FILED
APR 26 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-077 / 93-939

DORIS ARNDT,

Appellant,

vs.

HY-VEE FOOD STORES, INC.,

Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge.

Arndt appeals the district court's refusal to grant a new trial, asserting the damages awarded were inadequate as a matter of law and claiming the verdict failed to effectuate substantial justice between the parties. **AFFIRMED BY OPERATION OF LAW.**

H. P. Folkers and William J. Keen of Folkers and Keen, Mason City, for appellant.

Joel J. Yunek of Laird, Heiny, McManigal, Winga, Duffy & Stambaugh, P.L.C., Mason City, for appellee.

Heard by Donielson, P.J., Sackett, J., and Peterson, S.J.,* by decided by Donielson, C.J., and Hayden, Sackett, Habhab, Cady, and Huitink, JJ.

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1993).

AFFIRMED.

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

For reversal: Donielson, C.J., and Hayden and Huitink, JJ.