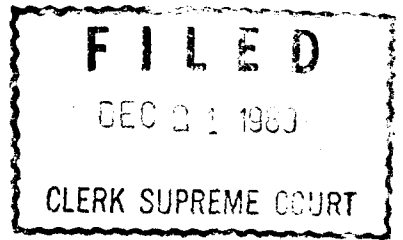


IN THE COURT OF APPEALS OF IOWA

No. 9-237 / 88-1500



FRANCIS EUGENE MORROW and CHERRY MORROW,

Appellees,

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vs.

STRAWTOWN INN, INC.,

Appellant.

Appeal from the Iowa District Court for Marion County,
Dale B. Hagen, Judge.

The defendant in this slip-and-fall case appeals the district court's order sustaining the plaintiffs' motion for a new trial. The defendant contends the court abused its discretion by holding the jury could not reasonably have found, as it did, that the defendant was negligent but that such negligence was not a proximate cause of the plaintiff's injury. **AFFIRMED.**

Paul C. Thune of Peddicord, Wharton, Thune, Foxhoven & Spencer, Des Moines, for defendant-appellant.

George A. Wilson, III and Richard A. LaJeunesse of Dreher, Wilson, Simpson, Jensen, Sellers, Butters, Adams & Kaiser, Des Moines, for plaintiffs- appellees.

Considered by Donielson, P.J., and Schlegel and Habhab,
JJ.

DONIELSON, P.J.

Francis Morrow was injured when he fell after failing to see a ten-inch step in the hallway of the Strawtown Inn in Pella. Francis and his wife sued the Inn, and their case was subsequently submitted to a jury under the law of comparative fault. Jury instruction number seventeen advised the jury of five specifications of negligence against the Inn, including the failure to warn Francis of the existence of the step, in having an "abnormally large" ten-inch step, and in failing to install a ramp. The jury was also instructed on Francis's alleged negligence in failing to maintain a proper lookout. The jury returned a verdict finding the Inn was negligent, but that its negligence was not a proximate cause of Francis's injury. The plaintiffs moved for a new trial, claiming the verdict on the issue of proximate cause was not supported by sufficient evidence and the jury failed to administer substantial justice. The district court agreed and granted a new trial ruling "it is inconceivable that the [d]efendant could have been negligent in any of the ways set forth in Instruction No. 17 without that negligence having been a proximate cause of the plaintiff's fall."

On appeal, the Inn contends the jury could properly have found from the evidence that its negligence was not a proximate cause of Francis's injury, and the district court abused its discretion by ruling otherwise. The Inn

maintains the court erred further by finding the jury should have gone on to determine the percentage of fault attributable to Francis and should also have considered his wife's claim for loss of consortium. The Inn asserts these additional jury findings are not required under Iowa law when the issue of proximate cause has been determined adversely to the injured party.

A trial court may grant a new trial when a verdict fails to effectuate substantial justice. Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa App. 1983); Iowa R. Civ. P. 244 (f). Support must fairly appear in the record to justify the granting of a new trial. Hardy v. Britt-Tech Corp., 378 N.W.2d 307, 310 (Iowa App. 1985); Houvenagle, 340 N.W.2d at 785.

In ruling upon a motion for a new trial, the trial court has broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3). Only when the evidence clearly shows the trial court abused its discretion will the court of appeals interfere. In re Marriage of Johnson, 311 N.W.2d 697, 699 (Iowa App. 1981).

This court recognizes that even though negligence is established, it does not necessarily follow that proximate cause exists; proximate cause must be separately determined. Blackhawk Bldg. Sys. v. Law Firm, 428 N.W.2d 288, 290 (Iowa 1988); Oak Leaf Country Club, Inc. v.

Wilson, 257 N.W.2d 739, 746 (Iowa 1977); DeYarman v. State, 226 N.W.2d 26, 28 (Iowa 1975). To constitute a proximate cause of harm to another, a party's conduct must have been a substantial factor in bringing about the harm. Iowa Elec. Light and Power Co. v. General Elec. Co., 352 N.W.2d 231, 234 (Iowa 1984).

From our review of the record, it is apparent the jury could not rationally have found defendant's conduct to have been negligent but not the proximate cause of plaintiff's injuries. This is a relatively simple case in that the jury was asked to determine: 1) if defendant was negligent in maintaining an unsafe step or in failing to adequately warn plaintiff about the step, and 2) if defendant was negligent, was its unsafe step or inadequate warning a substantial factor in bringing about plaintiff's injuries. This case involves no superseding or intervening factors; the evidence supports the finding that plaintiff's fall down the step caused or aggravated his injuries. The evidence cannot sustain a finding that defendant was negligent in one of the ways specified in instruction seventeen, but that that negligence was not a substantial factor and a proximate cause in bringing about plaintiff's fall and injuries.

The trial court faced a difficult situation in this case. While a jury verdict should not be lightly set aside, it must be sustained by sufficient evidence and

effectuate substantial justice. The trial court did not abuse its discretion in granting a new trial in this matter.¹

AFFIRMED.

1. Defendant has raised arguments with regard to the trial court's finding that the jury should have determined the percentage of fault attributable to plaintiff and that it should have considered Mrs. Morrow's claim for consortium. We believe the defendant has misconstrued the trial court's ruling. The trial court concluded the jury could not have found negligence without also finding proximate cause in this case. The trial court's ruling on September 23, 1988, merely indicates once the jury found negligence it should have also found proximate cause and then proceeded to the questions of comparative fault and consortium. The trial court was not stating that comparative fault and consortium issues should be addressed even though proximate cause has not been established in a case.