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IN THE COURT OF APPEALS OF IOWA

**MERLE E. MARTIN and
VELDA MARTIN,**

Appellees,

VS.

**HARLEY F. BARRETT, individually,
and BARRETT FURNITURE COMPANY,**

Appellants.

Filed August 31, 1978

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2-60152

Appeal from Delaware District Court - Karl Kenline, Judge.

Defendants appeal trial court's award of \$4,348 to plaintiffs for fire damage to their property allegedly resulting from defendants' negligence and improper use of an easement. **AFFIRMED.**

Raymond R. Stefani, of Silliman, Gray & Stapleton, of Cedar Rapids, counsel for appellants.

Robert R. Rush, of Terpstra, Wilkinson & VanHorne, of Cedar Rapids, and David Tracey, of Tracey & Tracey, of Manchester, counsel for appellees.

Submitted to Donielsor, Acting C. J., Snell, Oxberger and Carter, JJ.

DONIELSON, Acting C. J.

In this law action which was tried to the court, defendants, Harley F. Barrett and Barrett Furniture Company, grantees of an easement over property owned by plaintiffs-grantors, Merle E. and Velda Martin, appeal the court's award of \$4,348 to plaintiffs for fire damage to their property which allegedly resulted from defendants' negligence and improper use of the easement. Defendants contend that the trial court erred in (1) overruling their motion for directed verdict and making certain findings on the issue of proximate cause; (2) applying the doctrine of *res ipsa loquitur*; and (3) finding that defendants breached their duty to plaintiffs by using the storage area where the fire originated contrary to the terms of the easement and by failing to properly maintain the property subject to the easement.

Defendant-Harley Barrett owns and operates a furniture store immediately adjacent to plaintiffs' property. The Martin property is subject to a written easement which grants defendants the right of ingress and egress to the back of the store and provides that defendants may "construct and erect a platform for loading and unloading purposes thereon." Barrett constructed and maintained a storage shed on the property subject to the easement, in which were stored waste materials and various items used in connection with the business.

On January 15, 1974, according to the testimony of Douglas Palmer, Manchester Fire Chief, a fire started in the storage shed and spread to the Martin property, resulting in fire, smoke and water damage. He stated that he had no opinion as to the exact cause of the fire and didn't know whether it could have resulted from the ignition of some kind of flame. However, he ruled out arson, electrical wiring problems, and chemical reactions as possible causes of the fire.

Richard Hart, an officer and stockholder of the furniture company, testified that on the day of the fire numerous items, including chairs, blankets, brooms, stepladders, corrugated cartons, waste material and "Christmas garlands" made of an evergreen-type material, were being stored in the shed, and that it was not uncommon for the company to store boxes of waste material there. He conceded that no special precautions were taken in storing the garlands and waste materials. Hart, a smoker, also testified that he was most likely the only person in the storage area the morning of the fire and that he

walked through the area at approximately 11:15 a.m. The fire was reported at approximately 11:28 a.m.

Fire Chief Palmer testified that evergreen garland is highly flammable and burns with "almost explosive speed." Accordingly, he expressed the opinion that the evergreens in the shed contributed to the fire or the speed with which it spread. He also stated that in the space designated "cause of fire" in his report filed with the State Fire Marshal, he wrote "Poor housekeeping contributed but actual cause I do not know."

I. Rulings Concerning Proximate Cause

A. Defendants contend that the trial court erred in overruling their motion for directed verdict because the evidence was insufficient to establish that their actions served as the proximate cause of the fire. Initially, defendants correctly observe that since this action was tried to the court without a jury, the motion should have been labeled a motion to dismiss. However, since a motion to dismiss during trial is equivalent to a motion for directed verdict, this misnomer is not material. *B & B Asphalt Co. v. T. S. McShane Co.*, 242 N.W.2d 279, 281 (Iowa 1976). Because the two motions are equivalent, the principles which govern our consideration of the propriety of a directed verdict are equally applicable here.

