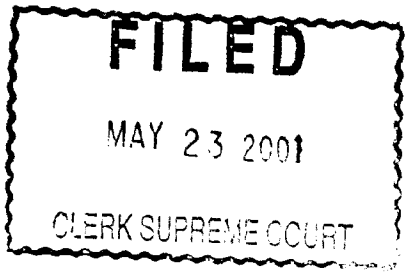
IN THE COURT OF APPEALS OF IOWA

No. 1-090 / 00-0453
May 23, 2001



MARVIN L. REYNOLDS,
Plaintiff-Appellee,

vs.

BRADLEY REYNOLDS,
Defendant-Appellant.

Appeal from the Iowa District Court for Dallas County, Arthur E. Gamble, Judge.

Defendant Bradley Reynolds appeals a district court judgment in plaintiff Marvin L. Reynolds's favor for damages resulting from a fire. **AFFIRMED.**

Jerry R. Foxhoven, Des Moines, for appellant.

Thomas J. Berg of Elverson, Vassey & Peterson, L.L.P., Des Moines, for appellee.

Considered by Hayden, Habhab, and R. Peterson, Senior Judges*.

*Senior Judges assigned by order pursuant to Iowa Code § 602.9206 (2001).

R. PETERSON, S.J.

Bradley Reynolds appeals a district court judgment in favor of Marvin L. Reynolds in the sum of $7495 plus costs. He contends there was no competent evidence as to the causation of the fire and, therefore, the trial court erred in entering judgment in favor of the plaintiff.

Background and Proceedings. Marvin L. Reynolds (Marvin) is the owner of an acreage in Dallas County, Iowa. In 1996 and 1997, he leased this acreage to his son, Bradley Reynolds (Bradley). The acreage contains a house, a barn, a corncrib, and a two-car garage that is approximately twenty feet from the house. The garage is of wood frame construction with a cement floor and was constructed about 1948. It has its original wiring, however, some new wiring has been added for lights and Bradley's welding equipment.

Bradley uses the garage to repair old cars. He has stored parts for automobiles and motorcycles in the garage, as well as flammable materials. These materials include paint, gasoline, and welding supplies. The welding supplies include three acetylene tanks, three oxygen tanks, and two CO_2 tanks, as well as cutting torches, welding torches, and other supplies.

On December 31, 1996, Bradley filled the gasoline tank on his 1962 Ford Galaxy. Upon returning home, he backed into the garage because he wanted to work on an area in the trunk.

Bradley's welding equipment was immediately behind the automobile as he placed it in the garage. He had precut pieces of metal which he intended to use to patch holes in the fire wall inside the left corner of the trunk.

Bradley used a "wire welder." This type of welding causes sparks to fly within a two-foot radius of the area that is being welded. Before beginning this operation, Bradley removed the trunk liner from the car which exposed the rear seat.

In the normal operation of this type of welding, a shield is placed in an appropriate position to contain the sparks that are generated from the welding operation. On the evening in question, Bradley did not use any type of shield in order to contain the sparks. At approximately midnight, Bradley interrupted his work and went into the house for New Year's Eve. Later he came back to the garage and continued his work. He stayed in the garage for approximately one-half hour after he completed the welding. At approximately 1:00 a.m., Bradley returned to the house and went to bed.

At approximately 5:00 a.m., he was awakened by a neighbor who advised him the garage was fully engulfed in flames. At the trial, Bradley speculated the fire could have been caused by a mouse eating through old wiring in the garage or arson. However, in a statement given on January 20, 1997, shortly after the incident in question, Bradley conceded the gas tank in the automobile had a "seep". He also speculated a spark from the welding could have gotten into the back seat. He felt the hot spot was the rear of the car.

The trial court found the fire was caused by a spark which flew from Bradley's weld of the fire wall in the trunk of the car and settled in flammable material in the rear seat of the car and the spark continued to smolder and was fueled by a seep in the gas tank. The court further found the fire then spread to

flammable material stored by Bradley in the wood-frame garage which caused the fire to burn out of control resulting in a total loss.

The court found Bradley was negligent in the following particulars:

> (1) In failing to shield the weld to keep the sparks from contacting flammable materials in the rear seat of the car, knowing of a seep in the gas tank.
> (2) In welding in a structure that was not suitable due to the wood-frame construction of the garage and storage of flammable materials in the garage.

The trial court found the negligence and fault of Bradley was a proximate cause of the damage to Marvin and entered judgment in the sum of $7495.

Standard of Review. In all cases with the exception of equity cases, the appellant courts shall constitute courts for correction of errors at law, and findings of fact in jury-waived cases shall have the effect of a special verdict. Iowa R. App. P. 4.

Discussion. In order to prevail on a claim of negligence, the plaintiff must establish the defendant owed the plaintiff a duty of care, the defendant breached that duty, the breach was the actual and a proximate cause of the plaintiff's injuries, and the plaintiff suffered damages. The mere occurrence of an accident without more is not proof of negligence. The plaintiff carries the burden of producing evidence from which reasonable persons may conclude that upon the whole, it is more likely the event was caused by the negligence than it was not. When direct evidence is not available, a plaintiff may rely on circumstantial evidence. *Novak Heating & Air Conditioning v. Carrier*, 622 N.W.2d 495, 497 (Iowa 2001).

Bradley contends there was no competent evidence as to the causation of the fire. In argument he contends, there are alternative causes of fire and expert opinions are necessary. He cites *Jaklitsch v. Finnerty*, 466 N.Y.S.2d 744, 96 A.D.2d 690 (N.Y.A.D. 3rd Dep't 1993). It is true during the trial Bradley opined the fire could have been caused by arson or an electrical malfunction. However, there was no evidence introduced with respect to either one of those theories. The only evidence introduced pertained to the welding that was done on the evening in question.

Bradley also cites *Limbeck v. Interstate Power Co.*, 69 F.2d 249 (8th Cir. 1934), *Ruth v. O'Neill*, 245 Iowa 1158, 66 N.W.2d 44 (1954); *Moyers v. Sears-Roebuck & Co.*, 242 Iowa 1039, 48 N.W.2d 881 (1951); and *Walters v. Iowa Elec. Co.*, 203 Iowa 467, 212 N.W. 886 (1927). He contends these cases support his contention expert testimony was necessary to establish the cause of fire in this situation. We believe those cases stand for the proposition expert testimony is authorized but is not required and circumstantial evidence may be relied upon to establish the cause of the fire.

We believe, in reviewing the evidence in this case, Marvin has produced evidence from which reasonable persons may conclude upon the whole it is more likely the fire was caused by the negligent welding by Bradley than not.

In conclusion, we find there is competent evidence as to the causation of fire in this case and the trial court did not err in so finding. We affirm.

AFFIRMED.