FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BERTHA CRUIKSHANK,

Plaintiff-appellee,

vs.

SEARS ROEBUCK AND COMPANY, A Corporation,

Defendant-Appellant.

Filed October 21, 1980

0-104
2-62993

Appeal from Davis District Court - Dick R. Schlegel, Judge.

Defendant appeals from judgment entered for plaintiff in her negligence action for damages resulting from a fire in her apartment. - AFFIRMED.

Richard C. Bauerle of Johnson, Bauerle & Hester, Ottumwa, for appellant.

John Moreland of Ottumwa, for appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from judgment entered for plaintiff in her negligence action for damages resulting from a fire in her apartment. Plaintiff alleged the fire was caused by a television set purchased by her from defendant and alleged defendant's negligence in failing to replace defective parts and failing to do proper repair work under a maintenance agreement. Defendant argues trial court error in refusing to sustain its motion for directed verdict, submitting certain instructions to the jury and allowing certain evidence as to property damage. We affirm.

Plaintiff purchased a television set from defendant in 1965 and also purchased a maintenance agreement whereby defendant agreed to do certain necessary repairs and install needed parts. This agreement was periodically renewed and was in effect at the time of the fire. Various repairs were done, all of which were covered by the agreements except for one in April, 1973 which was the result of lightning damage. Two or three days prior to the fire, defendant's serviceman came to plaintiff's apartment to replace a tuning knob on the television set. He turned on the set to assure its operation but did not inspect or repair within the set.

On November 9, 1973, plaintiff had the television on for an hour and a half, after which she turned the set off and returned to her business (she lived in an apartment above her shoe repair store). About fifteen minutes later she heard a noise "like something big dropped" and then saw smoke coming from upstairs. She went to investigate and saw a fire in the corner of her living room where the television was located.

She subsequently brought this action against defendant seeking monetary damages for property losses. Various grounds for recovery were asserted, including breach of express warranty, res ipsa loquitor and negligence. Trial court refused to submit the warranty and res ipsa loquitor claims to the jury; plaintiff does not appeal these rulings. Two negligence claims were submitted to the jury — defendant's failure to replace defective parts and failure to do proper repairs. The jury returned a verdict of $7500 for plaintiff and judgment was entered thereon.

Defendant argues trial court erred in not sustaining its motion for directed verdict on the ground there is no substantial evidence in the record demonstrating the television

set or defendant's negligence in repairing and replacing parts was the proximate cause of the fire.

In considering the propriety of a motion for directed verdict, we view the evidence in the light most favorable to the party against whom the motion was made; here, plaintiff. Iowa R. App. P. 14(f)(2). In addition, questions of negligence are generally for the jury; only in exceptional cases may they be decided as a matter of law. Iowa R. App. P. 14(f)(10). "To generate a jury question there must be substantial evidence. A mere scintilla is not enough". Ellingson v. Kramer, 255 Iowa 1257, 1262, 125 N.W.2d 777 (1964).

Defendant presented witnesses who were equivocal regarding the cause of fire. Plaintiff presented Dr. Arthur Frank, an expert in electronic systems engineering. Dr. Frank's testimony, while not eliciting a single cause, presented evidence of the television's causal effect of the fire because of an electrical component misfunction. He was of the opinion the fire started inside the right side of the set where the electrical components were located. He said television components normally fail when the set is turned off due to an unavoidable surge of electrical current which occurs at that time. He gave three main reasons why such components fail: 1) incorrect size component installed; 2) defective manufacture; and 3) incorrect installation. He expressed the opinion that the television caused the fire because of a component which failed for one of the above three reasons. We find sufficient evidence to allow a conclusion that the television was the source of the fire.

Defendant urges plaintiff failed to establish that it was defendant's negligence which resulted in the television fire. There is no question the maintenance contract was in effect at the time of the fire. A provision of the agreement stated:

> During the last 2 months of contract coverage, a Sears technician will make a preventative maintenance check of your Silvertone product at your convenience.

The agreement in effect was to terminate on December 16, 1973. The component parts and their repair and replacement were included in the agreement. We find sufficient evidence to present the jury question whether the defendant knew, or should have known, of a possible malfunctioning of parts immediately prior to the mishap. Dr. Frank testified the component misfunction would have been apparent upon visual

observation or electrical inspection. He also indicated the need for preventative maintenance for these components of a television set as provided in the agreement. The serviceman was well award of the age and condition of the set. He testified that a usual service call would include a complete inspection of the inside workings of the set. The serviceman was aware that the service agreement would terminate within less than two months when he attended to a tuning knob replacement two days prior to the fire. At that time, he did not inspect the set other than turn it on to check the knob operation. We find the evidence is sufficient for a jury to determine whether or not defendant reasonably performed its duty under the agreement.

The defendant asserts the trial court erred in allowing plaintiff's evidence of lump sum personalty damage. Plaintiff offered into evidence itemized lists of household furnishings that were damaged in the fire. The list included age and condition of those items. The original cost was noted on the lists, but they were accepted into evidence for the limited purpose as an aid to the jury to determine the value at time of the fire. Plaintiff was asked the total dollar value of the items as shown on the lists immediately prior to the fire. She responded, $6500. The court overruled defendant's objection to this opinion and stated what is a well established principle in Iowa law; that is, an owner of property is qualified to testify as to its value. State v. Boyken, 217 N.W.2d 218, 220 (Iowa 1974); Jeffries v. Snyder, 110 Iowa 359, 362, 81 N.W. 678, 680 (1900); Thomason v. Capital Ins. Co., 92 Iowa 72, 79, 61 N.W. 843, 845 (1894). It is within the court's discretion to permit a witness, after particularizing the damage, to state the value of all the items. Northrup v. Miles Homes, Inc. of Iowa, 204 N.W.2d 850, 857 (Iowa 1973). We find the jury was presented with sufficient, competent evidence to arrive at its determination of damages.

AFFIRMED.