When presented with a motion for directed verdict, both the trial court, which in this case served as the trier of fact, and this court must view the evidence in the light most favorable to the party against whom the motion is made, whether the evidence is contradicted or not. Rule 14(f)(2), Rules of Appellate Procedure. If reasonable minds might draw different inferences from the facts, a factual question is engendered and the motion to direct the verdict should be overruled. Rule 14(f)(17), R. App. P. A movant for a directed verdict must be considered as admitting the truth of all evidence offered by the adverse party and every favorable inference which may be fairly and reasonably deducted must be carried to the aid of the evidence. *Prestype Inc. v. Carr*, 248 N.W.2d 111, 118-119 (Iowa 1976); *Oak Leaf Country Club, Inc. v. Wilson*, 257 N.W.2d 739, 744 (Iowa 1977). Our function in this case is to review the evidence only to determine whether it is sufficient to warrant the submission of the question of defendants' negligence to the court as trier of fact. See *Meeker v. City of Clinton*, 259 N.W.2d 822, 828 (Iowa 1977).

Generally, questions of negligence, contributory negligence and proximate cause are matters for the trier of fact and it is only in exceptional cases that they may be decided as matters of law. See rule 14(f)(10), R. App. P. In describing proximate cause, the supreme court has stated that an actor's negligent conduct is a legal cause of harm to another if (1) his conduct is a substantial factor in bringing about the harm and (2) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm. *McCleary v. Wirtz*, 222 N.W.2d 409, 413 (Iowa 1974). With respect to this case, the law is clear that negligence cannot be inferred from the mere happening of a fire. *Northwestern Nat. Ins. v. Raid Quarries Corp.*, 249 N.W.2d 640, 644 (Iowa 1977); see *Ellingson v. Kramer*, 255 Iowa 1257, 1262-1263, 125 N.W.2d 777 (1964).

After reviewing the entire record, we conclude that the evidence was sufficient to permit the inference that defendants' actions served as the proximate cause of the fire. Consequently, the trial court did not err in overruling the motion for "directed verdict."

B. Defendants also urge that because of the insufficiency of the causal evidence, the findings of the trial court on this issue are erroneous. However, their argument is essentially premised upon a semantical dispute with the language contained in the findings of fact.

In a law action, the findings of fact of the trial court have the force of a jury verdict and are binding upon us if supported by substantial evidence. Rule 14(f)(1), R. App. P.; *Vanous v. City of Cedar Rapids*, 255 N.W.2d 334, 335 (Iowa 1977). Furthermore, the evidence is viewed in a light most favorable to the judgment and in case of ambiguity we construe to uphold rather than defeat it. *Northwestern Nat. Ins. v. Raid Quarries Corp.*, supra, at 642. Although the trial court might have been more technically precise in its selection of language concerning the causation question, we cannot say that the findings are not supported by substantial evidence. We find no error.

II. Applicability of Doctrine of Res Ipsa Loquitur

Defendants claim that since the precise cause of the fire is unknown, the trial court erred in applying the doctrine of *res ipsa loquitur*. Under this doctrine, where (1)

injury is caused by an instrumentality under the exclusive control of defendant, and (2) the occurrence is such as in the ordinary course of things would not happen if reasonable care had been used, the happening of the injury permits but does not compel an inference that defendant was negligent. *Wiles v. Myerly*, 210 N.W.2d 619, 624 (Iowa 1973); *Oak Leaf Country Club, Inc. v. Wilson*, supra, at 743. Although the mere occurrence of a fire with resultant injuries does not permit an inference of negligence, where the circumstances under which the fire originated and spread are such as to show that defendants or their servants were negligent in connection therewith, the doctrine may apply. *Northwestern Nat. Ins. v. Raid Quarries Corp.*, supra, at 644; *John Roof & Sons, Inc. v. Winterbottom*, 249 Iowa 122, 132-133, 86 N.W.2d 131 (1957).

In *Wilson v. Paul*, 176 N.W.2d 807, 809 (Iowa 1970), a case in which the supreme court upheld the application of the doctrine, the evidence regarding the cause of the fire was largely circumstantial. The court stated that where circumstantial evidence is involved, it must be such as to make plaintiff's theory of causation reasonably probable, not merely possible, and more probable than any other theory based on such evidence. It is not necessary for the testimony to be so clear as to exclude every other possible theory. *Id.*

The evidence concerning causation in the instant case was also largely circumstantial. As such, it was for the trier of fact to determine the sufficiency of such evidence. Rule 14(f)(16), R. App. P. Both Barrett and Hart testified that at all times the shed was under the exclusive control of defendants. Further, there was no evidence indicating a reasonable alternative explanation for the fire.

