FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-68 / 88-1551

CHARLES L. FISHER, BRENDA L. FISHER, and **BRENDA L. FISHER** as Natural Parent, Legal Guardian and Next Friend of **TIFFANY FISHER** and **SUZANNE FISHER,**
Plaintiffs-Appellees,

vs.

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KELLER INDUSTRIES, INC,
Defendant-Appellant,

and

R. C.'S HARDWARE, INC.,
Defendant.

Appeal from the Iowa District Court for Clay County, James L. McDonald, Judge.

Plaintiff Charles Fisher brought this tort action seeking damages for injuries caused by a fall from a ladder manufactured by defendant Keller Industries, Inc. The district court entered judgment on a jury verdict against Keller. Keller appeals. It claims the court erred in: 1) refusing to admit written answers to two interrogatories into evidence; 2) refusing to instruct the jury the interrogatory answers could be considered for any purpose; 3) refusing to instruct the jury on its alternative defenses; and 4) overruling Keller's hearsay objection to a certain exhibit. **AFFIRMED.**

John T. Wardrope of Purcell & Wardrope, Chicago, Illinois, and David A. Scott of Cornwall, Avery, Bjornstad & Scott, Spencer, for defendant-appellant.

Joel T. S. Greer of Cartwright, Druker & Ryden, Marshalltown, and Richard J. Barry of Greer, Montgomery, Barry & Bovee, Spencer, for plaintiffs-appellees.

Heard by Donielson, P.J., and Hayden and Habhab, JJ. Sackett, J., takes no part.

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Plaintiff Charles Fisher was employed by the City of Spencer, Iowa, as the assistant superintendent of public works. On January 7, 1985, he and another employee, Tom Dotson, were sent to a municipal airport hanger to release water trapped in the structure's insulation. Fisher and Dotson set up an extension ladder manufactured by defendant Keller Industries, Inc. (Keller). While Fisher was climbing up the ladder something happened to the ladder and he fell. Fisher suffered injuries from the fall.

Fisher brought this suit against Keller and R. C.'s Hardware, Inc., the seller of the ladder. He alleged strict tort liability and design negligence. Fisher's wife and children also sought damages for loss of consortium. The jury allocated fault 50% to Fisher and 50% to Keller. Judgment was entered against Keller in the sum of $179,817. Keller filed a motion for new trial which was denied by the trial court. Keller raises four issues on appeal which we will address separately.[1]

I. **Interrogatories.** An important issue at trial was whether the ladder locks were engaged or only appeared to be engaged (false-locked). At trial, Fisher claimed he observed the locks from the ground and believed they were

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1. In compliance with a previous supreme court order in this matter, we decline to consider the deposition of Charles Fisher in ruling on this case.

locked. He denied looking at the locks as he ascended the ladder.

In answering an interrogatory on February 10, 1986, Fisher stated:

> After checking the ladder for proper angle and position, I proceeded up the ladder to retrieve the screwdriver and release the water. Tom Dotson was holding the base of the ladder. As I passed the extension lock mechanisms, I checked the locks to make sure they were engaged. They were engaged so I proceeded on . . . .

When answering a subsequent interrogatory on October 15, 1986, Fisher referred to the interrogatory answer set out above in response to a question about what he was doing at the time of the occurrence.

Keller sought to admit the interrogatory answers into evidence. The trial court declined to allow Keller to admit the two interrogatories into evidence, but did allow them to be read orally and displayed on a screen to the jury. Keller contends the trial court erred in refusing to admit into evidence Fisher's answers to the two interrogatories.

Interrogatories are a discovery device. Beeck v. Kapalis, 302 N.W.2d 90, 95 (Iowa 1981). "Ordinarily, answers to them do not conclusively bind the answerer, and are often amended or supplemented." Id. at 95-96. Interrogatory answers may be used at trial to the extent permitted by the rules of evidence. Iowa R. Civ. P. 126(b).

A trial court has wide discretion in ruling on the admissibility of evidence. Its decisions will not be disturbed unless there is a clear and prejudicial abuse of discretion. Oberreuter v. Orion Industries, Inc., 398 N.W.2d 206, 210 (Iowa App. 1986); Carter v. Wiese Corp., 360 N.W.2d 122, 131 (Iowa App. 1984).

