

IN THE COURT OF APPEALS OF IOWA

No. 1-159 / 00-0353
Filed November 28, 2001

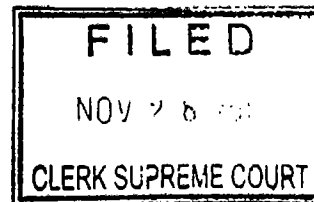
SHARON HOWER,
Plaintiff-Appellee,

vs.

VIRGINIA HALL,
Defendant-Appellant,

and

WINIFRED (TOBY) JOHNSON,
Defendant.



Appeal from the Iowa District Court for Union County, William H. Joy, Judge.

Appellant appeals an adverse verdict in a case involving liability under Iowa Code section 351.28 (1997) for injuries caused by dogs. **AFFIRMED.**

Janice M. Thomas of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellant.

Anthony F. Renzo of Babich & Renzo, P.C., Des Moines, for appellee.

Considered by Mahan, P.J., and Hecht and Vaitheswaran, JJ.

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HECHT, J.

Defendant/appellant, Virginia Hall, appeals from an adverse jury verdict and judgment in a personal injury action. She claims one jury instruction misstated the law, the jury made findings contrary to law, the court erred in an evidentiary ruling, and the court should have granted her motions for directed verdict or new trial. We affirm.

Background

Virginia Hall and co-defendant, Winifred (Toby) Johnson, lived together in Hall's home from about 1981 until after the incident giving rise to this case occurred in August 1997. Hall built a fenced dog pen in her yard for her dog. Johnson purchased an AKC-registered, female black Labrador and had her bred. She had a litter of six puppies in April 1997. Johnson also made use of Hall's dog pen.

In August 1997, three of the puppies were running loose and jumped up on the plaintiff, Sharon Hower, as she attempted to run into her house carrying her young grandson. She fell to her knees and ruptured her right Achilles' tendon. She later called local authorities, who cited Johnson for violation of a municipal ordinance prohibiting owners from allowing animals to run at large. He was convicted of the offense.

Hower sued Hall and Johnson to recover damages for her injury. She alleged strict liability under Iowa Code section 351.28, negligence, and *res ipsa loquitur*. Hall denied ownership of the dogs. Johnson defaulted. The court denied Hall's motions for directed verdict. Hower presented evidence Hall provided food and water to the dogs in her pen. Hall also was observed at times with the dogs in

her vehicle. The jury returned a verdict in Hower's favor in the amount of \$19,987. It found Hall strictly liable as an owner of the dogs. It also found Hall and Johnson negligent and apportioned fifteen percent of the fault to Hall. She appeals.

Claims on appeal

Hall claims jury instruction 10 misstated the law concerning who is an "owner." She also claims the court erred in allowing Hower to introduce the municipal ordinance because it was irrelevant and its definition of "owner" differed from the definition in the statute and confused the jury. Hall contends the jury's finding she was an owner of the dogs is contrary to the evidence. Finally, Hall asserts the court erred in denying her motions for directed verdict.

Discussion

A. Jury instruction 10.

We review jury instructions for errors of law. *Lovick v. Wil-Rich*, 588 N.W.2d 688, 692 (Iowa 1999). We find reversible error when the instructions given to the jury, viewed as a whole, fail to convey the applicable law. *Benn v. Thomas*, 512 N.W.2d 537, 539 (Iowa 1994). Error in giving a jury instruction does not merit reversal unless the complaining party has been prejudiced. *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co.*, 606 N.W.2d 370, 373 (Iowa 2000).

Jury instruction number 10 on ownership required proof that (1) the dogs were in Hall's possession and (2) Hall "was harboring the dogs on [her] premises as owners usually do with dogs." The instruction added, "'Harboring the dogs' means providing shelter or giving refuge to dogs. You may also consider whether the

Defendant Hall was active in the care and treatment of the dogs." Hall claims the instruction incorrectly defined "owner" under Iowa law. She argues "ownership" requires more than possessing the land on which the dog is kept and "harboring" requires more than providing shelter or refuge. She contends the repeal of the statutory definition of "owner," which was found in Iowa Code section 351.2 prior to 1994, narrowed the definition, citing *Fouts v. Mason*, 592 N.W.2d 33, 36-38 (Iowa 1999). The supreme court discussed ownership at length in *Fouts*, concluding,

The meaning of the word "owner" in section 351.28 is more narrow than its meaning before the 1994 repeal of the section 351.2 definition of "owner," which, as mentioned, included keeping or harboring. The word "owner" in section 351.28 now means legal owner as the court in *Alexander* had concluded. . . .

With the repeal of the statutory definition of "owner," we have come full circle to *Alexander*. As mentioned, in *Alexander*, this court held that while liability is imposed on the legal owner, ownership could be shown by establishing that "the defendant had the dog in his possession and was harboring it on his premises as owners usually do with their dogs." *Alexander [v. Crosby]*, 143 Iowa [50,] 53, 119 N.W. [717,] 718 [(1909)]. Presumably, establishing legal title in these circumstances is not an absolute requirement. Thus, where there is no evidence of legal ownership, the plaintiff can still prove the defendant is the owner of the dog by showing that (1) the dog was in the defendant's possession, and (2) the defendant was harboring the dog on the defendant's premises as owners usually do with their dogs.

Fouts, 592 N.W.2d at 37. Hall argues the repeal of the statutory definition of owner "was to avoid holding one responsible who has a tenant who has a dog, but does not participate in the care and daily maintenance of the dog." Hall successfully sought to have language concerning "care and treatment" of the dogs added to the jury instruction.