In deciding to apply the doctrine, the trial court effected a factual determination on this issue. After reviewing the record, we conclude that sufficient evidence exists to support that determination. See *Northwestern Nat. Ins. v. Raid Quarries Corp.*, supra, at 645.

III. Breach of Duty Regarding the Easement

A. Defendants assert that the trial court erred in concluding that they breached their duty to plaintiffs by using the property where the fire originated contrary to the specific terms of the easement. The law is settled that an easement, whether created by express written grant, implication or prescription, is limited to the

purpose for which it was created and its enjoyment may not be increased or extended without the consent of the owner of the servient estate, i.e., the Martin property. *Halsrud v. Brodale*, 247 Iowa 273, 278, 72 N.W.2d 94 (1955); *Presbyterian Church v. Harken*, 177 Iowa 195, 205, 158 N.W. 692 (1916); see 28 C.J.S. Easements § 73 at p. 751 (1951). Where an easement has been created and granted for a particular use and purpose, it cannot be changed by the grantee to another through like use, nor can the grantee increase the amount or extent of such use beyond what was originally intended and embraced in the grant. *Halsrud v. Brodale*, supra. Consequently, where an easement is created by express grant, the extent of the right acquired depends upon the terms of the grant properly construed. If this grant is specific in its terms, it is decisive of the limits of the easement. See 28 C.J.S. Easements, supra, § 75 at p. 752; 25 Am. Jur. 2d Easements and Licenses § 73 at p. 479 (1966); *Brossart v. Corlett*, 27 Iowa 288, 297 (1869); *McDonnell v. Sheets*, 234 Iowa 1148, 1155-1157, 15 N.W.2d 252 (1944); *cf. Kahl v. Clear Lake Methodist Camp Ass'n.*, 265 N.W.2d 622, 624-625 (Iowa 1978).

The specific purpose of the easement in question, as found by the trial court, was to allow defendants the right of ingress and egress to the back of the store and to permit them to construct a platform for loading and unloading. This finding is entirely consistent with the express language of the grant contained in the easement. We refuse to accept defendants' interpretation that the construction and maintenance of the storage shed was a permissible, reasonable and incidental use consistent with the general terms of the easement. The specific language of the grant precludes such an interpretation.

Defendants had the right to use the easement only in the manner and for the purposes it was intended to serve. *Wiegmann v. Baier*, 203 N.W.2d 204, 209 (Iowa 1972); see *Hagenson v. United Tel. Co. of Iowa*, 209 N.W.2d 76, 83 (Iowa 1973). However, they were not authorized to use it in a way which burdened the servient estate to a greater extent than was contemplated at the time of the creation of the easement. *Brossart v. Corlett*, supra; *Schwartz v. Grossman*, 173 N.W.2d 57, 59-60 (Iowa 1969). As holders of the dominant estate defendants are liable for any damages resulting from an improper use of the easement. *Halsrud v. Brodale*, supra, at 282; see 28 C.J.S. Easements, supra, § 93 at p. 773. The trial court correctly concluded that defendants used the storage

area contrary to the terms of the easement and were liable for the damages resulting therefrom.

B. Finally, defendants assert that the court incorrectly concluded that they had breached their duty to plaintiffs by failing to maintain the area subject to the easement in such a manner as to avoid damage to the servient estate. Where, as here, the easement is used and enjoyed for the benefit of the dominant estate alone, the holder of the dominant estate has a duty to keep it in proper condition so that no unnecessary damage will result to the servient estate from its use. See *Kepler v. Border*, 179 Iowa 318, 323, 161 N.W. 302 (1917); *Hastings v. Chicago, R. I. & P. Ry. Co.*, 148 Iowa 390, 395-396, 126 N.W. 786 (1910); 28 C.J.S. Easements, supra, § 94 at pp. 773-774. This duty to repair and maintain is apparently not eliminated even if the damages occurred for some unknown reason. See *Nixon v. Welch*, 238 Iowa 34, 41-43, 24 N.W.2d 476 (1946); *Bina v. Bina*, 213 Iowa 432, 436-438, 239 N.W. 68 (1931).

Defendants breached this duty by storing highly flammable items and waste material in the shed and by failing to take special precautions for the safety of the area covered by the easement. Consequently, plaintiffs are entitled to relief on the basis of our holding in division III alone even if, *arguendo*, the court erred in applying the *res ipsa loquitur* doctrine. The judgment of the district court is affirmed.

AFFIRMED.