In its brief, Keller elaborates on the fact that the interrogatories were relevant evidence. It does not explain, however, why the court's decision not to admit the evidence was an abuse of discretion.

The interrogatory answers had a tendency to prove Fisher checked the locks as he ascended the ladder and found they were engaged. These answers directly contradicted Fisher's trial testimony and brought into question the issues of his credibility and veracity.

Despite their nonadmittance, Keller was able to fully exploit the evidentiary value of the interrogatories. From the questioning of Fisher and other witnesses to the closing argument, the defense was able to fully utilize both the impeachment and the evidentiary aspects of the interrogatory answers.

Contrary to Keller's assertion that it was prejudiced by any failure of the jurors to recall the interrogatories, the defense's repeated references to the interrogatories made that a highly unlikely possibility. Similarly, Keller's argument that the refusal to admit the

interrogatory answers might have misled the jury into believing they were less credible or less important than plaintiffs' documentary exhibits is also without merit. Keller requested and obtained jury instruction 10A which instructed the jury to treat interrogatories and the answers to them as if the questions had been asked and answered in court. The refusal to admit the written interrogatories as evidence did not mislead the jury as to the significance it was to attribute to Fisher's interrogatory answers. The court's refusal to admit the interrogatory answers does not constitute an abuse of discretion in this matter.

II. **Jury Instruction - Use of Interrogatory Answers.** Keller contends the trial court erred in refusing to instruct the jury that answers to interrogatories could be considered for any purpose, not only for impeachment purposes. Specifically, Keller argues the jury instructions, as a whole, never conveyed to the jury the idea that interrogatory answers may be considered substantive evidence and their use is not limited to impeachment.

The jury was instructed to determine the case on the evidence admitted, and it was told interrogatory answers were statements made under oath and they were to be considered "as if the questions had been asked and answered here in court." Instruction number 44 gave the jury a

comprehensive instruction on judging the credibility of witnesses and weighing the evidence. In passing on the credibility of witnesses and weighing their testimony, the jury was told to consider whether the testimony was corroborated or contradicted.

Generally, Iowa law requires a court give a requested instruction when it states a correct rule of law having application to the facts of the case and the concept is not otherwise embodied in the other instructions. Stover v. Lakeland Square Ass'n, 434 N.W.2d 866, 868 (Iowa 1989). In reviewing instructions for error, we start with the cardinal rule that "all instructions given must be read and considered together and related to each other, not piecemeal or in artificial isolation." Gremmel v. Junnie's Lounge, Ltd., 397 N.W.2d 717, 722 (Iowa 1986), quoting Dickman v. Truck Transport, Inc., 224 N.W.2d 459, 464 (Iowa 1974). See also McCracken v. Edward D. Jones & Co., 445 N.W.2d 375, 382 (Iowa App. 1989) (jury instructions are considered as a whole and as long as the jury has not been misled there is no reversible error). A district court is free to phrase instructions in its own words so long as the instructions fully and fairly inform the jury of the issues and applicable law. Gail v. Clark, 410 N.W.2d 662, 670 (Iowa 1987).

Contrary to Keller's characterization of the instructions, the court did not explicitly or implicitly

instruct the jury that the interrogatory answers could be considered only for impeachment purposes. The jury was instructed the interrogatories were to be treated as if the questions had been asked and answered in court, and instruction number 44 informed the jury as to how it was to weigh and reconcile conflicting evidence. The court did not instruct the jury to limit its consideration of the interrogatory answers to impeachment purposes, and no additional instruction informing the jury that interrogatory answers could be considered "for any purpose" was warranted.

III. Jury Instructions - Defense Theories. Keller claims the trial court erred in not adding language to the jury instructions which would have clarified its primary defense was that the lock mechanism was fully engaged and its alternative affirmative defenses were based on plaintiff's contributory negligence or assumption of risk. Keller argues the instructions did not accurately reflect the alternate defenses it pursued and they misled the jury into believing Keller had conceded the mechanism had false locked.

