FILED
DEC 27 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

TROY PARK,	)	
Plaintiff-Appellant,	)	Filed December 27, 1983
vs.	)	
LARRY JACOBS, RONALD A. JACOBS, and SHIRLEY JACOBS,	)	3-282 / 2-69390
Defendants,	)	
LYLE MORROW and DONALD L. MORROW,	)	
Defendants-Appellees.	)	

Appeal from Benton District Court - William R. Eads, Judge.

Plaintiff appeals the judgment in his favor in a case of damages against two juveniles and their parents for the tort of assault. The trial court awarded damages to the plaintiff against one juvenile and his parents. On appeal, plaintiff contends he should have been awarded a judgment against the other defendants as well because the two juveniles were joint tort-feasors who should be held jointly and severally liable for the plaintiff's damages. AFFIRMED.

Morris L. Eckhart, Vinton, for plaintiff-appellant.

Larry D. Schlue of Kollmorgen & Schlue, Belle Plaine, for defendants-appellees Morrow.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

HAYDEN, J.

The plaintiff, Troy Park, was involved in a fistfight with the defendants, Larry Jacobs and Lyle Morrow. All three were high school students and minors at the time of the fight.

Park filed a lawsuit alleging the tort of assault. He named as defendants the assailants and their parents. The lawsuit was tried to the court, which found the various defendants liable for the following amounts: Larry Jacobs, $1500 in actual damages and $250 in punitive damages, with his parents liable for $1000 thereof; Lyle Morrow, $250 in actual damages and $250 in punitive damages. However, the trial court later vacated the judgment against Morrow and his father on the basis of an amended finding that Larry Jacobs had struck the only blow which caused injury to the plaintiff.

On appeal, plaintiff challenges the vacation of the judgment against the Morrows. The plaintiff contends that Larry Jacobs and Lyle Morrow were joint tort-feasors who should be held jointly and severally liable for all the damages sustained by the plaintiff. The Morrows contend that the appeal is moot as to Donald Morrow, Lyle's father, on the ground the payment of $1000 by Larry Jacobs' parents has satisfied the judgment, insofar as the judgment is against the parents of the assailants rather than against the assailants themselves. Furthermore, the Morrows deny that Lyle was a joint tort-feasor with Larry Jacobs.

The defendants Jacobs have not participated in this appeal.

Our review is on assigned error. Iowa R. App. P. 4 (1983).

The trial court as the factfinder concluded that only Jacobs was liable for the injury to the plaintiff. Trial court's findings of fact have the effect of a special verdict which will be upheld on appeal if supported by substantial evidence. Iowa R. App. P. 14(f)(1). The evidence is viewed in the light most favorable to the judgment. R.E.T. Corp. v. Frank Paxton Co., Inc., 329 N.W.2d

416, 419 (Iowa 1983). In this case there was evidence that Jacobs was responsible for plaintiff's broken nose. Therefore, we will not interfere with the court's judgment.

AFFIRMED.

Oxberger, C.J., concurs; Snell, J., concurs specially.

SNELL, J. (concurring specially)

I agree with the result in this case, but I also believe the trial court was correct on the issue of joint tort. The plaintiff alleges the trial court erred in not applying the joint tort-feasor doctrine. The majority does not reply to this issue. Even if Larry Jacobs was the only boy to injure plaintiff, it is possible that Lyle Morrow also could be liable. However, I believe the torts are severable.

Professor William L. Prosser states:

> All those who, in pursuance of a common plan or design to commit a tortious act, actively take part in it, or further it by cooperation or request, or who lend aid or encouragement to the wrongdoer, or who ratify and adopt his acts done for their benefit, are equally liable with him.

W. Prosser, Handbook of the Law of Torts 292 (4th ed. 1971)(footnotes omitted). Iowa follows this general axiom. See Way v. Waterloo, Cedar Falls & N.R.R., 239 Iowa 244, 248-49, 29 N.W.2d 867, 872 (1947).

Joint liability is imposed only when two or more causes combine to produce a single result, which, by its very nature, is obviously incapable of any logical, reasonable, or practical division. In this situation, each cause may be a substantial factor in bringing about the injury and, thus, each must be charged with all of it. Prosser at 315-16. However:

> . . . certain other results, by their nature, are more capable of apportionment. If two defendants independently shoot the plaintiff at the same time, and one wounds him in the arm and the other in the leg, the ultimate result may be a badly damaged plaintiff in the hospital, but it is still possible, as a practical matter, to regard the two wounds as separate wrongs. Mere coincidence in time does not make the two one tort, nor does similarity of design or conduct, without concert.

Prosser at 317. Accord Dickson v. Yates, 194 Iowa 910, 917, 188 N.W. 948, 951 (1928).

In the instant case, Larry Jacobs admitted he struck plaintiff in the face. A broken nose was the only compensable injury inflicted on plaintiff. Lyle Morrow is not the person who broke plaintiff's nose. There is no evidence that the two boys

had a common design in the scuffle; rather, it seems to have been an instantaneous unleashing of hostilities. Therefore, the damages were apportionable; trial court correctly apportioned the damages.