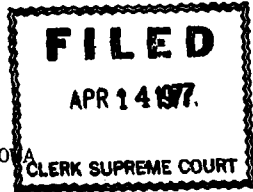


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IN THE COURT OF APPEALS OF IOWA

FRANCES WERT, Conservator,)

Appellant,)

v.)

JASPER COUNTY, IOWA, et al,)

Appellees.)

Filed April 14, 1977

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2-56847

Appeal from the Jasper District Court - M. J. V. Hayden,
Judge.

Appeal from verdict for defendant in personal injury action
tried to the court. Affirmed.

Dan Johnston of Jesse, Le Tourneau & Johnston of Des Moines,
for appellant.

A. Roger Witke of Whitfield, Musgrave, Selvy, Kelly & Eddy,
of Des Moines, for appellees.

Decided by Allbee, C.J., and Donielson, Snell and Carter,
JJ. Oxberger, J. takes no part.

CARTER, J.

This is an action seeking damages for personal injuries sustained by plaintiff's ward (Mrs. Shadle) from a fall occurring on the premises of the Jasper County Home. Mrs. Shadle was a custodial care patient at the county home at the time of the alleged occurrence. Defendants are Jasper County, the steward and stewardess of the county home and members of the county board of supervisors. Plaintiff's claim is based upon alleged negligence of defendants in caring for Mrs. Shadle. Trial to the court resulted in a finding and judgment denying recovery. We affirm.

It is clear from the record that when Mrs. Shadle came to the Jasper County Home the staff of that institution was clearly placed on notice that there was need to keep Mrs. Shadle in restraints. It was made known to them that she was 85 years of age; suffered from arteriosclerosis and dizziness; was prone to falling; and had been difficult to restrain during a recent hospitalization because she would untie restraints and climb out of bed. Mrs. Shadle was admitted to the county home on October 26, 1971. The staff employed a so-called Posey-belt to keep Mrs. Shadle in her bed. This is a fabric strap which fastens around the patient's waist, and other straps inserted through slits in this belt which are secured to the bed. It is designed to permit the patient to turn in bed, but at the same time, restrict falling or getting out of bed. In addition, Mrs. Shadle was provided with a low bed, approximately 22 inches in height.

On the first day Mrs. Shadle was in the county home she was found out of these restraints several times. This was reported to the registered nurse in charge who advised the staff to make sure that the restraints were tightly secured. In the early

morning hours of October 28, 1971, Mrs. Shadle was found unconscious on the floor of her room and shortly thereafter it was determined that she had a fractured hip. She had been observed in bed thirty minutes prior to the time she was discovered on the floor. The nurses' station was within a few feet of Mrs. Shadles' room and rounds were made at 30 minute intervals.

I. Plaintiff asks us to hold that on the entire record, contrary to the trial court's findings, Mrs. Shadle was entitled to recover against defendants. Plaintiff accordingly asks us to remand the case for determination of damages in the trial court. We believe the result thus advocated is precluded by the well established proposition that seldom, if ever, is a party who carries the burden of proof on an issue of fact entitled to a judgment in his favor as a matter of law. *Hepp v. Zinnel*, 199 N.W.2d 68, 69 (Iowa 1972); *Nassif v. Pipkin*, 178 N.W.2d 334 (Iowa 1970). Our review of the record in this non-jury case does not persuade us that the trial court was compelled to find in plaintiff's favor on the liability issues. To arrive at this conclusion we need only consider the contention of the parties relating to the alleged negligence of the defendants. The issue of proximate cause is also hotly contested but that issue need not be considered in view of our holding with respect to negligence.

Plaintiff, on this appeal, contends that defendants were negligent in two respects: (a) in failing to adequately confine Mrs. Shadle to her bed by bedrails or other means designed to prevent her from falling out of bed or leaving her bed when not attended; and (b) in leaving Mrs. Shadle unattended and unobserved. Our discussion in the following division approves what is essentially a common law standard for determining negligence

given the facts of the instant case. This is the standard of reasonable care in light of the patient's known condition. What was reasonable care with respect to application of restraints or necessary observation of the patient is peculiarly an issue for the trier of fact. *Hepp v. Zinnel*, supra. The trial court's ultimate findings on these issues find support in the record and are therefore conclusive upon appellate review. Rule 344(f) (1), Rules of Civil Procedure.

