

FILED

MAY 20 1977

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOHNNIE E. STENDER,	)	
Appellant,	)	Filed May 20, 1977
vs.	)	
HUBERT JACKSON, d/b/a	)	
JACKSON MOTORS, VAIL,	)	77
IOWA: McDONOUGH POWER	)	-----
EQUIPMENT, INC., McDONOUGH,	)	No. 2-58046
GEORGIA,	)	
Appellees.	)	

Appeal from Crawford District Court -- Lawrence W.
McCormick, Judge

The trial court sustained a motion for a directed verdict
in a case involving strict liability. - REVERSED

Wunschel Law Firm, P.C., of Carroll, Russell S. Wunschel,
counsel for appellant.

Kurth & Bunger, of Carroll, Darwin Bunger, counsel for
appellees.

Submitted to Allbee, C. J., Donielson, Snell, Oxberger
and Carter, JJ.

DONIELSON, J.

The plaintiff-Stender sustained a severe hand injury while using a riding lawn mower. He now appeals a judgment entered by the court's ruling sustaining defendant's motion for a directed verdict. The plaintiff claims that the trial court erred in sustaining the directed verdict on strict liability and that the evidence was such that reasonable minds could differ.

The plaintiff testified at the trial that he was using a lawn mower to mow around his garden. He stopped the mower, disengaged the mower blade, put the transmission in neutral and slowed the engine to idle. He then got off the mower to pull some weeds. Several minutes later, in trying to move the mower around some plants, he attempted to manually move the mower to one side. While doing so, he put his right hand underneath the mower and his fingers were badly cut by the blade. An expert witness, a mechanical engineer, called by Stender testified that in his expert opinion: (1) the mower had not been functioning properly; (2) that it was not manufactured in a safe manner; (3) that it did not have a safe design; (4) that it violated the principle of good design; and (5) that the mower manufacturer violated the standards and guidelines for lawn mower manufacturing.

The trial court in granting a directed verdict, found that the plaintiff's acts were something that was not foreseeable by the defendant, and as a result, the plaintiff was misusing the product at the time of the injury.

We note in *Hawkeye Security Insurance Co. v. Ford Motor Co.*, 199 N.W.2d 373, 381 (Iowa 1972) that the trial court required the plaintiff to establish that the product was used in a manner reasonably to be expected by the manufacturer.

However, this requirement was eliminated by *Kleve v. General Motors Corporation*, 210 N.W.2d 568 (Iowa 1973). See also Iowa Uniform Jury Instructions No. 24.4. In *Kleve, supra*, at 571, the court stated:

"Additionally, the phrase 'defective condition unreasonably dangerous to the user or consumer or to his property' found in Restatement, Second, Torts, §402A means the defect in a product not contemplated by the user or consumer which would be unreasonably dangerous to him in the normal and innocent use or consumption thereof. See Restatement, Second, Torts, §402A, comment (h); *Farr v. Armstrong Rubber Co.*, 288 Minn. 83, 179 N.W.2d 64, 68-69 (1970); 20 Drake L. Rev. at 541-543. See also Annot., 13 A.L.R.3d 1057, 1077-1080."

Consequently, the trial court erred in sustaining the motion for a directed verdict in considering whether the manufacturer reasonably could foresee the defendant would put his hand under the mower. *

* Appendix at 26, 27

"In connection with the first division--that is, the one that's based on Strict Liability--the plaintiff is required to show that at the time of the accident he was using the mower in a reasonably foreseeable manner--that is, reasonably foreseeable by the defendants-- and he may introduce evidence that he was using the product in an ordinary manner and for the purpose it was intended. But the evidence in this case shows that the plaintiff was not doing so when he attempted to move the mower by placing his hand under the blade guard. In other words, it's my belief that this was not a use that is intended by the manufacturer or the seller; and, particularly, the manufacturer has made this a mobile machine capable of moving itself; and it was not intended to be moved in the manner that the plaintiff attempted to use it. And it's my conclusion that in fairness to the defendants, who have rights here the same as the plaintiff, that it has not been shown that what the plaintiff was doing at that time was something that was reasonably foreseeable by the defendant in the manufacture of the machine or by the retailer in the sale of the machine."

Any defense of misuse must be based on whether the defect in the product is not contemplated by the user or consumer which would be unreasonably dangerous to him in normal and innocent use or consumption pursuant to *Kleve, supra*. We hold that the alleged misuse relating to this standard is a matter for the trier of fact and should have been submitted to the jury accordingly.

We find, given the standard of 344(f)(2), Rules of Civil Procedure, and *Schiltz v. Cullen-Schiltz & Associates, Inc.*, 228 N.W.2d 10, 17 (Iowa 1975), the plaintiff established a cause of action in strict liability sufficient to generate a jury question. It is for the jury to decide whether the plaintiff's strict liability claim is with merit or whether there has been misuse of the product.

We, therefore, reverse the trial court's ruling.

Since the appeal has been reversed, we need not discuss the appellant's other assigned errors for reversal.