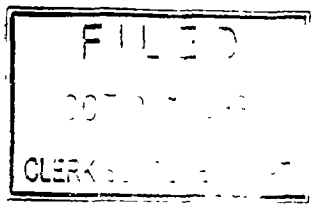
IN THE COURT OF APPEALS OF IOWA

No. 9-261 / 98-959
Filed October 27, 1999.



GARY LAAKE and DIANE LAAKE,

Plaintiffs-Appellants,

vs.

OUR LADY OF LOURDES CHURCH OF BETTENDORF, IOWA, d/b/a LOURDES CATHOLIC SCHOOL,

Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers, Judge.

Plaintiff appeals from the summary judgment dismissing his claim for personal injuries he sustained from a fall after colliding with a spectator while refereeing a basketball game for defendant. **REVERSED.**

Michael J. Warner of Law Offices of Michael J. Warner, Rock Island, Illinois, and Ronald A. May of Gomez, May, Cartee & Schutte, Davenport, for appellants.

Roger A. Lathrop and Peter J. Thill of Betty, Neuman & McMahon, L.L.P., Davenport, for appellee.

Considered by Streit, P.J., and Mahan, and Zimmer, JJ.

ZIMMER, J.

Gary and Diane Laake appeal from the district court's grant of summary judgment to defendant on their claim for personal injuries sustained from Gary's fall after colliding with a spectator while refereeing a basketball game for defendant. We reverse.

I. Background Facts and Proceedings. Plaintiff Gary Laake ("Laake") sustained injuries to his hand and wrist from a fall he took while refereeing a sixth-grade boys basketball championship game for defendant, Lourdes Catholic School ("Lourdes"), at Lourdes' gymnasium. Laake fell after colliding with a child spectator who entered the field of play. The identity of the child is not known and likely will remain unknown. Nothing in the record reveals the reason for the child's entry onto the court.

Laake filed suit, contending that because of the excess capacity crowd blocking the perimeters of the basketball court, the spectator foreseeably entered the field of play. Laake's wife, Diane, filed a consortium claim. Lourdes moved for and was granted summary judgment. The district court found there was no duty to provide protection against or warn Laake of the sudden act of one child running onto the basketball court. The district court reasoned the 'bizarre' and 'isolated' incident was not reasonably foreseeable. The court also found overcrowding at the gymnasium did not proximately cause the child to run onto the playing field.

Laake appeals, contending the district court erred in its grant of summary judgment.

II. Standard of Review. We review a district court's ruling on a motion for summary judgment for corrections of errors at law. Iowa R. App. 4; *General Car & Truck Leasing System, Inc. v. Lane & Waterman*, 557 N.W.2d 274, 276 (Iowa 1996). On review, we examine the record before the district court to decide whether any material fact is in dispute, and if not, whether the district court correctly applied the law. *General Car & Truck,* 557 N.W.2d at 276. In considering the record, we view the facts in the light most favorable to the party opposing the motion for summary judgment. *Id.* The "genuine issue as to any material fact" requirement means the evidence is such that reasonable minds could differ on how the issue should be resolved. *Fouts ex rel. Jensen v. Mason,* 592 N.W.2d 33, 35 (Iowa 1999).

III. The Merits. A negligence claim consists of the following elements: (1) defendant owed plaintiff a duty of care, (2) which was breached, (3) proximately causing (4) damages. *Marcus v. Young,* 538 N.W.2d 285, 288 (Iowa 1995).

Laake argues: (1) Lourdes breached its duty of care by permitting an overcrowded condition to exist at the gym and failing to take measures to protect him; (2) the court should not have found Lourdes had no notice of the dangerous condition and hence no duty; (3) there was a fact issue as to whether the accident was a reasonably foreseeable consequence of overcrowding; and (4) there was a genuine issue of fact as to whether the overcrowding was a proximate cause of his injuries or

whether the child was a superseding cause. Lourdes responds by arguing Laake's arguments are only theories, unsupported by actual facts in the record, and that Lourdes was not in fact negligent. Laake's arguments reduce to essentially two issues: (1) the existence of duty owed Laake by Lourdes and (2) fact issues surrounding proximate cause.

