FILED
APR 24 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-108 / 89-1112

SUZANNE WILBUR,

Appellee,

235

vs.

CITY OF CEDAR RAPIDS, IOWA

Appellant.

CITY OF CEDAR RAPIDS, IOWA,

Cross-Petitioner,

vs.

DONALD BLAYLOCK and BLAYLOCK CONSTRUCTION COMPANY; HELEN WYREMBECK; FIALA PLUMBING & HEATING CO.; and FORREST BLAYLOCK,

Third-Party Defendants.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

The City of Cedar Rapids, defendant in a personal injury action, appeals an adverse judgment. **AFFIRMED.**

David F. McGuire and Mohammad H. Sheronick, of the Cedar Rapids City Attorney's Office, for appellant.

Henry E. Nathanson, Cedar Rapids, for appellee.

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

SCHLEGEL, J.

Suzanne Wilbur suffered a broken arm when she tripped over a water shutoff valve, commonly known as a "stopbox," which was protruding above the surface of a Cedar Rapids sidewalk.

To recover for her injuries, Wilbur sued the City of Cedar Rapids (City). The City responded by filing third-party petitions seeking contribution or indemnity from three parties: the owner of the property adjacent to the sidewalk; the builder who had built the house located on that property; and a plumbing firm which had performed repair work on the sewer system affected by the stopbox.

Prior to trial one of the third-party defendants, the adjacent property owner, successfully moved for summary judgment. Also prior to trial, plaintiff Wilbur settled with the other two third-party defendants for a total of $6,000.

Wilbur's petition proceeded to trial against the City of Cedar Rapids as the sole defendant. The jury allocated fault as follows: the City of Cedar Rapids, 51%; Suzanne Wilbur, 49%; third-party defendants, 0%. The jury found Suzanne Wilbur's total damages to be $21,000.

Based on the verdict described above, the district court entered judgment against the City of Cedar Rapids for $10,710, or 51% of $21,000. The district court rejected the City's request that the judgment be offset by the

$6,000 Wilbur had received in settlement from two of the third-party defendants.

The City of Cedar Rapids has appealed from the judgment against it. The City contends the district court erred by refusing to offset the judgment by the $6,000 Wilbur had received in settlement from two of the third-party defendants.

Our scope of review in this matter is for the correction of errors at law. Iowa R. App. P. 4.

The only question presented for our consideration is whether a defendant is entitled to a credit of the amount the plaintiff settled with two other defendants, when it is the nonsettling defendant, rather than the plaintiff, who is proceeding against the other defendants. In this case the other two defendants settled for $3,000 each. The City contends that because the plaintiff did not join those two defendants in the action, the City should be entitled to a $6,000 credit against the judgment. We fail to see the distinction that would arise depending on whether the plaintiff took action directly against the other defendants or if the City of Cedar Rapids brings the defendants in as third-party defendants.

Iowa Code section 668.3 through section 668.7 sets out various rules for contribution and payment under our comparative fault system. Thomas v. Solberg, 442 N.W.2d 73 (Iowa 1989), interprets that statute and discusses the same

basic issue that is before us today. In Thomas, the court examined the effects of a partial tort settlement and whether the plaintiff is entitled to the benefits of a favorable settlement. The defendant in our case is asking us to apply the pro tanto credit rule to its specific situation; the pro tanto credit rule is "where the plaintiff's recovery is reduced by the amount paid by the settling defendants." Thomas, at 75. This was specifically rejected by the Iowa Supreme Court. Thomas, at 74. The court held:

> [I]n partial settlements of comparative fault cases the proportionate, rather than the pro tanto credit rule applies. This is so regardless of whether the plaintiff negotiates a partial settlement that ultimately results in the plaintiff receiving more that a jury or court award. In applying the proportionate credit rule, the district court simply credits the award against the nonsettling defendant with the settling defendant's equitable share of the total damages found by the trier of fact. This equitable share is determined by multiplying the total damages by the percentage of fault allocated to the settling defendant.

Thomas, at 78.

The equitable share of the settling defendants in our case is zero. The jury allocated 0% liability to those defendants. The total damages were $21,000. $21,000 multiplied by zero is zero.

The plaintiff is certainly entitled to the benefit of this good settlement. As the court stated in Thomas:

> A proportionate credit necessarily means that settling plaintiffs may recover more than the amount of damages ultimately determined, but they may also recover less. Plaintiffs bear the risk

> of poor settlements; logic and equity dictate that the benefit of good settlements should also be theirs.

Id.

The plaintiff has made a good settlement and, under Thomas, she is entitled to the benefit. There is no basis to assume the court in Thomas meant the pro tanto credit rule to apply in defendant's situation. We affirm the trial court's assessment of damages and possible contribution or credit thereto.

AFFIRMED.