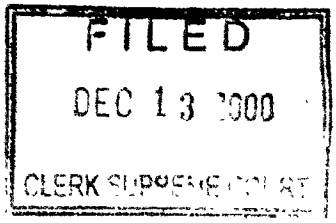
IN THE COURT OF APPEALS OF IOWA

No. 0-544 / 00-0244
Filed December 13, 2000



WILLIAM C. HINMAN,
Plaintiff-Appellant,

vs.

R.D. HAFNER FARMS, INC.,
R.D. HAFNER AND ANDREW C. HAFNER,

Defendants-Appellees.

Appeal from the Iowa District Court for Louisa County, John G. Linn, Judge.

The plaintiff appeals from the district court's ruling granting the defendants summary judgment on plaintiff's premises liability claim for damages arising from an accident on defendants' property allegedly caused when his tractor hit a drainage tile blowout. **AFFIRMED.**

David Scieszinski, Wilton, for appellant.

Gene R. Krekel and Jason W. Sapsin of Hirsch, Adams, Krekel, Putnam & Cahill, Burlington, for appellees.

Heard by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

MAHAN, J.

The plaintiff appeals from the district court's ruling granting the defendants summary judgment on plaintiff's premises liability claim for damages arising from an accident on defendants' property allegedly caused when his tractor hit a drainage tile blowout. The plaintiff claims the district court erred in determining the defendants had a legal excuse for not inspecting the property for defects in the tile line and in not finding the record generated reasonable inferences creating a factual issue on whether the tile line defect could have been discovered by inspection. We affirm.

Defendant R.D. Hafner Farms, Inc. (Hafner Farms), is tenant of a certain tract of agricultural farm real estate located in Concord Township, Louisa County, Iowa, which is leased from Ms. Faith Furnace. Defendant R.D. Hafner is president and defendant Andrew C. Hafner is an officer of R.D. Hafner Farms, Inc.

Plaintiff, William C. Hinman, mowed the grass waterways on the agricultural land farmed by the Hafners. Hinman obtained permission to mow from Andrew Hafner, but no money was exchanged for the service. Hinman baled the mowed grass from the waterway and kept the bales to feed his cattle.

On August 2, 1998, Hinman was mowing the grass waterway when the tractor he was operating struck a depression causing him serious bodily injury. Hinman believed the depression was most likely caused by a "blowout" in the

underground drainage tile.[1] Hinman described a "blowout" as "something you can't see . . . where the dirt is taken away from the bottom and leave[s] a top structure, it becomes a cavity, and that cavity, with weight and pressure, can cave in. . . . ." One can locate possible blowouts in drainage tile lines by driving a weight-bearing implement over the location of the tile line to test the weight bearing strength of the soil on top of the drainage tile system.

Hinman had laid tile previously, and was familiar with how it worked. He was aware of the possibility of washouts and blowouts of tile lines. He knew a person could not see a tile blowout. Hinman explained in deposition testimony the grass growing over the area where the blowout occurred was not discolored. The waterway containing the blowout was approximately 100 feet wide.

The drainage system was in place before Hafner Farms started farming the Furnace farm. A tile map does not exist; therefore, Hafner Farms did not know the location of the tile lines. The limited problems Hafner Farms had with the tile lines during the life of its lease did not involve a blowout. The problems were always evidenced by a visibly wet area in the field and would be remedied by digging down approximately six feet and repairing the problem. Defendants never tested the drainage system for possible blowouts.

Andrew Hafner did not see a broken tile when he looked in the hole after Hinman's accident. The hole was filled up with dirt after the accident, but no tile was repaired.

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[1] Hinman's petition alleges he drove his tractor and mower into a large "washout" in the drainage tile system. Discovery revealed the "washout" allegation was without support. Rather, the condition was best described as a "blowout."

Hinman filed a petition alleging defendants were negligent in (a) failing to inspect the waterways and discover the defective condition; (b) failing to repair the blowout in the drainage system; and (c) failing to warn plaintiff of the defective condition of the waterway caused by the blowout. The court granted defendant's motion for summary judgment, ruling: (1) plaintiff was a business invitee of defendants; (2) defendants did not know of the latent dangerous condition; and (3) defendants had no legal duty to inspect the land to discover the latent defect. Plaintiff appeals.