A. Existence of a Duty. Whether a duty of care exists is a question of law that may be properly resolved in a summary judgment proceeding. *Martinko v. H-N-W Assocs.*, 393 N.W.2d 320, 321 (Iowa 1986). The district court found Lourdes owed Laake no duty of care to guard or warn against spectators suddenly darting onto the field of play. The district court also concluded Lourdes could not have known or foreseen that the spectator would run onto the field of play and characterized this collision as a bizarre, isolated incident that was not a consequence of overcrowding.

Laake argues the district court mischaracterized the case. He alleged in his original petition that the overcrowded gymnasium was the dangerous condition against which Lourdes had a duty to protect or warn Laake, not the sudden act of the spectator entering the basketball court. Apparently, the district court declined to find overcrowding as the dangerous condition based on Lourdes' argument that there were no facts to support a conclusion that the gym was *over*crowded on the night in question because Laake could produce no numbers. However, at least two deponents testified the gym was 'packed,' very crowded, and 'wild.' Seating had been placed on the gym floor to supplement the bleachers' capacity. Some spectators did not have

seats and cheerleaders had to be told to move back from the boundaries. Finding factual support, we focus on overcrowding as the dangerous condition.

Laake also urges that the district court misapplied the law. He argues a possessor of land does have a duty of care where the possessor knows an invitee may be distracted, despite the invitee's equal knowledge of the dangerous condition.

Our Supreme Court continues to apply the following liability rule to invitees:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
>
> (a) knows or by the exercise of reasonable care would discover the condition and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
>
> (c) fails to exercise reasonable care to protect them against the danger.

Richardson v. The Commodore, Inc., No. 97-1829, slip op. at 4 (Iowa Sept 9, 1999), citing Restatement (Second) of Torts (hereinafter "Restatement") § 343, at 215-16 (1965). The parties agreed that Laake was an invitee.[1]

Knowledge of a dangerous condition is imputed to a possessor of land who has created the condition that causes the plaintiff's injury. *Richardson*, slip op. at 5 (citations omitted). Lourdes clearly created the overcrowding; it sold the tickets to the event and set up the additional seating on the gym floor.

---

[1]The status of a visitor continues to be relevant in premises liability law. *Richardson*, slip op. at 8 n.3, (declining to apply *Sheets v. Ritt, Ritt & Ritt, Inc.*, 581 N.W.2d 602, 603 (Iowa 1998) (abrogating distinction between invitees and licensees in premises liability)).

However, a possessor is not ordinarily required to protect or warn against dangers that are known or obvious to an invitee. *Parsons v. Nat'l. Dairy Cattle Congress,* 277 N.W.2d 620, 623 (Iowa 1979), citing Restatement § 343A(1) Comment e, *overruled on other grounds by Sheets v. Ritt, Ritt & Ritt, Inc.,* 581 N.W.2d 602 (Iowa 1998). There are exceptions to this rule. If the possessor should reasonably foresee that the condition will still cause harm to the invitee, the possessor of land is not relieved of a duty even though the invitee knows or should be aware of the dangerous condition. *Parsons*, 277 N.W.2d at 623, citing Restatement § 343A(1) Comment f. Such a situation exists where "a possessor has reason to expect that the invitee's attention may be distracted, so that he will not discover what is obvious, or will forget what he has discovered, or fail to protect himself against it." *Id.* Despite Laake's knowledge of the overcrowded conditions, it is clear that he would be focused on the game, his reason for being there. We find that Lourdes owed Laake a duty of care under this exception.

B. Proximate Cause. Even if Lourdes owes a duty to Laake, if there is no factual issue on this element of his cause of action, we must affirm. *See Shaw v. Soo Line R. Co.,* 463 N.W.2d 51, 53 (Iowa 1990) (finding that although party moving for summary judgment bears the burden of proving that no material fact is in dispute, nonmovant not relieved from making showing sufficient to establish existence of an element essential to their case); *Benton v. Nelsen,* 502 N.W.2d 288, 291 (Iowa App. 1993)(appellate court bound to affirm trial court for any reason whether argued or

not). Laake argues that it is for the jury to determine whether overcrowding was a proximate cause of his injury. We note that proximate cause is usually a jury question "and 'it is only in rare cases that a party establishes proximate cause as a matter of law.'" *Randol v. Roe Enterprises, Inc.*, 524 N.W.2d 414, 417 (Iowa 1994); Iowa R.App.P. 14(f)(10).

