

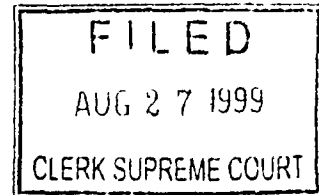
IN THE COURT OF APPEALS OF IOWA

No. 9-105 / 98-592
Filed August 27, 1999

BEVERLY NEDERHOFF and ART NEDERHOFF,
Appellees,

vs.

ROUSE MOTOR CO.,
Appellant.



Appeal from the Iowa District Court for Grundy County, James C. Bauch,
Judge.

Rouse Motor Co. appeals a district court judgment entered in favor of Beverly
and Art Nederhoff on their personal injury action. **AFFIRMED.**

Roy M. Irish of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker &
Ordway, L.L.P., Des Moines, for appellant.

Michael A. Smith of Lundy, Butler & Smith, P.C., Eldora, for appellees.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

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VOGEL, J.

Rouse Motor Co. appeals a district court judgment entered in favor of Beverly and Art Nederhoff on their personal injury action. We affirm.

Background facts. On June 22, 1994, Beverly Nederhoff brought her van to Rouse Motor Co. in Grundy Center, Iowa to be serviced. When the van was finished, a Rouse employee parked the van parallel to the front of the building. Nederhoff exited the building and proceeded to walk along the walkway/ledge, which extended the length of the building, toward her van. The ledge is twenty-seven inches wide and just over six inches higher than the parking surface. The ledge is marked with orange paint only in the area directly in front of the doorway to the building. After walking about five and one-half feet to a point where the ledge narrowed to seventeen and one-half inches around a column, Nederhoff lost her footing. She fell as she stepped off the ledge and sustained injury.

Beverly and her husband Art filed a negligence action against Rouse. A jury returned a verdict in favor of the Nederhoffs, but found that both parties were fifty percent at fault. Rouse's motion for judgment notwithstanding the verdict and alternative motion for new trial were denied by the trial court. Rouse now appeals.

I. Expert testimony. Rouse first argues that the trial court erred in overruling his objections to testimony by the Nederhoff's expert witness, Dr. Jerry Hall. Rouse contends that Hall was wrongly allowed to state an opinion as to a legal standard.

A trial court is entitled to exercise its broad discretion in the admissibility of expert testimony. *United Cent. Bank v. Kruse*, 439 N.W.2d 849, 852 (Iowa 1989). We give great deference to the trial court's decision and will not interfere unless clear abuse is shown. *See Bell v. Community Ambulance Service Agency for Northern Des Moines County*, 579 N.W.2d 330, 338 (Iowa 1998).

In general an expert witness is not permitted to state a legal conclusion. *Terrell v. Reinecker*, 482 N.W.2d 428, 430 (Iowa 1992); *Miller v. Bonar*, 337 N.W.2d 523, 529 (Iowa 1983). This rule is modified somewhat if a legal issue is raised in such a way as to become a necessary operative fact. *Terrell*, 482 N.W.2d at 430. However, when the legal conclusion is a rule of decision to be applied by the judge or jury in deciding the case, it is not a proper subject for expert testimony. *See id.*; *Kruse*, 439 N.W.2d at 852.

Hall is a retired engineering professor from Iowa State University who reviews the construction of buildings and their compliance with applicable codes. Hall explained why he viewed the ledge in front of the Rouse building to be a hazard and offered several suggestions as to how the hazard could be eliminated. After reviewing his testimony, we do not find that Hall offered an objectionable legal standard. In addition to the elements of knowledge, proximate cause, and damage, the jury was instructed to determine whether Rouse had been negligent in any of the following ways:

- a) in having a landing/walkway which was too narrow;

b) in having a landing/walkway which “blended” with the parking lot below;

c) failing to block the use of a narrow landing/walkway by a handrail or otherwise; and

d) in failing to warn of the conditions existing.

Hall’s testimony that he considered the ledge a hazard did not constitute an opinion on the jury’s ultimate question of Rouse’s negligence. Furthermore, the jury was free to reject Hall’s testimony altogether. We find no abuse of discretion.

II. Uniform building code. Rouse next contends that the court erred in allowing the admission of the 1979 Uniform Building Code into evidence when the Code was never adopted by the town of Grundy Center, Grundy County, or the State of Iowa. Rouse also complains that the court erred in allowing Dr. Hall to compare the ledge to a “landing,” and comparing its dimensions with the requirements for a landing in the Code.

The record reveals that Hall referred to the Code as an example to illustrate what he considered to be safe and unsafe construction. The jury was not instructed to consider any violations of the Code as negligence per se. We believe the jury was entitled to consider Hall’s testimony and the provisions of the Code in determining whether Rouse was negligent. *See Johnson v. Interstate Power Co.*, 481 N.W.2d 310, 316 (Iowa 1992) (finding that while the jury could not consider breaches of an inapplicable safety code as negligence per se, it could consider the requirements of a safety code as evidence of negligence). We find no abuse of discretion.

III. Directed verdict or JNOV. Finally Rouse contends the court erred in failing to grant its motion for directed verdict or judgment notwithstanding the verdict. Rouse argues that the Nederhoffs failed to prove that it knew, or should have known that the ledge was a hazard or danger which presented an unreasonable risk of harm.

Our review of a district court's denial or grant of a motion for judgment notwithstanding the verdict is for correction of errors at law. Iowa R. App. P. 4. We view the evidence as the trial court did in ruling on the motion, that is, in the light most favorable to the party against whom the motion was directed. *Bangs v. Maple Hills, Ltd.*, 585 N.W.2d 262, 268 (Iowa 1998) (citation omitted). A motion for judgment notwithstanding the verdict should be denied if there is substantial evidence to support the claim. *See id.* Generally, questions of negligence are for the jury; only in exceptional cases may they be decided as a matter of law. *See* Iowa R. App. P. 14(f)(10).

Viewing the evidence in a light most favorable to the Nederhoffs, we conclude that the court did not err in denying Rouse's motions for directed verdict and judgment notwithstanding the verdict. Generally there is no liability for injuries from dangers that are known and obvious to the invitee. *See Anderson v. Younker Bros., Inc.*, 249 Iowa 923, 928, 89 N.W.2d 858, 861 (1958). However, because of the position in which a Rouse employee had parked the van, the ledge was the only accessible pathway to the driver's side door. Moreover, the exhibits presented at trial

and Dr. Hall's testimony supported that the ledge presented a hazardous condition because the ledge narrowed around a post, had no edge paint to distinguish it from the surface below, and had no handrail. In addition, both Nederhoffs testified that Rouse employees told them that other people had tripped on the ledge in the past. There was clearly sufficient evidence to generate a fact question for the jury and to support their final verdict.

For all of these reasons, we hereby affirm the judgment of the district court.

AFFIRMED.