IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

DORIS FINCK and DONALD FINCK,)

Plaintiffs-Appellants,) Filed November 26, 1986

vs.) 6-337
85-1881 83

MERCY HOSPITAL,)

Defendant-Appellee.)

Appeal from the Iowa District Court for Pottawattamie County (No. 54503) - Paul H. Sulhoff, Judge.

Plaintiff appeals a trial court order sustaining a motion for directed verdict.

REMANDED FOR NEW TRIAL.

John M. McHale, Council Bluffs, for plaintiffs.

David A. Blagg and Dennis R. Riekenberg, of Cassem, Tierney, Adams, Gotch & Douglas, Omaha, Nebraska, for defendant.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

PER CURIUM:

Plaintiffs Doris and Donald Finck appeal from the trial court's order sustaining Defendant Mercy Hospital's motion for directed verdict in a slip and fall case. Plaintiffs contend there was sufficient evidence to submit to a jury Doris' claim that defendant's negligence was a proximate cause of her fall. In order for plaintiff to recover she must show the alleged dangerous condition existed and defendant knew or in the exercise of reasonable care should have known it existed prior to plaintiff's fall. See Frantz v. Knights of Columbus, 205 N.W.2d 705, 712 (Iowa 1973).

On January 19, 1982, in the early morning hours, Doris slipped on the sidewalk in front of the emergency entrance when she entered the hospital to fill a newspaper vendor. The evidence taken in the light most favorable to Doris shows on January 18, 1982 the temperature at the Omaha Airport, ten miles from Mercy Hospital, went above freezing. Starting at 6:00 p.m., on January 18, the temperature dropped below freezing and at the time of the fall the temperature was around 20 degrees Fahrenheit. The ground cover for snow and ice was three inches on January 18, and reduced to two inches on January 19, 1982.

We could infer a melting period had occurred on the afternoon before the accident and that a freezing period was in existence at the time of the accident. Doris testified she fell on some substance on the walk. She told a security guard employed by defendant she fell. It was the duty of the security guard to keep the area where she fell free from slippery conditions. She testified he told her he knew it was slippery out where she fell because he had almost fallen and he should put something out there. The security guard did not remember telling Doris this.

In considering the propriety of a motion for directed verdict the court views the evidence in the light most favorable to the party against whom the motion was made. Generally questions of negligence, contributory negligence and proximate cause are for the jury; it is only in exceptional cases that they may be decided as matters of law. Direct and circumstantial evidence are equally probative. Even when the facts are not in dispute or contradicted, if reasonable minds might draw different inferences from them a jury question is engendered. Iowa R. App. P. 14(f)(2), (10), (16), (17). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). There is sufficient evidence to generate a jury question.

We remand for a new trial.

REMANDED FOR NEW TRIAL.