IN THE COURT OF APPEALS OF IOWA

No. 2-141 / 91-1593

FILED
MAY 28 1992
CLERK SUPREME COURT

RABERTA SCHULTE,

Appellant,

vs.

WEBSTER COUNTY, IOWA,

Appellee.

856

Appeal from the Iowa District Court for Webster County, Newt Draheim, Judge.

Schulte appeals the district court's sustaining the county's motion for summary judgment. **AFFIRMED.**

R. Ronald Pogge and Jeffrey M. Margolin of Hopkins & Huebner, P.C., Des Moines, for appellant.

James L. Kramer and Neven J. Mulholland of Johnson, Erb, Gibb, Bice & Carlson, P.C., Fort Dodge, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

On January 11, 1989, Raberta Schulte was injured in a single car accident on Webster County Road P-29. Schulte had been traveling north on County Road P-29 from Greene County into Webster County. The road is a two-lane paved highway. The weather conditions at the time of her accident consisted of freezing rain and sleet. The road was level and straight. It had not been sanded, salted, or checked by county road crews that day.

Schulte brought an action against Webster County alleging its negligence in failing to properly remove the natural and unnatural accumulations of ice and in failing to place sand, salt, and other abrasive material on the roadway. The County responded by way of affirmative defense noting that under Iowa Code section 668.10(2) it cannot be assigned a percentage of fault because it had complied with its policy or level of service for snow and ice removal at the time and place of the accident.

The district court granted the county's motion for summary judgment. The court found the county did have a written snow and ice removal policy which provided that the entire width of roads may not be cleared of snow, ice, or frost, and no warning signs shall be posted concerning slick or slippery conditions, or advising drivers of a proper speed for the condition. Under the policy, paved roads may be sanded or salted on bridges, intersections,

hills, and curves after being plowed. It was not the County's policy to provide a "dry" pavement condition and there was no time limit in which the sequence of service would take place. The policy did not call for sanding of straight sections of roads.

Schulte appeals. She insists that because the defendant did not have a policy or level of service concerning freezing rain, it cannot shield itself behind the immunity provision of Iowa Code section 668.10.

Summary Judgment: Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but

if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Gott, 387 N.W.2d at 343; Milne, 424 N.W.2d at 423. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e). The language of our rule and case law is substantially similar or identical to that of rule 56 of the Federal Rules of Civil Procedure, see, e.g., Matsushita Elec. Indust. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-88 (1986), from which we may draw for guidance in interpreting our own rule, Sherwood, 179 N.W.2d at 339.

Issue: The issue in this case is whether "ice" and "freezing rain" are the same so far as the scope of Webster County's snow removal policy is concerned. The court believed the ordinary meaning of "ice" included the weather condition of freezing rain, reasoning that once such rain reaches the road surface it becomes ice. We agree.

Iowa Code section 668.10 provides in part:

> In any action brought pursuant to this chapter, the state or municipality shall not be assigned a percentage of fault for any of the following:
> . . .
> The failure to remove natural or unnatural accumulations of snow or ice, or to place sand, salt, or other abrasive material on a highway, road, or street if the state or municipality establishes that it has complied with its policy or level of service for snow and ice removal or placing sand, salt, or other abrasive material on its highways, roads, or streets.

Schulte argues that because statutory language should be construed narrowly, this code section should not be applied to "freezing rain." We find the statute applies and the county has brought itself within the statutory requirements for immunity. We affirm the trial court.

Costs are taxed to the appellant.

AFFIRMED.