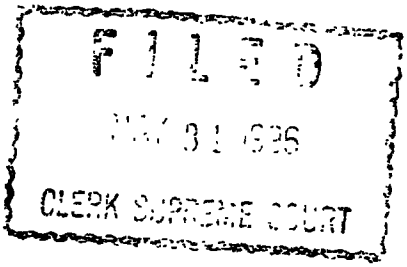
IN THE COURT OF APPEALS OF IOWA

No. 5-729 / 95-498



TOM WEIGEL,

Appellant.

vs.

G & L CLOTHING, INC.,

Appellee.

Appeal from the Iowa District Court for Polk County, Dale Hagen, Judge.

The plaintiff appeals from the district court ruling granting the defendant summary judgment on plaintiff's tort action seeking damages for injuries sustained by the plaintiff in a fall allegedly caused by defective boots sold by the defendant. **AFFIRMED.**

Ronald W. Kuntz, Des Moines, for appellant.

Kenneth R. Munro, of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Considered by Sackett, P.J., and Cady and Streit, JJ. Vogel, J., takes no part.

PER CURIAM

This is an appeal by a plaintiff claiming he suffered damages due to defendant's negligence. The district court granted defendant's motion for summary judgment. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In August 1992, Tom Weigel, who is legally blind, purchased a pair of "Carolina Logger" boots from G & L Clothing, Inc. He purchased these specific boots because he believed they were skid resistant. Weigel alleged that after he fell about ten times in the boots, he complained to an employee of G & L, who told him the boots needed to be broken in. On December 31, 1993, Weigel slipped on the ice while wearing the boots and broke his right wrist.

Weigel filed suit against G & L alleging it was negligent in: (1) failing to advise him the boots were slippery; (2) selling him defective boots; (3) continuing to advise him to wear the boots; and (4) failing to take corrective action in regard to the boots. The district court granted defendant's motion for summary judgment, finding Weigel's allegations of negligence were not actionable under Iowa law.

Weigel appealed. He claims the court erred in granting defendant's motion for summary judgment. He claims that once he informed G & L he had fallen in the boots, the company had a legal obligation to take action which would prevent further injury to him.

On appeal of a summary judgment ruling, we must decide whether a genuine issue of material fact exists and if the law was correctly applied. *Ottumwa Housing Authority v. State Farm Fire & Cas. Co.*, 495 N.W.2d 723, 726 (Iowa 1993). The party moving for summary judgment has the burden of showing the nonexistence of a genuine issue of material fact. *Hofco, Inc. v. National Union Fire Ins. Co.*, 482 N.W.2d 397, 400 (Iowa 1992). A fact question is generated if reasonable minds could differ on how the issue should be resolved. *Hoefer v. Wisconsin Educ. Ass'n Trust*, 470 N.W.2d 336, 338 (Iowa 1991).

The tort of negligent misrepresentation applies only to defendants in the profession or business of supplying information or opinions. *Freeman v. Ernst & Young*, 516 N.W.2d 835, 838 (Iowa 1994). Defendant was not in the business supplying information or opinions. Thus, Weigel may not bring a claim against defendant based on statements made either at the time of sale or later. Also, Iowa does not recognize claims based on retailer negligence in selling a defective product. Additionally, we find defendant did not owe a special duty to Weigel based on the his limited eyesight. Weigel's eyesight did not hinder him from hunting or operating power tools.

We affirm the decision of the district court granting summary judgment to defendant. Costs of this appeal are assessed to Weigel.

AFFIRMED.