FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-465 / 92-1387

DEBRA ANN MUSSELMAN,

Appellant,

vs.

SCHNEIDER NATIONAL CARRIERS, INC., and **JAMES WEAVER,**

Appellees.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Plaintiff appeals a jury verdict for defendants in this personal injury action arising from an automobile collision. **AFFIRMED.**

Mary L. McGee, Des Moines, for appellant.

Margaret C. Callahan and Dennis P. Ogden of Belin, Harris, Lamson, McCormick, P.C., Des Moines, for appellees.

Heard by Schlegel, P.J., and Sackett, J., and Keefe, S.J.* Donielson, J., takes no part.

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

KEEFE, S.J. 000438

The evening of January 15, 1991, was very foggy in the Des Moines area. On that evening defendant James S. Weaver was driving a semitrailer for defendant Schneider National Carriers, Inc. Weaver parked the semitrailer at the Schneider facilities located at 1911 N.E. 58th Street. He decided to move the semitrailer to an area at the back of the facility in order to have permits placed on the vehicle. Weaver was unable to turn the truck around inside the Schneider facility because of ice and snow in the parking lot. He then prepared to make a left-hand turn onto 58th Street so he could drive into the Schneider facility by a different driveway and then proceed to the back of the facility.

After checking for traffic, Weaver turned left onto 58th Street. At the same time Weaver was turning onto 58th Street, plaintiff Debra Ann Musselman was approaching eastbound on 58th Street. Musselman first saw the semitrailer through the fog when Weaver had the cab of the semitrailer facing west in the westbound lane and the trailer was passing across the eastbound lane. She was unable to stop before hitting the rear of the semitrailer.

Musselman filed an action against Schneider and Weaver alleging she was injured in the accident and that defendants' actions caused her injuries. Division I alleged defendants were negligent in the operation of the semitrailer. Division II alleged negligence in allowing

ice and snow to remain in the parking lot, which caused Weaver to improperly enter onto 58th Street. Division III alleged negligent entrustment of the semitrailer to Weaver, who operated the truck in a reckless manner.

Defendants filed a motion for summary judgment in regard to Divisions II and III. The district court granted summary judgment to defendants on Division II on the ground that Schneider owed no duty to plaintiff to maintain the premises. The court also found that the ice and snow were not a substantial factor in causing the accident and thus, not a proximate cause of plaintiff's damages. The court granted summary judgment to defendants on Division III on the ground that plaintiff produced no evidence to show Weaver was an incompetent driver or that his actions were reckless. Plaintiff did not appeal the grant of summary judgment on Division III.

The case then proceeded only on Division I. Prior to the trial, defendants filed a motion in limine asking the court to exclude from evidence a statement of Bernie Tweedt, who is an insurance adjuster for Schneider. Plaintiff wanted to present evidence that Tweedt told her defendants were no more than seventy-percent liable. A hearing was held on the motion in limine. The court granted the motion in limine on the ground that the statement was made during the course of negotiations in the case.

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The case was presented to a jury, which returned a verdict for defendants. Plaintiff filed a motion for a new trial claiming the court should not have granted summary judgment on Division II and should not have granted the motion in limine. The court denied the motion for new trial. The court found summary judgment was proper. The court also found the alleged statement by Tweedt was properly excluded. In addition, the court noted plaintiff had failed to preserve error by making an offer of proof concerning Tweedt's statement. Plaintiff appeals.

I. Plaintiff contends the district court should not have granted summary judgment on Division II of its petition. Plaintiff claims the accumulation of ice and snow on the parking lot was a proximate cause of her injuries. She states that if the ice and snow had not been present Weaver would have been able to turn the semitrailer around within the Schneider facility and he would not have been present on 58th Street at the time she approached the Schneider facility. She reasons that but for the ice and snow on the parking lot, the accident would not have occurred.