Standard of Review. We review a summary judgment ruling for errors at law. Iowa R. App. P. 4; *St. Ansgar Mills, Inc. v. Streit*, 613 N.W.2d 289, 292 (Iowa 2000). Summary judgment is appropriate where the moving party shows no genuine issue of material fact exists and it is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 649 (Iowa 2000). We examine the record before the district court to determine whether any genuine issue of material fact exists and whether the court correctly applied the law. *Schoff v. Combined Ins. Co. of America*, 604 N.W.2d 43, 45 (Iowa 1999). We view the facts in the light most favorable to the party opposing the motion for summary judgment. *Id.*

Legal Excuse. Plaintiff argues the trial court erred in holding defendants had a legal excuse for not inspecting the grass waterway for defects in the tile line. The court, in its summary judgment ruling, stated:

> The Court finds that because there was no foreseeable potential danger of a tile blowout in the grass waterway; an inspection with a weight bearing implement over such a large area with no knowledge of where the tile was would have created an impractical

> and onerous burden which would have been very difficult, and required significant effort; and such an inspection most likely would not have revealed the defect in the tile; thus the Defendants had no legal duty to inspect the land in this manner.

Thus, the court held defendants owed no duty to plaintiff under the facts and circumstances of this case to inspect the premises for a latent condition. The court did not rely upon legal excuse in reaching its conclusion. Therefore, we conclude the issue of legal excuse is irrelevant in this case.

Duty to Inspect. Plaintiff contends genuine issues of fact existed as to whether reasonable care warranted an inspection of the tile line and whether such an inspection would have alerted defendants to the dangerous condition of the tile line. According to plaintiff, the fact defendants were aware of the existence of the tile lines on the property and had repaired them in the past could support a jury finding reasonable care warranted inspection.

Before a plaintiff may recover for damages allegedly caused by another's negligence, the plaintiff must establish a legal duty owed the plaintiff by the wrongdoer. *Ries v. Steffensmeier*, 570 N.W.2d 111, 114 (Iowa 1997). The existence of a duty is a question of law for the court to determine. *Fry v. Mount*, 554 N.W.2d 263, 265 (Iowa 1996). Restatement (Second) of Torts states the general rule applicable to the liability of possessors of land for injuries caused by conditions on the land:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
>
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(c) fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts § 343, at 215-16 (1965). The parties do not dispute Hinman's status as invitee or the defendants' status as possessors of the land. The dispute in this case centers on the requirement the defendants know of the dangerous condition or by the exercise of reasonable care should know of the condition. *See Richardson v. Commodore, Inc.*, 599 N.W.2d 693, 696 (Iowa 1999).

The record demonstrates defendants had no actual knowledge of the blowout. Hinman himself testified generally, one cannot see a tile blowout and, in this case, the grass was green and growing on top of the blowout.

Knowledge can be imputed to a possessor of land who has created the condition that causes the injury. *Ling v. Hosts, Inc.*, 164 N.W.2d 123, 126 (Iowa 1969). There is no evidence defendants created the condition that existed at the time of Hinman's accident. Therefore, knowledge of the condition cannot be imputed to defendant.

The duty owed by a possessor of land to invitees includes an inspection of the premises to discover any dangerous condition or latent defects, "'followed by such repair, safeguards, or warning as may be reasonably necessary for his protection under the circumstance.'" *Wieseler v. Sisters of Mercy Health Corp.*, 540 N.W.2d 445, 450 (quoting Restatement (Second) of Torts § 343 cmt. b, at 216 (1965)). The action necessary to satisfy this duty of reasonable care depends upon "the nature of the land and the purposes for which it is used." *Richardson*, 599 N.W.2d at 697 (quoting Restatement (Second) of Torts § 343

cmt. e, at 217 (1965)). The possessor of the land need not expend a significant amount of time and money to discover hazards that may not exist. *See Vollmar v. J.C. Penney Co.*; 251 Iowa 1026, 1030-31, 103 N.W.2d 715, 717-18 (1960) (defendant not liable where discovery of defect would have required careful hand examination of allegedly defective step).

Visual inspection would not have revealed the existence of the blowout in this case. Hinman testified the grass growing over the blowout was green, not discolored. He had never before hit a tile blowout and did not know of anyone who had. According to Hinman, blowouts do not happen very often, and no one could see a blowout. Andrew Hafner did not see tile in the hole after the accident. No tile was repaired when the hole was filled in. Based on these facts, we conclude visual inspection would not have revealed the condition. Therefore, defendants' failure to visually inspect is irrelevant.

The only other method of inspection suggested by Hinman to the trial court was driving weight-bearing implements (i.e., a tractor) over the area to test the strength of the topsoil. Defendants, however, had no map of the tile lines, and no way of knowing exactly where to inspect. Defendants' previous problems with the tile lines did not involve blowouts. Plaintiff observed no visual indication of a blowout. We conclude, as did the trial court, the method of inspection suggested by plaintiff would have required significant effort and expense, and may not have revealed the condition alleged. Thus, defendants had no legal duty to inspect the land in this manner.

AFFIRMED.