

IN THE COURT OF APPEALS OF IOWA

No. 8-615 / 97-1576

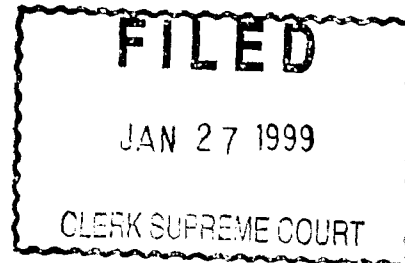
RANDY FIX,

Plaintiff-Appellant,

vs.

LARRY HARWOOD and POLK COUNTY,

Defendants-Appellees.



Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Plaintiff appeals from an adverse district court judgment in his action against a snowplow driver for assault and battery and for negligent supervision against the driver's employer, Polk County. **AFFIRMED.**

Rick L. Olson, Des Moines, for appellant.

John P. Sarcone, County Attorney, and Michael B. O'Meara, Assistant County Attorney, for appellees

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.
Zimmer, J., takes no part.

SACKETT, C.J.

Plaintiff-appellant Randy Fix sued defendants-appellees Larry Harwood and Polk County claiming defendant Harwood, an employee of defendant county, assaulted him. The district court denied plaintiff's claim. Plaintiff appeals contending the district court erroneously concluded defendant Harwood's actions were justified as self-defense. We affirm.

Defendant Harwood, driving a Polk County snowplow, damaged plaintiff's mailbox. Plaintiff pulled his pickup truck in front of the snowplow and a confrontation ensued. There was evidence plaintiff hit Harwood, and as Harwood pushed plaintiff away, plaintiff grabbed Harwood's shirt. Harwood allegedly then pushed plaintiff against his truck. Plaintiff was injured when he struck a side mirror.

The case was tried to the district court which found Harwood's initial push in response to plaintiff's assault reasonable and justified. The district court also found Harwood's contact that caused plaintiff's injuries was his response to being grabbed and was reasonable under the circumstances. The district court went on to find plaintiff failed to prove his case by a preponderance of the evidence. The district court cited *Savage v. Employment Appeal Bd.*, 529 N.W.2d 640 (Iowa App. 1995), in support of its conclusion that a person may use reasonable force to protect himself from bodily harm by other. *Id.* at 642. *Savage* sets forth three elements necessary to show an act was done in self-defense: (1) freedom from fault in bringing on the difficulty, (2) a necessity to strike, and (3) an attempt to retreat unless there is no mode of escape or the peril will increase. *Id.*

Plaintiff filed a 179(b) motion contending the district court erred in finding Harwood's actions justified because there was no finding Harwood attempted to retreat. The district court denied the motion.

Our review is for correction of errors of law. Iowa R. App. P. 4. Findings of facts in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Evidence is substantial when a reasonable mind would find the evidence presented adequate to reach the same findings. *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990). We construe the trial court's findings broadly and liberally. *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the judgment. *Id.* We do not weigh the evidence or the credibility of the witnesses. *Id.*

Plaintiff contends the district court erred in its application of the self-defense doctrine. He maintains (1) Harwood was not free from fault, (2) there was no necessity for him to strike, and (3) he failed to retreat. Plaintiff was injured after Harwood pushed him against the pick-up. Plaintiff argues Harwood should have retreated and the district court erroneously concluded Harwood acted in self-defense.

There was evidence after plaintiff grabbed Harwood, Harwood could not retreat and the push by Harwood was necessary to make plaintiff release the hold he had on Harwood. The verdict is supported by substantial evidence. We affirm.

AFFIRMED.