IN THE COURT OF APPEALS OF IOWA

No. 1-552 / 00-1671
Filed November 28, 2001

FILED
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CLERK SUPREME COURT

DANNY L. PHELPS,
Appellant,

vs.

JUNE I. SCHULTZ,
Appellee.

JUNE I. SCHULTZ,
Third-Party Plaintiff-Appellee,

vs.

DENNIS WAYNE THARP,
Third-Party Defendant.

Appeal from the Iowa District Court for Fayette County, James L. Beeghly, Judge.

Plaintiff appeals from district court ruling granting the defendant's renewed motion for summary judgment in his action seeking damages for negligence and under the theory of res ipsa loquitur. **REVERSED AND REMANDED.**

Morris L. Eckhart, Vinton, and Peter C. Riley, Cedar Rapids, for appellant.

Timothy W. Hamann and Brandon Adams of Clark, Butler, Walsh & Hamann, Waterloo, for appellee.

Considered by Hayden, S.J., Harris, S.J., and C. Peterson, S.J.*

*Senior judges assigned by order pursuant to Iowa Code section 602.9206 (2001).

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HAYDEN, S.J.

Plaintiff (Phelps) appeals from the district court's ruling granting defendant's (Schultz) renewed motion for summary judgment. He is seeking damages for negligence and under the theory of res ipsa loquitur. He claims the prior decision of the Iowa Court of Appeals, filed October 29, 1998, is the law of the case and the district court erred in sustaining defendant's renewed motion for summary judgment.

Facts and Background

Phelps was on Schultz's property helping to repair her house. A wooden ladder broke as he was climbing it. He fractured his right foot when he fell. His right leg was later amputated below the knee because it was chronically infected due to failure of the foot to heal properly.

Schultz filed a motion for summary judgment and Phelps resisted it. A district court granted summary judgment in Schultz's favor and concluded: (1) Phelps presented insufficient evidence to show Schultz owned the ladder; (2) Phelps asserted no evidence climbing the ladder would have been within the scope of his alleged employment; and (3) Schultz did not breach any duty of care she might have owed Phelps.

Phelps appealed and the Iowa Court of Appeals in a decision filed October 29, 1998, reversed the district court. This court determined reasonable minds could differ whether Phelps and Schultz had an employment relationship, whether climbing the ladder was within the scope of Phelp's employment and the ownership of the ladder. The court of appeals determined the facts underlying the legal determination of what duty of care Schultz owed Phelps are in dispute.

The court determined summary judgment should not have been granted in favor of Schultz and reversed the district court.

Scope of Review

Scope of review of this law action is for corrections of errors at law. Iowa R. of App. P. 4.

Issue

Phelps argues the court of appeals October 29, 1998, decision is the law of this case. The trial court was obligated to follow the decision upon remand to the trial court. The decision is logical and consistent with established Iowa law. *Woods v. Schmidt,* 439 N.W.2d 855, 865, 866 (Iowa 1989). (Citations omitted). None of the issues cited by the Iowa Court of Appeals in the decision of October 29, 1998, had been tried by a jury at the time the trial court ruled on the renewed motion for summary judgment. That ruling did not resolve any of the factual disputes cited by the court of appeals.

The trial court's order on defendant's renewed motion for summary judgment is set forth as follows:

> There is no evidence presented by the plaintiff that the ladder in question was defective or that any condition of the ladder would have placed a person on notice of a defective condition. The defendant could only be held liable under these circumstances under a theory of strict liability. There is no evidence that she was a manufacturer or distributor of the ladder in question.
>
> The plaintiff's own evidence is that there was nothing unusual about the appearance of the ladder, and there were no other facts that would place the defendant on notice of any risk to those using the ladder in the manner for which it was intended.
>
> Under the circumstances the defendant, June I. Schultz, had no duty to the plaintiff, Danny L. Phelps, Jr.

The district court dismissed plaintiff's claims against the defendant.

Trial Court Erred in Granting Renewed Motion for Summary Judgment

A party moving for summary judgment has the burden of establishing the absence of any genuine issue of material fact and the movant is entitled to judgment as a matter of law. Iowa Civ. P. 237(c); *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994).

In considering a motion for summary judgment, the court can not weigh the evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202, 211 (1986).

In considering a motion for summary judgment, the district court is required to view the record in the light most favorable to the party resisting the motion; *Hoffnagel,* 522 N.W.2d at 811. The party resisting the motion for summary judgment should be accorded all possible inferences reasonably deducible from the evidence. *Central Nat'l Ins., Co. v. Insurance Co. of America,* 522 N.W.2d 39, 42 (Iowa 1994).

For summary judgment purposes, a fact issue exists if reasonable minds could differ on how the issues should be resolved. *Hoeffer v. Wisconsin Educ. Ass'n Ins. Trust,* 470 N.W.2d 336, 338 (Iowa 1991). Even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them a jury question is engendered. Iowa R. App. P. 14(f)(17).

It is apparent to this court the trial court did not follow these well-established rules of law in ruling upon June Schultz's renewed motion for

summary judgment. The district court erred in granting defendant Schultz's renewed motion for summary judgment.

Although claims of negligence are seldom capable of summary adjudication, the threshold determination of whether the defendant owes the plaintiff a duty of care is always a legal question for the court. *Robinson v. Poured Walls of Iowa, Inc.*, 553 N.W.2d 873, 875 (Iowa 1996). However, if the facts underlying the plaintiff's claim of duty are disputed, summary judgment is improper. *Sankey v. Richenberger*, 456 N.W.2d 206, 207 (Iowa 1990).

The decision of the Iowa Court of Appeals filed October 29, 1998, shall remain in full-force and effect.

The order of the district court for Fayette County signed on September 19, 2000, is reversed. This case is remanded for a jury trial.

REVERSED AND REMANDED.