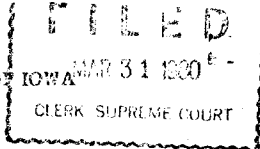


IN THE COURT OF APPEALS OF IOWA



416

HOWARD RICE,

)

Plaintiff-Appellant,

)

vs.

)

Filed March 31, 1980

EUGENE LEONARD, d/b/a
GENE'S LOUNGE,

)

and

)

COURTNEY ROBERTS,

)

0-39
2-62928

Defendant-Appellee.

)

)

Appeal from Greene District Court - Paul E. Hellwege, Judge.

Plaintiff appeals trial court ruling barring recovery in a tort action due to a finding of contributory negligence on his part. AFFIRMED.

Jerry L. Jones of Ames, Iowa, for plaintiff-appellant.

W. K. Doran of Doran, Doran, Courter & Quinn, Boone, Iowa, for defendant-appellee Eugene Leonard.

Richard N. Winders of Cudahy, Wilcox, Magee, Polking, Gerken & Winders, Jefferson, Iowa, for defendant-appellee Courtney Roberts.

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

PER CURIAM

Plaintiff appeals trial court ruling barring recovery in a tort action due to a finding of contributory negligence on his part. We affirm.

Plaintiff sustained his injury on January 24, 1975. During the day, he had been hunting rabbits with a friend. After returning home, he had a beer while the rabbits were being cleaned. Thereafter, plaintiff and his friend went to a bar known as Gene's Lounge, which was operated by defendant Eugene Leonard on real estate owned by defendant Courtney Roberts. At the time, plaintiff was still dressed in his hunting clothes, including his hunting boots. Testimony as to how much alcohol plaintiff had consumed varied, but it is not seriously disputed that he had at least three highballs and possibly as many as five. Plaintiff learned that a dance was scheduled in the tavern later in the evening and he decided to go home and change his hunting clothes and boots. His change of clothes included light dress shoes with rubber heels and soles. Upon returning, plaintiff slipped and fell in the parking lot of Gene's Lounge on his way from his car to the bar, breaking his leg in two places. This lawsuit followed.

The trial court, acting as finder of fact, concluded plaintiff had "failed to exercise ordinary care under the total record for his own safety and, as a result, must be denied recovery"¹ Plaintiff moved for a new trial. The trial court denied this request stating its finding of contributory negligence was not based solely on evidence of plaintiff's intoxication, but rather was based on the entire record and all of the facts adduced therein.

The ultimate issue in a suit of this nature is whether defendant, as a possessor of the real estate, exercised reasonable care to make the premises reasonably safe for plaintiff, as an invitee. Frantz v. Knights of Columbus, 205 N.W.2d 705, 708-09 (Iowa 1973); Weidenhaft v. Shoppers Fair of Des Moines, Inc., 165 N.W.2d 756, 758 (Iowa 1969). The trial court did not enter a specific finding on this issue, but rather found that, in any event, a recovery by plaintiff would be barred by way of his own contributory negligence. Marean v. Petersen, 259 Iowa 557, 567, 144 N.W.2d 906, 912 (1966); Bostian v. Jewell, 254 Iowa 1289, 1300, 121 N.W.2d 141, 147 (1963). On appeal plaintiff's only contention is that the evidence presented was insufficient to support the trial court's finding of contributory negligence.

Our review is not *de novo*, but only for correction of errors at law. Iowa R. App.

P. 4. The findings of fact made by the trial court have the effect of a special verdict

¹ The trial court's findings and conclusions also deny plaintiff recovery against defendant Courtney Roberts on the ground that control of the premises where the slip and fall occurred rested with the lessee, Eugene Leonard.

and are equivalent to a jury verdict. Frantz, 205 N.W.2d at 703; Iowa R. App. P. 4. Findings of fact made by the trial court are binding on this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. Grefe v. Ross, 231 N.W.2d 863, 865 (Iowa 1975).

The evidence presented must be construed in the light most favorable to sustaining the trial court's judgment, whether contradicted or not. Carson v. Muhnix, 263 N.W.2d 701, 705 (Iowa 1978); Briggs Transportation Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978). In case of doubt or ambiguity, findings will be construed to uphold rather than defeat the judgment. Frantz, 205 N.W.2d at 708. Here the trial court found plaintiff's injuries were the result of his own failure to exercise ordinary care for his own safety. In so finding, the trial court relied primarily upon two factors: (1) evidence that plaintiff was intoxicated at the time he fell² and (2) evidence that he had knowledge of the icy condition and failed to avoid it. These findings and the ultimate inference of lack of due care have support in the evidence and should not be disturbed on appeal.

AFFIRMED.

² This was the opinion of the doctor who treated plaintiff in the hospital emergency room following his fall.