IN THE COURT OF APPEALS OF IOWA

No. 1-244 / 00-0191
Filed November 16, 2001

FILED
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CLERK SUPREME COURT

EDWARD H. KARNES,
Plaintiff-Appellant,

vs.

KEFFER-OVERTON ASSOCIATES, INC., CHARLES OVERTON, JOHN B. OVERTON, and CHARLES SAUL, d/b/a CHARLES SAUL ENGINEERING,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

The plaintiff appeals from a district court order granting summary judgment for the defendants and dismissing his personal injury action, which alleged the defendants were negligent in the design, engineering, and oversight of construction of a stairway that collapsed beneath him. **AFFIRMED.**

Mark W. Thomas of Grefe & Sidney, P.L.C, Des Moines, for appellant.

Russell J. Hansen of Connolly O'Malley Lillis Hansen Olson, L.L.P., Des Moines, for appellees Keffer-Overton Associates, Inc., and Overton.

Edward W. Remsburg of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines, for appellee Saul.

Heard by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

SACKETT, C.J.

Plaintiff-appellant Edward H. Karnes appeals the district court's summary judgment for defendant-appellees Keffer-Overton Associates, Inc., Charles Overton, John Overton, and Charles Saul d/b/a Charles Saul Engineering, in his suit against them for negligent design, engineering and construction oversight of stairs in the administration building at the Iowa State Fair. Plaintiff claims on appeal that the district court's summary judgment due to his failure to name an expert under Iowa Code section 668.11 (1999) was in error because no expert testimony is necessary in this case. Plaintiff contends that the issue at trial would not have involved the mechanics of stairway engineering, but would instead have been one of determining whose faultily-engineered plans were used in the obviously defective construction of the stairs. We affirm.

Plaintiff Edward H. Karnes suffered injuries when a flight of stairs he and two others were standing on collapsed. The stairs were located in the administration building of the Iowa State Fairgrounds. At the time of plaintiff's fall, the building was being renovated and plaintiff was involved in constructing the stairway which later collapsed Plaintiff sued defendants, contending they were responsible for the design, engineering and construction oversight of the stairs.

Defendants Charles Overton and John B. Overton are licensed architects employed by Keffer-Overton Associates, Inc., an architectural firm which provided architectural services for the renovation. Defendant Charles Saul is an engineer and employs engineers in his business, Charles Saul Engineering. He provided the structural engineering plans in this renovation.

Defendants claim and plaintiff concedes that no expert witness was designated in the required time as provided in Iowa Code section 668.11. The district court found this fatal to the plaintiff's case and granted summary judgment for the defendants. In dismissing plaintiff's petition the district court concluded that an expert was necessary for plaintiff to establish a prima facie case that the actions of the architects and engineers demonstrated a level of care below that ordinarily possessed and exercised by members of the profession under similar circumstances. Plaintiff responds that there was clear negligence, given the stairs' collapse, and that the only real issue is whose negligence that was. On appeal plaintiff claims that that question can be addressed at trial, without experts, simply by determining which of the several stairway plans was used and who had drafted it.

We review a ruling on a summary judgment motion for errors at law. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000); *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 649 (Iowa 2000); *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp.*, 606 N.W.2d 359, 362 (Iowa 2000). A district court properly grants summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Crippen*, 618 N.W.2d at 565; *Swartzendruber*, 613 N.W.2d at 649. Summary judgment may be appropriate in an instance in which expert testimony is required to establish negligence or foundational facts, such expert testimony is not available, and no genuine issue of fact can therefore be proved. *Schlader v.*

Interstate Power Co., 591 N.W.2d 10, 11-12 (Iowa 1999), *citing Welte v. Bello*, 482 N.W.2d 437, 440 (Iowa 1992).

In actions of professional negligence such as this one, in order for the plaintiff to recover, the actions of the architects and engineers must be below the degree of skill, care and learning ordinarily possessed and exercised by members of that profession in good standing in similar circumstances. *Schiltz v. Cullen-Schiltz & Associates, Inc.*, 228 N.W.2d 10, 17 (Iowa 1975). Plaintiff may prove the standard of care by the use of expert testimony or through evidence showing a lack of care so obvious so as to be within the comprehension of a lay person. *Urbandale v. Frevert-Ramsey-Kobes Architects-Engineers, Inc.*, 435 N.W.2d 400, 402 (Iowa Ct. App. 1988). Lay persons sitting as the trier of fact generally lack the knowledge to render a competent judgment as to negligence and proximate cause in complex matters requiring professional expertise. *Eventide Lutheran Home for the Aged v. Smithson Elec. & Gen. Constr., Inc.*, 445 N.W.2d 789, 791 (Iowa 1989). In those instances an expert witness is required to testify as to the standard of care. *See Thompson v. Embassy Rehabilitation & Care Center*, 604 N W 2d 643, 646 (Iowa 2000).

We agree with the district court that an expert was necessary in this case and that failure to designate one was appropriate grounds for summary judgment in favor of the defendants. Plaintiff claims defendants are making a simple case complicated by requiring the testimony of an expert witness. To support his claim, plaintiff contends that defendants concede the stairway as constructed was "unsafe" and "inadequate," and that due to this concession, the standard of care is not at issue in this case. He therefore claims that no expert testimony

regarding the professional standard of care of engineers and architects is necessary.

While we agree the collapse of the stairs is evidence enough, without expert testimony, to establish that there must have been negligence by some party during the process of designing and building the staircase, we do not agree that the obviousness of this negligence, or defendants' acknowledgement of it, makes a sufficient showing, or any showing, that the breach of care was in these defendants' own design, engineering, or construction oversight. In order to reduce this negligence case to a mere "whom do you believe," as plaintiff claims, defendants would have to concede that the obvious defect in the stairs was attributable to them, and that plaintiff's burden was only to establish that he had followed their engineering and architectural plans to the letter. Defendants do not make this concession. To the contrary, they argue that a claim of negligence regarding the design of the stairs requires an expert or experts to establish that the negligence was in fact due to the engineering or architecture of the stairs.

Plaintiff is operating under the assumption that the acknowledgment by defendants of the defectiveness of the stairs relieves him of his burden to make a prima facie showing of their professional negligence. One cannot conclude, as plaintiff did, from the defendants' statement that joist hangers would have prevented a collapse, that the omission of joist hangers in the plans was necessarily negligence. Nor can one conclude from that statement that failure to notice their absence was negligent oversight. It is possible that the defendants in this case did not anticipate, and could not have been expected to anticipate (or even notice), the construction workers' unusually deep notching work which may

have weakened the stairway design and required as a consequence that joist hangers be used to reinforce the stairs. The Iowa Supreme Court has held that in negligence actions brought against architects and engineers, the applicable standard of care is that of an individual in the field with a "reasonable degree of technical skill. . . [whose design and specifications] would produce. . . a building. . . without marked defects in . . .strength." *Schiltz,* 228 N.W.2d at 17, *citing Chrischilles v. Griswold,* 260 Iowa 453, 460, 150 N.W.2d 94, 99 (1967). The issue at hand is the standard of care of a prudent architect or engineer and whether defendants conformed to that standard. That determination includes judging whether, when drafting designs and specifications, a prudent architect or engineer should anticipate the kind of notching that occurred in this case. We clearly need an expert to assist in that determination.

AFFIRMED.

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