

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 29 1985

CLERK SUPREME COURT

DEBORAH J. KEESEE,

)

Plaintiff-Appellant,

)

vs.

)

HICKMAN VILLAGE, LTD.,

)

Defendant-Appellee.

)

Filed August 29, 1985

5-285

84-1190

Appeal from the Iowa District Court for Polk County - Anthony M. Critelli,
Judge.

Plaintiff tenant appeals from an adverse judgment in a negligence action arising out of plaintiff's fall down a stairway in an apartment building owned by defendant. **AFFIRMED.**

Bruce E. Bergman of Davis, Baker & Bergman, Des Moines, for plaintiff-appellant.

R. Todd Gaffney of Duncan, Jones, Riley & Finley, Des Moines, for defendant-appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

PER CURIAM

Plaintiff Keesee was a tenant in one of defendant Hickman Village's apartment buildings. On the evening of October 30, 1981, Keesee was returning to her apartment and fell while descending the stairs, injuring her head and knees. She alleged that the stairwell lights were burned out and as a result she was unable to see some steps.

According to Keesee and another tenant, the stairwell lights were quite often burned out, broken, or stolen. The Hickman Village maintenance staff was aware that light bulbs were occasionally stolen or broken by tenants.

Prior to the submission of the jury instructions, Keesee requested that the jury be informed that the violation of a city ordinance regarding lighting standards constituted negligence per se and that recurring conditions constituted constructive notice. These requests were overruled. The jury subsequently returned a verdict finding that Hickman Village was not negligent.

Keesee filed a timely motion for new trial on the grounds that the court erred in failing to give the requested instructions. The motion was overruled and Keesee has appealed.

I. The Negligence Per Se Instruction. The trial court refused to submit the plaintiff's requested jury instruction that defendant's violation of a municipal ordinance constituted negligence per se. The trial court told the jury the municipal code standard for lighting was evidence to be considered on the issue of defendant's negligence in failing to maintain adequate lighting but the court did not instruct that a violation of this standard would be negligence per se.

The trial court is obligated to correctly state the law in its instructions to the jury and confine the law to the factual situation appearing in the record. Heidenbrand v. Executive Council of Iowa, State, 218 N.W.2d 628, 637 (Iowa 1974). A misstatement of the law in an instruction is reversible error. Id.

The Iowa Supreme Court had the opportunity to determine whether a landlord's violation of a municipal housing ordinance constituted negligence per se or merely prima facie evidence of negligence in Montgomery v. Engel, 179 N.W.2d 478 (Iowa 1970).

In Montgomery, plaintiff was a tenant in a building owned by defendant. Tenant rented a second floor apartment which was serviced by an inside stairway without handrails. One day when tenant left his apartment to go to work, he slipped and fell down the stairs. Tenant sued to recover for injuries sustained in the fall, alleging that his landlord failed to comply with a municipal housing ordinance. The ordinance provided that:

"Every exit from every dwelling shall comply with the following requirements:

* * *

risers shall have at least one handrail and all stairways which are five feet or more in width, or which are open on both sides, shall have a handrail on each side."

Id. at 481, citing Municipal Ordinances of Sioux City, 156.5, § 5.13. The court specifically addressed the question of whether the alleged ordinance violation constituted negligence per se or merely prima facie evidence of negligence. The court concluded: "We hold evidence of violation of the ordinance here involved is prima facie evidence of negligence." Id. at 484.

Here, Keesee fell down the stairs in the apartment building where she lived. She sued to recover for her injuries alleging that her landlord was negligent in failing to comply with Section 14-13 of the Housing and Occupancy Subchapter of the Des Moines Municipal Code. Section 14-13 provides, in relevant part, that "Every public hall and stairway in every multiple dwelling shall be adequately lighted by natural or electric light at all times, so as to provide in all parts thereof an adequate amount of light to see the tread or floor level."

We can find nothing that militates against applying Montgomery's clear statement of principle in the present circumstances. In Iowa a landlord's violation of a housing ordinance is prima facie evidence of negligence and not negligence per se. We, therefore, conclude that because the trial court stated the applicable law correctly, the court did not err in refusing to submit Keesee's negligence per se instruction to the jury.

II. The Constructive Knowledge Instruction. The trial court also refused to submit plaintiff's requested jury instruction that knowledge of a recurring condition could constitute constructive knowledge to defendant of a condition on the premises.

Parties to a lawsuit have a right to have their legal theories submitted to a jury so long as they are supported by the pleadings and substantial evidence. Anderson v. Low Rent Housing Comm., Etc., 304 N.W.2d 239, 249 (Iowa 1981) cert. den., 102 S. Ct. 645, 454 U.S. 1086, 70 L. Ed. 2d 621.

Keesee asserts that there was sufficient evidence of Hickman Village's knowledge of difficulty with the stairway lighting to warrant submission of this instruction to the jury. The testimony upon which Keesee relies for this proposition was that of Hickman Village's managing general partner, its cleaning man, another tenant, and Keesee herself. These four people testified about past occasions where light bulbs had been broken or burned out in the Hickman Village apartment complex.

None of the foregoing testimony referred specifically to the stairway lights involved in Keesee's mishap. There was no evidence that these lights were out continuously or that Hickman Village was notified and refused to correct such a condition. Furthermore, on the evening in question, the lights could not possibly have been burned out for longer than one and a half hours prior to Keesee's fall. The lights were on when Keesee left the building at around

5:00 and out when she returned between 6:00 and 6:30. No one knew exactly when the bulbs burned out, and no one had notified Hickman Village that the lights were burned out.

We conclude that there was no substantial evidence of Hickman Village's constructive knowledge and so find no error in the trial court's refusal to submit Keesee's requested instruction to the jury.

AFFIRMED.