Our Supreme Court has displayed caution in determining factual issues on proximate cause. In *Perkins v. Wal-Mart Stores,* No. 753, 525 N.W.2d 817 (Iowa 1994), the Iowa Supreme Court reversed a trial court's grant of summary judgment to the defendant store in a suit brought by a patron who fell on the premises. The district court had based its ruling on the lack of evidence that the store caused the plaintiff's fall. Although the plaintiff did not produce the material on which she slipped, she did find sand and debris on her hands and feet when she got up and her clothing was similarly soiled. The record also showed that employees had not swept the area that day, leading to a reasonable inference that the area was full of sand-like debris. The Iowa Supreme Court held that this evidence generated an inference that a dirty floor caused plaintiff to fall and that this condition was attributable to the defendant store.

Similarly, in *Randol*, the Iowa Supreme Court found sufficient evidence to generate a fact question on the issue of the cause of the plaintiff's injury. The district court had concluded that there was no evidence that the fall was caused by a drop-off from the cement to the graveled portion of the defendant's driveway. Our Supreme

Court concluded that the mechanics of plaintiff's fall (head over heels) were consistent with the conclusion that she fell after stepping off of a paved surface onto a lower graveled one. Because plaintiff showed when she fell, the nature of the terrain, and how she fell, she generated a fact issue on causation.

We find a fact issue on proximate cause. Plaintiff argues that his fall stemmed from the crowding which created greater potential for entry onto the field because the court's perimeters were blocked, limiting access to the concession stand and causing the child to use the field of play to get to it. Of course, the latter part of Laake's chain of reasoning is purely speculative; no one knows the identity of the child who collided with Laake or the child's motivations for entering the field of play. Apparently, this information is also not likely to be discovered. We do know that the conditions were crowded and spectators were seated on the gym floor, unsupervised children would likely be and in fact were in attendance, and the location of the concession stand was across the floor from the majority of seats. We think from this evidence that Plaintiff is entitled to a reasonable inference that because the gym was so crowded, spectators would enter the field of play for any number of reasons, whether to go to the concession stand or not, and a collision would occur. It is up to a jury to decide whether to afford Laake this inference.

C. Superseding Cause. While this issue was not thoroughly briefed by the parties, Laake does argue that the district court's opinion contains an implicit finding

that the child was a superseding cause of his injuries. Because the issue may arise at or before trial, we address it briefly.

Foreseeable intervening forces are within the scope of the original risk and hence of the defendant's negligence. If the likelihood that a third person may act in a particular manner is a risk that also makes a defendant negligent, such an act by the third person, whether innocent, negligent, intentionally tortious, or criminal, does not prevent the defendant from being liable for any harm caused by the third party's act. *See Rieger v. Jacque,* 584 N.W.2d 247, 251-252 (Iowa 1998); Restatement § 443 (intervention of a force that is a normal consequence of a situation created by defendant's negligent conduct is not a superseding cause of harm which such conduct has been a substantial factor in bringing about); Restatement § 449 (if likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes defendant negligent, such an act does not prevent the defendant from being liable for harm caused thereby). In other words, an intervening force which falls squarely within the scope of the original risk will not supersede the defendant's responsibility. *Rieger,* 584 N.W.2d at 251. Again, it will be for the trier of fact to determine whether the child entered the field because of the crowded conditions or for some other reason. If the child entered the basketball court because of the overcrowding, then the child is not a superseding cause of Lourdes' alleged negligence.

IV. Conclusion. We reverse the trial court's grant of summary judgment because we find (1) a legal duty is owed by Lourdes to Laake and (2) factual issues surround the proximate cause element of Laake's claim.

REVERSED.