IN THE COURT OF APPEALS OF IOWA

FILED
APR 23 1996
CLERK SUPREME COURT

No. 5-540 / 94-1456

DONALD W. BELL and **JANET M. BELL,**

Appellants/Cross-Appellees.

vs.

GUINTHER WELDING & MACHINE WORKS and **THOMAS FREEMAN,**

Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Woodbury County, James D. Scott, Judge.

Donald Bell appeals the district court's ruling finding he was seventy-five percent at fault in this negligence action and defendants cross-appeal on the award of consortium damages to Janet Bell. **AFFIRMED.**

Brian E. Buckmeier of Buckmeier & Daane, Sioux City, and David J. King and Mitchell A. Herigstad of Berenstein, Vriezelaar, Moore, Moser & Tigges, Sioux City, for appellants.

Christopher K. Miller of Shull, Cosgrove, Hellige & Lundberg, Sioux City, for appellees.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

PER CURIAM

Donald and Janet Bell appeal the district court's ruling finding Donald seventy-five percent at fault in this negligence action, thus barring his recovery of any damages from defendants. Defendants cross-appeal arguing the district court erred in awarding damages to Janet on her loss of consortium claim. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On February 22, 1991, Donald brought his truck to Guinther Welding and Machine Works to have a tarp placed on it. Bell waited for the work to be done. Thomas Freeman, the sole proprietor of Guinther, asked Bell to help him bend some pieces of sheet metal in a brake press. Freeman gave Bell some instruction on using the machine. While using the machine, Bell's thumb became pinched in the brake press, and he lost the tip of his thumb.

Bell and his wife, Janet, filed an action against Guinther and Freeman. After a bench trial, the district court found defendants were negligent in allowing Bell to operate the brake press. The court also found, however, that Bell was negligent in failing to keep his fingers out of the machine. The court assessed fault seventy-five percent to Bell and twenty-five percent to Freeman. Janet was awarded $7,500 on her loss of consortium claim. Plaintiffs appealed and defendants cross-appealed.

I. Plaintiffs claim the district court erred in finding Bell's negligence exceeded Freeman's negligence. They also claim there is not sufficient evidence to support the

court's conclusion that Bell was negligent. The district court's findings of fact are entitled to the weight of a special verdict and are binding on appeal if supported by substantial evidence. Iowa R. App. P. 14(f)(7).

We find there was substantial evidence in the record to support the court's conclusions. Bell admitted he knew not to place his fingers in the area where the machine pressed down. Immediately after the injury, Bell stated, "I can't believe I did that." We find no error in the court's determination Bell was negligent or in the assignment of fault.

II. In the cross-appeal, defendants seek to overturn current Iowa case law which provides that a tortfeasor is liable to an injured person's spouse for loss of consortium damages equal to the proportion of responsibility the tortfeasor bears for the damaging occurrence and the proportion of responsibility the physically injured spouse bears for the damaging occurrence. The supreme court recently upheld this rule in *Huber v. Hovey*, 501 N.W.2d 53, 57 (Iowa 1993). We see no reason to depart from this rule.

After carefully considering all issues raised by the parties on the appeal and the cross-appeal, we affirm the decision of the district court. Costs of this appeal are assessed one-half to each party.

AFFIRMED.