Parties to a lawsuit are entitled to have their legal theories submitted to a jury as long as they are supported by pleadings and substantial evidence. Sanders v. Ghrist, 421 N.W.2d 520, 522 (Iowa 1988). We will not reverse and

order a new trial for marginal or technical omissions; we will do so if the instructions as a whole are insufficient to convey the applicable law. Id.

Instructions should thoroughly and fully present issues to a jury so that body will have a proper understanding of the law to be applied in reaching a verdict. Id. The trial court must see to it that a jury has a clear and intelligent understanding of what it is to decide. Id.

When the instructions are read and construed together as a whole, we can find no error as alleged by Keller. In an introductory-type of jury instruction (instruction number one), the court informed the jury Fisher claimed his injuries were caused by the fault of Keller and Keller denied the claims and claimed Fisher's conduct was the cause of his injuries. In instruction eighteen, the court told the jury Fisher claimed Keller was at fault because of its negligence and strict tort liability.

From this point on, the instructions individually addressed the separate claims and defenses raised by the parties. Instructions nineteen and twenty set forth plaintiff's specifications of negligence and strict liability. Instructions twenty-five and twenty-six set forth defendant's defenses of assumption of risk and contributory negligence.

The language requested by defendant was clearly not appropriate for instruction twenty-five. To get to

instruction twenty-five, the jury had to have previously found Keller strictly liable for the design of a defective lock (instruction nineteen). Defendant's requested language, "if the locks were not engaged . . ." would not be consistent with the jury's implicit finding that the lock was engaged but defectively designed. No error occurred in excluding Keller's requested language from this instruction.

The language was also not warranted in instruction twenty-six. Instruction twenty-six set forth three specifications of negligence which Keller claimed Fisher had committed. The third claim, failure to exercise due care in securing the ladder, was consistent with Keller's claim that the locking mechanism had been fully engaged and the ladder fell because the base had slipped out.

The instructions were not misleading and would not have precluded a jury from accepting Keller's defense that the lock was fully engaged (and thus there was no design defect) had it believed the evidence warranted such a finding. The instructions sufficiently set forth the various defenses proffered by Keller and the specific wording requested by Keller was not improperly excluded.

IV. Hearsay Exception. Keller claims the trial court erred in overruling its hearsay objection to the admission of exhibit twenty-two, The International City Management Association's Municipal Yearbook (1987). The International

City Management Association (ICMA) is a professional association of appointed administrators serving cities, counties, regional councils, and other local governments. The ICMA yearbook consists of data derived from annual surveys of local officials.

Part of the data compiled in the yearbook is salary and benefits information for a variety of positions held by local government officials. The information is classified by occupation, size of municipality, geographic region, and form of governmental body.

At trial, Fisher called Darwin Payne as a witness. Mr. Payne was the city manager of Spencer. Mr. Payne had approximately fourteen years of experience in city management. Mr. Payne responded affirmatively when asked if he kept informed about the salary levels other city managers pay their city officials.

With regard to the admissibility of the ICMA yearbook, Mr. Payne testified as to what the yearbook was and stated it contained data upon which he would reasonably rely in his capacity as a city manager. Over Keller's objections of hearsay and no proper foundation, the ICMA yearbook was admitted into evidence.

Keller claims the yearbook was not properly admitted pursuant to either Iowa Rule of Evidence 803(8) or 803(24). We agree, however, we will sustain a trial court

ruling if the hearsay rule can be found inapplicable under any theory. Hunt v. State, 252 N.W.2d 715, 722 (Iowa 1977).

Iowa Rule of Evidence 803(17) excludes published compilations, generally used and relied upon by persons in particular occupations, from the hearsay rule. The advisory committee notes to the analogous federal rule set forth the rationale for this hearsay exception. "The basis of trustworthiness is general reliance by the public or by a particular segment of it, and the motivation of the compiler to foster reliance by being accurate." Fed. R. Evid. 803 advisory committee note.

Apparently only one Iowa case has construed rule 803(17). Rinkleff v. Knox, 375 N.W.2d 262 (Iowa 1985). The factors which precluded admission of the parts catalog in that case are not present in the matter before us. Id. at 269. We find no error in admitting the ICMA yearbook into evidence.

AFFIRMED.