

IN THE COURT OF APPEALS OF IOWA

FILED

APR 20 1988

CLERK SUPREME COURT

MARGUERITE H. ROBERTS,

)

Plaintiff-Appellant,

)

Filed April 20, 1988

vs.

)

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CITY OF DUBUQUE, a Municipal
Corporation, and EDITH M. YATES

)

7-442
87-388

Defendants-Appellees.

)

Appeal from the Iowa District Court for Dubuque County (No. 45133) -
R. J. Curnan, Judge.

Plaintiff appeals a jury verdict assessing plaintiff's negligence at thirty-
three and one-third percent and thereby reducing her award. **AFFIRMED.**

William C. Fuerste, of Fuerste, Carew, Coyle, Juergens and Sudmeier,
P.C., Dubuque, for plaintiff-appellant.

Barry A. Lindahl, Corporation Counsel, Dubuque, for defendant-appellee
City of Dubuque.

Randal J. Nigg and Jane C. Mylrea, of Reynolds and Kenline, Dubuque,
for defendant-appellee Edith M. Yates.

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

SCHLEGEL, J.

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The plaintiff, Marguerite H. Roberts, brought suit against the defendants, City of Dubuque and Edith M. Yates, for failing to take care of a sidewalk on which the plaintiff slipped and fell on January 31, 1984. The plaintiff appeals a jury verdict assessing her negligence at thirty-three and one-third percent and reducing her award accordingly. The plaintiff contends that the evidence at trial did not support the court's submitting a jury instruction dealing with negligence regarding the propriety of the plaintiff's footwear given the conditions. Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. We affirm.

On January 31, 1984, the plaintiff fell on the sidewalk outside of defendant Yates' home, resulting in injury to the plaintiff. During the day of the incident, thawing of snow had occurred and subsequently refroze, creating the icy sidewalk. At trial, the plaintiff's shoes were admitted into evidence and described by the plaintiff as having a rubber sole and heel, but not a high heel. Testimony concerning the condition of the sidewalk and the fact that accumulated snow existed near the sidewalk was also admitted into evidence. At the close of trial, defendant Yates proposed a jury instruction concerning the propriety of the plaintiff's footwear given the conditions. This instruction, plus one concerning the plaintiff keeping a proper lookout, was given to the jury on the issue of the plaintiff's alleged contributory negligence. The jury assessed the plaintiff's negligence at thirty-three and one-third percent. This appeal followed.

The plaintiff contends that the submission of the footwear instruction was error since no evidence was presented to the jury dealing with the propriety of the plaintiff wearing the shoes in question. The defendants argue that additional evidence concerning the propriety of the shoes was unnecessary since

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 it was within the common knowledge of the jury to discern whether the shoes were appropriate. The defendants also contend that since the plaintiff did not request separate findings by the jury on the plaintiff's alleged negligence, under Iowa Rule of Civil Procedure 205 she cannot now complain of the verdict by reference to the footwear instruction only. Finally, the defendants request that if a new trial is ordered, it be limited to the question of liability and not include the issue of damages.

The jury instruction objected to by the plaintiff states:

Defendant Edith M. Yates alleges that plaintiff Marguerite Roberts was negligent in the following particulars:

2. In failing to wear proper footwear considering the circumstances existing at the time.

By failing to wear proper footwear is meant a failure to use ordinary and reasonable care in the selection and wearing of footwear under the facts and circumstances as they existed.

The trial court should submit to the jury only those issues supported by substantial evidence. Hoekstra v. Farm Bureau Mut. Ins. Co., 382 N.W.2d 100, 107 (Iowa 1986). In weighing the sufficiency of the evidence, it should be given the most favorable construction possible in favor of the party urging submission. Id. at 108. The plaintiff appears to contend that for there to have been substantial evidence on the footwear issue, testimony should have been presented regarding the particular style of shoe's characteristics for traction under a given set of circumstances. This court has stated that "[w]hether expert testimony is required [to prevail on an issue] ultimately depends on whether it is a fact issue upon which the jury needs assistance to reach an intelligent or correct

decision." Wernimont v. Int'l Harvester Corp., 309 N.W.2d 137, 141 (Iowa App. 1981). We went on to quote with approval from the Oregon case of Lynd v. Rockwell Mfg. Co., 276 Or. 341, 349, 554 P.2d 1000, 1005 (1976) as follows:

[W]hen the issues presented relate to matters which require only common knowledge and experience to understand them, the testimony of experts is not essential.

Wernimont, 309 N.W.2d at 141. Furthermore, the Iowa Supreme Court, in Daiker v. Martin, 250 Iowa 75, 81, 91 N.W.2d 747, 751 (1958), stated that "[w]here . . . lack of care is so obvious as to be within the comprehension of laymen and to require only common knowledge and experience to understand, expert testimony is not necessary."

After reviewing the evidence, we conclude that it was sufficient to warrant submitting the footwear instruction to the jury. The shoes that the plaintiff was wearing on the night of the incident were admitted into evidence. In addition, evidence was presented concerning the condition of the sidewalk near Yates' house, the thawing of snow that had occurred during the day of the incident, and the presence of accumulated snow on the ground near the sidewalk.

It is our opinion that further testimony regarding the characteristics of shoes, like those worn by the plaintiff, for traction under given circumstances is not necessary for the jury to be able to adequately consider the extent, if any, of the plaintiff's negligence. Such an issue can be decided by the jury based on common knowledge and experience as to how various types of footwear will respond on slick surfaces and which types of footwear are most appropriate for traversing safely in winter conditions. This is not an issue where testimony from someone with knowledge beyond that of ordinary laymen is required.

We therefore hold that the evidence was sufficient to submit the jury instruction regarding the propriety of the plaintiff's footwear. The trial court is accordingly affirmed.

AFFIRMED.