

FILED

MAR 09 1988

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WILLIAM S. BAIRD,

Plaintiff-Appellant,

vs.

**DONALD V. SHAWHAN, d/b/a
MAR-SAN TRAILER COURT,**

Defendant-Appellee.

Filed March 9, 1988

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7-447
87-401

Appeal from the Iowa District Court for Polk County (CL 86-38753), Ray
A. Fenton, Judge.

Plaintiff appeals the rulings of the district court which directed a verdict
in favor of defendant and rejected plaintiff's motion for a new trial. **AFFIRMED.**

Michael Burdette and Joseph B. Joyce of Adler, Brennan, Joyce and Steger,
Des Moines, for plaintiff-appellant.

Robert N. Helmick and William F. Fanter of Bradshaw, Fowler, Proctor
and Fairgrave, Des Moines, for defendant-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Plaintiff, William Baird, appeals the rulings of the district court which directed a verdict in favor of Defendant, Donald Shawhan, d/b/a Mar-San Trailer Court (Shawhan), and rejected Baird's motion for a new trial. Baird asserts there was sufficient evidence in the record to engender jury questions on his claims.

The incident giving rise to this action occurred on August 18, 1985, on the premises of the trailer court owned by Shawhan. Baird, who resided at the trailer court, was visiting a neighbor to look at a car the neighbor wanted to sell. While Baird and his neighbor were outside discussing the possible sale of the car, one Cliff Johnson drove up to them in his truck. Johnson was the stepson of Shawhan's brother, who lived at the trailer park and collected the rent checks, and with whom Johnson had stayed several weeks at a time over the past four years. Johnson was accompanied in his truck by two women and was obviously intoxicated. He asked Baird if he (Baird) wanted to join them. Baird replied no and said, "You need somebody thirty-eight." Johnson then said, "You say you got a .38?" Baird replied, "No, I don't have no .38." At this point, Johnson got out of his truck and became verbally and physically abusive. As he was pushing Baird, Johnson said his uncle (Shawhan) was out of town, he was in charge, and he would "make it rough" for Baird. Johnson then pushed Baird into the neighbor's trailer and began beating him. The two women also entered the neighbor's trailer and hit Baird. The police finally arrived and Johnson and the women fled.

Baird thereupon brought this action against Shawhan, contending he was liable for Johnson's actions as an employee or, in the alternative, that Shawhan negligently failed to take reasonable precautions to prevent the allegedly foreseeable criminal conduct on his premises. The district court granted Shawhan's

motion for a directed verdict after both parties presented their evidence. This appeal followed.

In determining whether the evidence in this case engendered jury questions, we apply the following principles, as stated in Oberreuter v. Orion Industries, Inc., 398 N.W.2d 206 (Iowa App. 1986):

We view the evidence in the light most favorable to the nonmoving party, regardless of whether such evidence is contradicted, to determine if reasonable minds could differ on the issue. Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443, 444 (Iowa App. 1984). If reasonable minds can differ on this issue, it is one for the jury. Mid-Country Meats v. Woodruff-Evans Construction, 334 N.W.2d 332, 335 (Iowa App. 1983).

A directed verdict is appropriate in cases where each element of the claim is not supported by substantial evidence. Kurth v. Van Horn, 380 N.W.2d 693, 695 (Iowa 1986). In addition, any issue without evidentiary support should not be submitted to the jury for determination. Dutcher v. Lewis, 260 N.W.2d 404, 406 (Iowa 1977). A mere scintilla of evidence is not sufficient to require denial of a motion for directed verdict. Petersen v. Farmers Casualty Co., 226 N.W.2d 226, 232 (Iowa 1975). The trial court is vested with considerable discretion in determining whether evidence is sufficient to submit it to the jury. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376, 383 (Iowa 1975).

Id. at 209.

The only evidence supporting Baird's contention Johnson was Shawhan's employee was Johnson's statement, made while clearly intoxicated, that "he was in charge," and Baird's testimony that Johnson had harassed tenants before by making them move their cars. There was no evidence at trial that Shawhan had ever hired Johnson, received work from Johnson, or paid Johnson. We conclude the trial court did not abuse its discretion by determining this scant evidence did not engender a jury question on the employment issue.

Similarly, Baird only offered a scintilla of evidence to prove his premises liability claim. The only evidence relating to the foreseeability of criminal conduct on Shawhan's premises was there had been "frequent" fights and disruptions, some of which required police intervention. There was no evidence of

the approximate number of fights or disruptions, or the circumstances surrounding any of them. Nor was there evidence of the approximate number of police visits or of the necessity for those visits. In short, Baird's evidence of foreseeability was highly speculative since it was not even clear whether these disruptions were domestic disputes, arguments between neighbors, or the result of third party criminal conduct. In any event, there was no evidence Johnson had ever been involved in a fight before. Under these circumstances, we conclude the trial court did not abuse its discretion by determining a jury question was also not engendered on the premises liability issue.

AFFIRMED.

Schlegel, J., concurs; Donielson, P.J., dissents.

DONIELSON, P.J. (dissenting)

I respectfully dissent. Viewing the evidence in a light most favorable to plaintiff, I find that reasonable minds could differ on whether Johnson was Shawhan's employee. Johnson indicated he was an employee of defendant's by stating on the night in question that he was "in charge" and by telling the other tenants on prior occasions that he was the boss. Johnson was the stepson of defendant's brother and had lived in the trailer court approximately three years; the trailer where Johnson lived served as defendant's office where the tenants delivered their rent checks. In my opinion, there was enough evidence to engender a jury question.