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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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PRIMUS HOMES, INC.,	)	Filed March 20, 1984
Plaintiff-Appellees,	)	
vs.	)	4-77 83-1176
A-1 INSULATION, INC.,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Linn County—William R. Eads, Judge.

Defendant appeals from the grant of a new trial in an action seeking damages based on theories of negligence and breach of an implied warranty of fitness for a particular purpose. AFFIRMED.

Richard P. Moore of Moyer & Bergman, Cedar Rapids, for defendant-appellant.

John H. Ehrhart of Fisher, Martin, Ehrhart & McCright, Cedar Rapids, for plaintiff-appellee.

Heard by Oxberger, C.J., and Hayden, and Sackett, JJ.

Defendant, A-1 Insulation, appeals from the grant of a new trial in an action seeking damages based on theories of negligence and breach of implied warranty. We affirm.

I. Motion for a New Trial

Motions for new trials can be granted pursuant to Iowa Rule of Civil Procedure 244(f) if a jury verdict is not sustained by sufficient evidence. Likewise, a trial court can grant a new trial when the verdict fails to effectuate substantial justice. Thompson v. Rozeboom, 272 N.W.2d 44, 446 (Iowa 1978). Generally, a trial court has broad discretion in passing on motions for new trials and only when there is a clear abuse of that discretion will we interfere with a ruling upon the motion. Id. at 446. However, a court has no right to set aside a verdict just because it might have reached a different conclusion. Lubin v. Iowa City, 257 Iowa 383, 385, 131 N.W.2d 765, 767 (Iowa 1964).

In this case the trial court stated that "the verdict is contrary to the weight of the evidence and did not do substantial justice." The trial court gave no specific reasons why it had granted the motion except to say that "the weight of the evidence relative to liability favored Plaintiff's cause."

When a trial court grants a new trial in the interest of justice, there must be some reason that fairly appears in the record. Northrup v. Miles Homes, Inc., 204 N.W.2d 850, 861 (Iowa 1973). A review of the record shows that there is no dispute that a leaking pipe that had frozen and cracked caused the water damage to the house. Subsequent to the discovery of the leaking water, a gap in the insulation was found. All parties agree that the gap was large enough to cause the freezing of this pipe. Irv Waters, one of A-1's owners, testified that he had not personally done this job, that he had hired an employee to do it, that he did not know what the insulation was like when the employee finished the job, but that later on there was a gap in the insulation. He also stated that there was nothing else that

Primus should have done to prevent this problem, subsequent to the time the insulation work was finished.

Waters also indicated that even though he thought the insulation was in place at the time it was installed, there was "a possibility, stronger than a possibility" that A-1 was in some way at fault. Waters testified that the only thing unusual about this house was the vent pipe. He acknowledged that it was his decision to place the insulation on the outside of the pipe, as opposed to staying inside the wall. Waters further acknowledged that the insulation used was pre-cut insulation to a standard size of ninety-four inches long, which allowed for an extra inch and three-eighths over the stud length. The vent pipe was two inches in diameter. Waters agreed that in order to go around that vent pipe extra insulation was going to be used up. However, he admits that he did not cut any longer insulation lengths for that job.

The trial judge could have found that the only logical cause for the frozen pipes was the gap caused by the shortened insulation necessitated by the decision to go outside of the pipe instead of inside. The physical facts of this case indicate that it is an impossibility to stretch pre-cut insulation to accommodate the extra distance around the pipe. It follows that there had to be a gap somewhere and that the gap allowed cold air into the vanity cavity housing the water pipes. Further evidence revealed that there were three furnaces in the house. They were all operating at or above sixty degrees. When the cracked pipe was located inside the bathroom vanity cavity there was a considerable amount of ice in the cavity and a lot of cold air coming through that area.

In our review, we need only find some basis in the record for the granting of a new trial. Thompson v. Rozeboom, 272 N.W.2d 444, 447 (Iowa 1978). We believe the foregoing evidence provides such a basis. We cannot say that there was no reasonable ground for the trial court to believe the jury reached an unjust result

which may be obviated upon a second trial. See Riley v. Wilson Concrete Co., 184 N.W.2d 689, 690 (Iowa 1971). Therefore, we do not find a clear abuse of discretion by the trial court as is required before we will interfere with a grant of a new trial. See In re Marriage of Johnson, 311 N.W.2d 697, 699 (Iowa Ct. App. 1981).

We do not reach the issue of whether a trial court should be required to point to something in the record to support its view that a fair trial was had, since we are convinced that there was sufficient basis in the record for the ruling. However, we do note that it would have been helpful to us on appeal had the trial court explained its rationale.

AFFIRMED.