

IN THE COURT OF APPEALS OF IOWA

No. 4-499 / 93-1666

FILED

JAN 23 1995

CLERK SUPREME COURT

LYMAN TWING,

Appellant,

vs.

JOSEPH STEVEN GODFIRNON and
McMULLEN BROTHERS, INC.,

Appellees.

Appeal from the Iowa District Court for Scott County,
John A. Nahra, Judge, and Margaret S. Briles, Senior Judge.

Twing appeals the district court order granting
defendants renewed motion for summary judgment in his
negligence action. **AFFIRMED.**

G. Trent Marquis and William N. Hughet of Klockau,
McCarthy, Ellison & Marquis, P.C., Rock Island, Illinois,
for appellant.

Jean Dickson Feeney, Greg A. Egbers, and Vicki L. Seeck
of Betty, Neuman & McMahon, Davenport, for appellee.

Heard by Hayden, P.J., and Habhab and Huitink, JJ.

RECEIVED

HUITINK, J.

Lyman Twing appeals a district court order granting defendants renewed motion for summary judgment in his negligence action. We affirm.

Joseph Godfirnon was operating a semitractor truck and trailer owned by McMullen Brothers, Inc. on Interstate 280 when he traveled into the median and crashed into metal rebar materials used for concrete reinforcement. This collision caused the rebar to become bent and twisted. Two days later, Twing sustained injuries to his eye, head, and body while working on cutting the coiled rebar which sprung from its twisted position and struck him.

Twing filed suit against Godfirnon and McMullen Brothers, Inc., (defendants) for extreme physical and emotional pain, suffering, and discomfort, and for lost wages. Twing alleged Godfirnon's negligent driving, which caused the rebar damage, was the proximate cause of Twing's injuries. Defendants' motion for summary judgment was denied. Defendants filed a timely motion to reconsider which was considered at trial, after Twing's opening statement. No evidence had been presented. Defendants contended they did not owe a duty of care to Twing and that their alleged negligence was not a proximate cause of Twing's injuries. The district court granted the motion, mischaracterizing it as a directed verdict, and entered judgment in favor of defendants.

CONFIDENTIAL

Our review is for corrections of errors at law. Iowa R. App. P. 4. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423; Gott, 387 N.W.2d at 343. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e). The language of our rule and case law are substantially similar or identical to that of rule 56 of the Federal Rules of Civil Procedure, see,

e.g., Matsushita Elec. Indust. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-88, 106 S. Ct. 1348, 1355-56, 89 L. Ed. 2d 538, 551-53 (1986), from which we may draw for guidance in interpreting our own rule, Sherwood, 179 N.W.2d at 339.

Twing contends the district court erred in ruling there was no issue of material fact on the issue of duty. He argues Godfirnon owed a duty to exercise ordinary care while driving and this duty extended to construction workers who come upon any hazardous condition caused by Godfirnon's negligence, at any point in time. We disagree.

In order to establish negligence, a recognized legal duty must exist that is owed the injured party by the alleged wrongdoer. Fiala v. Rains, 519 N.W.2d 386, 388 (Iowa 1994) (citations omitted). An actionable duty is a legal obligation imposed on one individual for the benefit of another person or particularized class of persons. Sankey v. Richenberger, 456 N.W.2d 206, 209 (Iowa 1990). "[T]he relationship giving rise to a duty of care must be premised on foreseeability of harm to the injured person." Id. "The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension." Palsgraf v. Long Island Ry., 248 N.Y. 339, 344, 162 N.E. 99, 100 (1928). "The law's standard is reasonable foresight, not prophetic vision." Bain v. Gillespie, 357 N.W.2d 47, 49 (Iowa App. 1984). Whether a duty arises out of the parties' relationship is always a matter of law for

the court. Shaw v. Soo Line R.R., 463 N.W.2d 51, 53 (Iowa 1990) (citations omitted).

An operator of a motor vehicle has a common-law duty to exercise ordinary care under the circumstances. Matuska v. Bryant, 150 N.W.2d 716, 720 (Iowa 1967). Iowa Code section 321.288(6) imposes the statutory duty that:

A person operating a motor vehicle shall have the vehicle under control at all times and shall reduce the speed to a reasonable and proper rate:
(6) When approaching and passing through a sign posted construction or maintenance zone upon the public highway.

The scope of both the common-law and statutory duties is limited by the foreseeability of harm to the injured person.

It is clear Godfirnon had a duty to the other drivers and those highway workers in the area of construction at the time of the accident. It was foreseeable those drivers and highway workers present might be injured as a result of his collision with the pile of metal rebar.

However, it was not foreseeable that the metal rebar would spring back and strike Twing two days later while he was engaged in his normal routine of cutting the rebar for removal. Because Twing's injuries were not foreseeable, no relationship giving rise to a legal duty existed.

We, like the district court, determine there was no duty as a matter of law. The district court judgment is affirmed, and costs of this appeal are assessed to Twing.

AFFIRMED.