IN THE COURT OF APPEALS OF IOWA

No 6-257 / 95-1162

FILED
AUG 3 0
CLERK SUPREME COURT

JOHN J. RENNENGER, Individually and as Next Friend of RHONDA C. RENNENGER, HEATHER M. RENNENGER and RENADA N. RENNENGER and SANDRA K. RENNENGER, his wife,

Plaintiffs-Appellants,

vs.

PACESETTER COMPANY a/k/a PACESETTER COMPANY, INC.,

Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge.

John J. Rennenger appeals from the district court's order granting the defendant's Motion for Summary Judgment dismissing his petition seeking damages for personal injuries he received while performing his duties as a fireman for the City of Des Moines **REVERSED AND REMANDED.**

Gary D. Ordway and Roy M. Irish of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, L.L.P., Des Moines, for appellants.

William F. Fanter and Elizabeth A. Nigut of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Heard by Cady, P.J., and Huitink and Vogel, JJ. Streit, J., takes no part.

HUITINK, J.

In this case we are required to determine whether the district court correctly applied the "fireman's rule" in granting Pacesetter Company's motion for summary judgment in Des Moines firefighter John Rennenger's personal injury action against Pacesetter Because we conclude the district court's application of the fireman's rule exceeded its narrowly defined scope we reverse and remand for trial on the merits of the Rennengers' claims.

The summary judgment record indicates Rennenger was injured when he fell from an upper floor deck of an apartment house while fighting a suspected arson fire. At the time the fire occurred, Pacesetter Company was remodeling this property under a contract with the owner Sherman Hills Association. Rennenger and members of his family sued Pacesetter claiming Pacesetter was negligent in failing to, among other specifications, provide temporary railings for the deck area from which Rennenger fell. The Rennengers did not make any claims against Sherman Hills and Sherman Hills is not a party to this action.

Pacesetter moved for summary judgment citing the fireman's rule. Under the fireman's rule a firefighter is barred from recovering for injuries caused by the negligently created risk necessitating the firefighter's presence in an official capacity. *Chapman v. Craig*, 431 N.W.2d 770, 771 (Iowa 1988); *Gail v. Clark*, 410 N.W.2d 662, 666 (Iowa 1987); *Pottebaum v. Hinds*, 347 N.W.2d 642, 647 (Iowa 1984). Pacesetter

argued Rennenger's claim was barred because his injuries were indisputably caused by the smoke, poor lighting, and obscured vision incidental to the fire necessitating Rennenger's presence at the apartment house. The district court determined, as a matter of law, that circumstances incidental to the fire were the proximate cause of Rennenger's injuries and that there were accordingly no genuine issues of material fact remaining for trial. Although Pacesetter's alleged negligence was acknowledged as an "independent factor" contributing to Rennenger's injuries, the district court rejected its consideration because of the underlying public policy considerations implicated by the fireman's rule. The Rennengers' motion for adjudication of law points seeking exception to the application of the fireman's rule in this case was denied.

On appeal the Rennengers contend the district court erred in granting summary judgment and dismissing their claims. They contend the fireman's rule does not apply in this case because the risk created by Pacesetter's negligent conduct is not the same as the conduct necessitating Rennenger's presence at the fire in his official capacity

We review this case for corrections of errors at law. Iowa R.App. 4. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); *see Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of

a material fact, *Milne*, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party. *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986) The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. *Id.; Sherwood v. Nissen*, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Milne*, 424 N.W.2d at 423; *Gott*, 387 N.W.2d at 343. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e).

The fireman's rule adopted by the Iowa Supreme Court is intended to be a limited rule applied only in narrow circumstances. *Pottebaum*, 347 N.W.2d at 645; *Clark*, 410 N.W.2d at 665-66. The court specifically provided that their decision did not express an absolute rule barring police officers and firefighters from recovery in all instances in which they are injured by negligent acts. *Id.* at 646. The "door was left open for recovery" by injured police officers and firemen. *Clark*, 410 N.W.2d at 666:

> The relevant inquiry is whether the negligently created risk which resulted in the fireman's or policeman's injury was the very reason for his presence on the scene in his professional capacity. If the answer is yes, then recovery is barred; if no, recovery may be had.

Pottebaum, 347 N.W.2d at 646.

In defining the scope of the fireman's rule, the Iowa Supreme Court quoted with approval, the language in a California case, *Lipson v. Superior,* 31 Cal 3d. 362, 182 Cal Rptr. 629, 644 P 2d 822 (1982):

> Its [the fireman's rule] parameters are narrow. The rule does not prohibit a firefighter from recovering damages where the act which results in his injury is independent from the act which created the emergency to which the fireman responded. A defendant is liable for failing to warn of a known, hidden danger on his premises or for misrepresenting the nature of the hazard, if such misconduct causes the fireman's injury.

Id.; 31 Cal.3d at 378, 182 Cal.Rptr. at 639-40, 644 P.2d at 832-33; *Pottebaum*, 347 N.W 2d at 646.

The *Pottebaum* court noted several exceptions to the application of the fireman's rule. One noted exception is a claim based on the negligent or intentional acts of a third party. *Pottebaum,* 347 N.W.2d at 646. We hold that the Rennengers' claim falls within the purview of this exception because it is based on a third party's (Pacesetter's) negligent conduct which is not the same as the suspected arsonist's conduct that necessitated his official presence at the fire

We also disagree with the notion that permitting the Rennengers to recover under these circumstances frustrates the policy underlying the rule. We fail to see how anyone would be discouraged from seeking emergency assistance based on the liability implications of unrelated third party conduct. Moreover, our holding in this case serves the equally important and acknowledged public policy favoring a party's right to seek

reimbursement for injuries caused by the negligence of another. *Chapman*, 431 N.W 2d at 773 (Larson, J., dissenting).

Lastly, it was error for the district court to exclude Pacesetter's conduct as a contributing cause of Rennenger's injuries because there is no legitimate policy consideration requiring its exclusion. Whether Rennenger's injuries were proximately caused by Pacesetter's negligence or other circumstances incidental to the fire presents a factual issue for the jury to resolve. The presence of this fact issue precludes entry of summary judgment in this case. *See Beeman v. Manville Corp. Asbestos Disease Compensation Fund*, 496 N.W.2d 247, 254 (Iowa 1993) (questions of proximate cause are for jury; only in exceptional cases is proximate cause decided as a matter of law).

For all these reasons we reverse the district court's summary judgment ruling and remand for trial. We also conclude that the fireman's rule does not apply under the circumstances of this case and it was error for the district court to hold otherwise.

REVERSED AND REMANDED.