IN THE COURT OF APPEALS OF IOWA

No. 1-132 / 00-1037
Filed May 23, 2001

JOHN WALKUP,
Plaintiff-Appellee/Cross-Appellant,

vs.

DAVID MAUDLIN,
Defendant-Appellant/Cross-Appellee.

FILED
MAY 23 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Ringgold County, Richard Morr, Judge.

Defendant appeals from the district court judgment entered on a jury verdict in favor of plaintiff on a claim to recover for injuries plaintiff sustained when defendant's cow kicked him in the leg. **REVERSED.**

Janice M. Thomas of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellant.

Richard L. Wilson of Wilson, Spurrier and Moss, P.C., Lenox, for appellee.

Heard by Huitink, P.J., and Hecht, and Vaitheswaran, JJ.

VAITHESWARAN, J.

A farmer helping another farmer with his cattle was repaid with a bovine kick in the leg. A jury awarded him damages. On appeal, the cow owner contends there was no evidence to connect him to the wayward act of his cow. We agree and, accordingly, reverse.

I. Background Facts and Proceedings

John Walkup, a self-employed farmer, offered to help fellow farmer David Maudlin "work" his cattle. This entailed rounding up the animals so they could be pregnancy tested, vaccinated, castrated, or dehorned. Walkup and several others congregated at Maudlin's farm and began the process of setting up a temporary pen and chute to contain the cows before and during their medical examination. They proceeded to funnel the cows from an open pasture into the pen and through the chute. With only two cows waiting in the pen, Walkup, who was standing outside the pen, momentarily looked away. In that moment, one of the cows kicked him through the fence. Walkup broke a leg bone and injured one of his knees.

Walkup sued Maudlin for negligence in failing to protect him from his cow's "vicious tendencies." The case was tried to a jury. At the close of Walkup's case, Maudlin moved for a directed verdict, contending there was no evidence he failed to use reasonable and ordinary care. The district court reserved ruling on the motion. The jury returned a verdict for Walkup and awarded past medical expenses of $9901.13 and $1500 in damages for loss of time. Maudlin moved for a judgment notwithstanding the verdict and Walkup moved for a new trial on the ground the jury failed to award him damages for past pain and suffering and

past loss of full use of body. The court denied both motions and the parties appealed.

II. Negligence

In his motion for judgment notwithstanding the verdict, Maudlin claimed Walkup did not establish negligence. We review the court's denial of this motion for correction of errors of law. *Mincks Agri Center, Inc. v. Bell Farms, Inc.*, 611 N.W.2d 270, 273 (Iowa 2000).

To prove a prima facie case of negligence, Walkup must establish: (1) Maudlin owed a duty of care to him; (2) Maudlin breached that duty; (3) the breach was the actual and proximate cause of Walkup's injuries; and (4) Walkup suffered damages. *Walls v. Jacob North Printing Co., Inc.*, 618 N.W.2d 282, 285 (Iowa 2000).

Maudlin argues Walkup did not prove the first three elements. We elect to focus on the actual and proximate cause element. This is ordinarily a question for the jury, but it may be decided as a matter of law in exceptional cases. *See Rieger v. Jacque*, 584 N.W.2d 247, 250 (Iowa 1998). This is an exceptional case.

At a minimum, the actual and proximate cause element required Walkup to demonstrate some causal relationship between Maudlin's conduct and the injury. *Hasselman v. Hasselman*, 596 N.W.2d 541, 545 (Iowa 1999). Walkup claims he established that causal link by showing Maudlin failed to: (1) sort the adult cattle from the calves; (2) provide a large enough sorting area; (3) operate the gate with chains; (4) have experienced helpers; and (5) keep a bleeding yearling heifer away from the other two cows. We disagree.

Even if Maudlin had cured each of the problems cited by Walkup, he could not have protected Walkup from the "vicious tendencies" of the cow. *Cf. Douglas v. Scandia Coal Co.*, 161 Iowa 180, 181, 141 N.W. 960, 961-62 (1913) (holding mule owner's failure to warn plaintiff of mule's vicious temperament was not proximate cause of plaintiff's injury). At the time of the kick, there were only two cows in the pen, rendering the sorting and space issues irrelevant. Additionally, the mode of operating the gate was immaterial because the gate was closed and Walkup was standing several feet away from it. Further, the presence of other experienced workers would have made no difference, as their acts or omissions had nothing to do with the cow's decision to kick Walkup. Finally, Walkup conceded the bleeding heifer was in a holding pen next to the chute and not in the same pen as the two cows. Walkup's attempt to tie the cow's kick to the heifer's unruliness amounted to speculation. In sum, we agree with the statement of one of the witnesses that this was a "freak accident."

Walkup failed to prove Maudlin was the actual and proximate cause of his injury. Therefore, as a matter of law, he cannot recover from Maudlin. In light of our conclusion, we need not address the remaining issues raised by the parties. We reverse the district court's denial of Maudlin's motion for judgment notwithstanding the verdict.

Costs are assessed to Walkup.

REVERSED.