Hower argues *Fouts* is distinguishable because Hall and Johnson lived together for seventeen years and Johnson was more than a tenant. She contends

jury instruction 10 correctly sets forth Iowa law concerning ownership for strict liability purposes under Iowa Code section 351.28.

Under the test set forth in *Fouts*, where there is no evidence Hall was the legal owner of the dogs, she still could be found liable as an "owner" if the dog was in her possession and she was harboring the dog on her premises as owners usually do. Jury instruction 10 correctly conveys applicable Iowa law. We find no legal error in giving this instruction to the jury.

B. Municipal ordinance

Next, Hall claims the court erred in admitting the municipal animal control ordinance because it was irrelevant and because its definition of "owner" differs from Iowa case and statutory law and confused the jury.

We review the district court's ruling concerning admission of evidence for correction of errors at law. Iowa R. App. P. 4. "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected,...." Iowa R. Evid. 103(a). . . . A trial court is granted a broad range of discretion concerning the admissibility of evidence.

Bangs v. Maple Hills, Ltd., 585 N.W 2d 262, 265 (Iowa 1998).

The district court admitted Creston City Ordinance Chapter 55 on animal control, which defines owner as any person owning, keeping, sheltering, or harboring an animal. Hall argues the Creston ordinance was adopted for animal control, not the application of Iowa's strict liability statute, therefore, the ordinance is irrelevant and confused the jury concerning the definition of owner. She also argues the term "sheltering" confused the jury.

Hower responds that Hall used the ordinance on cross examination of the Creston police officer and, therefore, cannot show prejudice. Hower also contends

the definition in the ordinance is consistent with *Fouts* and jury instruction 10. In the alternative, Hower argues even if the ordinance was inadmissible, its admission was harmless.

We conclude the district court's admission of Creston City Ordinance Chapter 55 was harmless. The definition of owner in the ordinance is consistent with the instructions to the jury. We see no likelihood of confusion or prejudice.

C. Motions for directed verdict.

Review of the denial of a motion for directed verdict is for correction of errors of law. *Top of Iowa Co-op. v. Sime Farms, Inc.*, 608 N.W.2d 454, 466 (Iowa 2000). The issue is simply whether there was sufficient evidence to generate a jury question. *Federal Land Bank v. Woods*, 480 N.W.2d 61, 65 (Iowa 1992). We view the evidence in the light most favorable to the nonmoving party, regardless of whether or not the evidence was contradicted. *Id.* We also afford the nonmovant every legitimate inference that can reasonably be drawn from the evidence. *Lawrence v. Grinde*, 534 N.W.2d 414, 418 (Iowa 1995). If reasonable minds could differ on resolution of the issue, it should be submitted to the jury. *Beeman v. Manville Corp. Asbestos Fund*, 496 N.W.2d 247, 254 (Iowa 1993).

There is evidence in the record that Hall did more than allow Johnson to keep his dogs in the fenced dog pen she built. She was observed with the dogs in her vehicle. She provided food and water for the dogs in her pen. Johnson owned and registered the mother of the puppies involved in the incident. He registered the puppies later. We conclude there was sufficient evidence in the record to generate

a jury question. Consequently, the district court did not err in denying Hall's motion for directed verdict.

D. Substantial evidence for jury verdict.

Hall raised this issue by filing a motion for new trial and an amended motion for new trial. Review of denial of motions for new trial is for an abuse of discretion. *Riniker v. Wilson*, 623 N.W.2d 220, 230 (Iowa Ct. App. 2000). When reviewing a challenge to the sufficiency of evidence to support the jury's factual findings, we examine the record to determine whether those findings are supported by substantial evidence. *Boham v. City of Sioux City*, 567 N.W.2d 431, 435 (Iowa 1997). If a jury verdict is not supported by sufficient evidence and fails to effectuate substantial justice, a new trial may be ordered. *Bredberg v. Pepsico, Inc.*, 551 N.W.2d 321, 326 (Iowa 1996). Substantial evidence is what a reasonable person would find adequate to reach a conclusion. *Id.* "Evidence is substantial if a jury could reasonably infer a fact from the evidence." *Balmer v. Hawkeye Steel*, 604 N.W.2d 639, 640 (Iowa 2000). Evidence is not insubstantial merely because more than one conclusion can be reached from the evidence presented. *Magnusson Agency v. Public Entity Nat. Company-Midwest*, 560 N.W.2d 20, 30 (Iowa 1997).

Hall claims the evidence introduced at trial does not support the jury's verdict. She argues the jury erred in finding she was an owner of the dogs. She contends she was working out of state and did not have possession or control of the dogs. She denies any responsibility for their care or feeding. Hower introduced evidence at trial that Hall built and maintained the dog pen on her property, put food and water in the pen where the dogs were kept, and was seen with the dogs in her vehicle on

more than one occasion. In our review, we view the evidence in the light most favorable to the verdict, taking into consideration all reasonable inferences the jury may have made. *City of Cedar Falls v. Cedar Falls Community School Dist.*, 617 N.W.2d 11, 16 (Iowa 2000). We conclude there is sufficient evidence in the record from which a jury could find Hall was an owner of the dogs. Therefore the court did not abuse its discretion when it denied Hall's motions for a new trial based on the sufficiency of the evidence to support the jury's verdict.

AFFIRMED.