of review regarding this jury trial is on assigned error of law. Moore's Builder & Contractor, Inc. v. Hoffman, 409 N.W.2d 191, 194 (Iowa App. 1987). If supported by substantial evidence and justified as a matter of law, the judgment will not be disturbed on appeal. Id. But the reviewing court is not bound by the trial court's determination of law. Id.

The city has raised several issues relating to the jury instructions. The city contends the jury instructions as given misstate the applicable law. The city requested an instruction which stated that an owner could wait until the

end of a storm and a reasonable time thereafter to remove ice and snow. The city also requested an instruction on assumption of risk. The district court refused to give these two requested instructions.

We look at jury instructions as a whole to determine whether there has been error. Edwards v. City of Des Moines, 349 N.W.2d 786, 788 (Iowa App. 1984). Reversible error is committed when instructions are conflicting and confusing. Moser v. Stallings, 387 N.W.2d 599, 605 (Iowa 1986). A trial court is not required to word jury instructions in any particular way. Schuller v. Hy-Vee Food Stores, Inc., 407 N.W.2d 347, 351 (Iowa App. 1987). If an instruction correctly states the applicable law, it will be deemed proper even though an alternative is available. Id. Generally, trial courts have much discretion in framing jury instructions. Id.

We have examined as a whole the instructions which were given to the jury. We hold the instructions given here correctly state the applicable law. The district court was not required to word the instructions as suggested by the city.

As to the two requested instructions the district court did not give, Iowa law requires that a court give a requested instruction when it states a correct rule of law having application to the facts of the case and the concept is not otherwise embodied in the other instructions. See Stover v. Lakeland Square Owners Association, 434 N.W.2d

866, 868 (Iowa 1989). A party cannot complain if instructions fail to emphasize circumstances favorable to him. Edwards, 349 N.W.2d at 788. This is precisely what instructions should avoid. Id.

We conclude that the subject matter of the city's requested instructions was covered in the other instructions given to the jury. To have given the additional instructions would have emphasized the city's case.

We affirm the judgment of the district court.

AFFIRMED.