In considering the district court's grant of a motion for summary judgment, our scope of review is whether genuine issues of material fact exist and whether the law was applied correctly. Stanfield v. Polk County, 492 N.W.2d 648, 649 (Iowa 1992). On appeal, we examine the record in the light most favorable to the party opposing

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the motion to determine if the movants have met their burden. Shaw v. Soo Line R.R. Co., 463 N.W.2d 51, 53 (Iowa 1990). Summary judgment is appropriate where there is no material fact in issue and the moving party is entitled to judgment as a matter of law. Id.

A prerequisite to establishing a claim of negligence is the existence of a legal duty. Id. Whether a duty arises out of the parties' relationship is always a matter of law for the court. Id. The supreme court has previously determined that an abutting landowner has no duty to motorists to prevent hazards on its property which do not cause an obstruction of the traveled way Fritz v. Parkison, 397 N.W.2d 714, 717 (Iowa 1986). Plaintiff has not alleged the ice and snow on Schneider's parking lot caused any obstruction of 58th Street. Thus, as a matter of law, defendants had no duty to plaintiff, as a motorist on 58th Street, to remove the ice and snow from its parking lot.

Also, we conclude that as a matter of law the ice and snow on the parking lot were not a proximate cause of plaintiff's damages. Proximate causation presents the question of whether the policy of the law will extend responsibility to those consequences which have in fact been produced by an actor's conduct. Kelly v. Sinclair Oil Corp., 476 N.W.2d 341, 349 (Iowa 1991). The general rule is that an actor's conduct is a proximate or legal cause of harm to another if the conduct is a "substantial factor" in

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bringing about the harm. Id. We determine the ice and snow on Schneider's parking lot were not a "substantial factor" in bringing about the harm to plaintiff.

We affirm the district court's grant of summary judgment to defendants on plaintiff's Division II.

II. Plaintiff contends the district court should not have granted the motion in limine to exclude the statement of Bernie Tweedt. Plaintiff admits she did not make an offer of proof concerning the alleged statement. However, she claims such an offer was not necessary in order to preserve error because the substance of the evidence was before the court.

Generally, a ruling sustaining a motion in limine is not a ruling on the evidence; the ruling merely adds a procedural step to the offer of evidence. Johnson v. Interstate Power Co., 481 N.W.2d 310, 317 (Iowa 1992). If the evidence is not offered, there is nothing preserved to review on appeal. Id.; Johnson v. State Farm Auto. Ins. Co., 504 N.W.2d 135, 138 (Iowa App. 1993).

An exception exists where a motion in limine is granted on a hearing which is evidentiary in nature, the court is completely advised of the factual situation, and nothing occurs at trial to change the status. State v. Langley, 265 N.W.2d 718, 720 (Iowa 1978). The exception applies where the trial court's ruling is an unequivocal holding on the evidentiary issue raised. Kalell v. Peterson, 498 N.W.2d 413, 415 (Iowa App. 1993) (quoting State v. Harlow, 325 N.W.2d 90, 91 (Iowa 1982)).

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We determine the present situation does not come within the exception to the general rule. There was a hearing on the motion, but it was not evidentiary in nature. Neither plaintiff nor Tweedt testified about the alleged statement. The only evidence of the statement came from plaintiff's trial counsel, Michael McMurry. We find this is insufficient to completely advise the trial court of the factual situation concerning the alleged statement.

We conclude an offer of proof was necessary to preserve error in this case. Because plaintiff did not make an offer of proof, there is nothing preserved for us to review on appeal.

III. Finally, plaintiff contends the district court should have granted her motion for a new trial. As noted above, plaintiff's motion for a new trial raised the same two issues raised here on appeal. Our reasons for affirming the district court are discussed in this opinion. We determine the district court did not abuse its discretion in denying the motion for new trial on these same issues. See Iowa R. App. P. 14(f)(3) (In ruling upon a motion for new trial, the trial court has broad, but not unlimited, discretion).

We have affirmed the district court on all issues raised in this appeal. Costs of the appeal are assessed to plaintiff.

AFFIRMED.