

FILED

APR - 2 1991

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-631 / 90-168

**VERNA ALDEN, As Executrix of the Estate of WILLIAM ALDEN,
Deceased,**

Plaintiff-Appellant,

vs.

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GENIE INDUSTRIES,

Defendant,

and

RICHARD JUSTICE,

Defendant-Appellee.

Appeal from the Iowa District Court for Delaware
County, William G. Klotzbach, Judge.

Plaintiff appeals granting of summary judgment in favor
of coemployee on gross negligence claim. **AFFIRMED BY
OPERATION OF LAW.**

Gerald J. Kucera of the Tom Riley Law Firm, P.C.,
Cedar Rapids, for plaintiff-appellant.

Terry J. Abernathy and Matthew G. Novak of Pickens,
Barnes & Abernathy, Cedar Rapids, for defendant-appellee
Justice.

Gregory M. Lederer and Matthew Petrzelka of Simmons,
Perrine, Albright & Ellwood, Cedar Rapids, for defendant
Genie Industries.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.,
but decided en banc.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1989).

AFFIRMED.

For affirmance: Donielson, Sackett, and Habhab, JJ.

For reversal: Oxberger, C.J., and Schlegel and Hayden, JJ.