II. An exception to the rule requiring that conclusive effect be given to the trial court's ultimate findings exists in instances where such findings were induced by misapplication of controlling principles of law. But our review of the record convinces us that the trial court applied the proper legal standard in arriving at its ultimate findings on the issue of defendants' negligence. Given the facts of this case such standard is reasonable care in light of the patient's known condition. *Kastler v. Iowa Methodist Hospital*, 193 N.W.2d 98 (Iowa 1971). In reaching this conclusion we have considered the fact that there is language in the trial court's written decision suggesting that the absence of defendants' negligence is being adjudicated as a matter of law. If we were to so construe the ruling it would doubtless be without support in the record. We construe the court's decision in its entirety, however, and conclude that the court's determination of the negligence issues are, in fact, predicated upon findings of fact arrived at after application of the correct legal standard. See *Batliner v. Sallee*, 254 Iowa 561, 118 N.W.2d 552 (1962); *Brown v. Compton & Roush, Inc.*, 243 Iowa 665, 53 N.W.2d 164 (1952).

III. We next consider the plaintiff's contention that certain of the trial court's findings of fact (albeit not the ultimate findings on negligence) are without support in the record.

Plaintiff, in particular, challenges the trial court's finding that there was "no further or greater care that could have been provided plaintiff's ward at the time of her injury than was afforded her." There is evidence in the record that more restrictive devices were available to restrain Mrs. Shadle and that she was not in fact under uninterrupted observation.

Rule 179(b), R.C.P., provides that a party on appeal may challenge "the sufficiency of the evidence to sustain any finding." It has been held, however, that the mere fact that a finding by the court is not supported by the evidence will not justify a reversal when the judgment is in accord with other findings which do have support in the record. *Concannon v. Blackman*, 232 Iowa 722, 6 N.W.2d 116 (1942). As we have previously stated the law requires only reasonable care and not the highest and best care that is known or available. Since we have held that the trial court's ultimate findings on negligence have support in the record we will not reverse on the basis that other findings may not have such support. We do not believe that the trial court's ultimate findings were induced by any misconception as to the evidence offered on this issue.

IV. Lastly we consider plaintiff's claim that the trial court erred in not considering and failing to make any finding concerning the claim that defendants were negligent in the manner in which the Posey-belt was fastened. There is evidence in the record that, if the belt had been fastened under the bed rather than around the bedrails, it would have been more difficult to untie. In discussing the restraints employed, the trial court's written decision only speaks of the various types of restraint and does not specifically refer to the manner in which the particular type of restraint employed was attached. The rule is well

established that a trial court's findings are to be liberally construed so as to uphold rather than defeat the judgment. A corollary to this rule is that whenever, from facts expressly found, others may fairly be inferred which will support the judgment, such inference will be drawn. E.g., *Offermann v. Dickinson*, 175 N.W.2d 423 (Iowa 1970); *Staley v. Fazel Bros. Co.*, 247 Iowa 644, 75 N.W.2d 253 (1956). In application of these rules we can only reverse the judgment if we believe that the trial court failed to consider this theory of plaintiff's case and the evidence supporting said theory. We do not believe that such omission occurred.

This conclusion is reinforced by the fact that after the trial court had filed its findings of fact and conclusions of law plaintiff filed a motion to amend same. In paragraphs 6(a) and 7 of this motion the trial court's attention was specifically directed to the lack of any findings pertaining to the manner of attachment of the belt. The trial court judge's order, overruling the motion to amend findings, recited that the motion had been read. We would certainly not presume that he failed to read it. While it might have been better practice to make a supplemental finding on the issue referred to, we do not believe that the failure to do so lends support to plaintiff's claim that this issue was not considered by the court. Such consideration inheres in the ruling on the motion. We find no basis for reversal on plaintiff's appeal.

V. Defendants' cross-appeal presents a difficult jurisdictional issue which may involve questions of first impression. It is not necessary to pass on these issues in order to affirm the judgment and we decline to do so. Defendants' cross-appeal is dismissed as moot.

AFFIRMED.