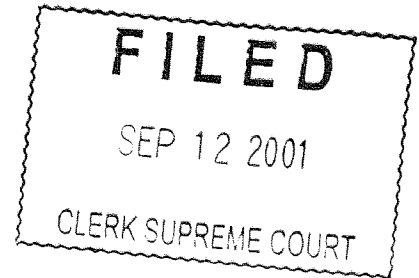


IN THE COURT OF APPEALS OF IOWA

No. 1-371 / 00-1521
Filed September 12, 2001



THELMA SCHOEMANN,
Appellant,

vs.

FAREWAY STORES, INC.,
Appellee.

Appeal from the Iowa District Court for Shelby County, Charles L. Smith,
Judge.

Plaintiff appeals the order granting summary judgment and dismissing her
negligence action against a supermarket. **REVERSED AND REMANDED.**

Robert Kohorst of Kohorst, Early, Gross & Louis, Harlan, for appellant.

David Woodke and Michael T. Gibbons of Woodke, Otepka & Gibbons,
P.C., Omaha, Nebraska, for appellee.

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

VOGEL, J.

Thelma Schoemann appeals the district court's grant of summary judgment in favor of Fareway Stores, Inc. (Fareway), and the resulting dismissal of her negligence action against the store. Because we find a genuine issue of material fact existed on the element of causation, we reverse and remand for further proceedings.

Background Facts and Proceedings. Schoemann and a co-worker, Angela Brisbois, were walking down an aisle in a Fareway store when Schoemann fell forward, landed on her knees, and slid several feet into a nearby milk counter. In two affidavits Brisbois stated that Schoemann tripped over the edge of a pallet located in the mid-aisle display area, and Schoemann signed an affidavit stating that, on the way home from the store that same day, Brisbois informed her she had "fallen on the edge of a pallet." In her deposition testimony Schoemann admitted she did not know what caused her to fall, and could not say whether she tripped on an object protruding out into the walkway of the aisle, or whether she slipped on a substance on the floor.

In her deposition testimony Brisbois admitted she did not see Schoemann trip, but stated that she did see the beginning of the fall, at which time Schoemann's foot and leg were next to the corner of an empty display pallet sitting in the middle of the aisle. Although Brisbois could not state with any certainty that Schoemann tripped over the pallet, she could think of no other cause for the accident. This testimony was consistent with a statement Brisbois gave to a representative of Fareway shortly after the incident. It is undisputed

that no other substances or objects were located on the aisle floor in the location of Schoemann's fall.

Schoemann filed suit, alleging that her fall was due to Fareway's negligence. After filing an answer in denial of the allegations, Fareway filed a motion for summary judgment. The motion contended Schoemann could not demonstrate a causal link between Fareway's actions and her fall and alleged injuries. In granting Fareway's motion and dismissing Schoemann's petition, the court found:

All evidence on the causation issue in this matter has been submitted in the form of depositions of Schoemann and Brisbois. The causal connection has been left entirely to speculation. Schoemann is unable to determine what caused her to fall and merely assumes she tripped on the pallet on the grocery store floor. Schoemann's witness, Brisbois, was also unable to say what caused Schoemann to fall. Brisbois concluded that since nothing else was on the floor, Schoemann must have bumped into the pallet. This is pure conjecture, thus there is no issue for the jury and summary judgment is appropriate.

It is from this ruling that Schoemann appeals.

Scope of Review. Summary judgment rulings are reviewed for correction of errors at law. Iowa R. App. P. 4; *General Car & Truck Leasing Sys., Inc. v. Lane & Waterman*, 557 N.W.2d 274, 276 (Iowa 1996). Summary judgment is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *City of West Branch v. Miller*, 546 N.W.2d 598, 600 (Iowa 1996). In making this determination, we review the pleadings, depositions and affidavits filed by the parties. *City of West Branch*, 546 N.W.2d at 600. All facts are viewed in the light most favorable to the party opposing the summary judgment request. *Bearshield*

v. John Morrell & Co., 570 N.W.2d 915, 917 (Iowa 1997). Summary judgment is improper if reasonable minds could differ on resolution of the matter before the court. *Dickerson v. Mertz*, 547 N.W.2d 208, 212 (Iowa 1996).

Proximate Cause. In reviewing the district court ruling we are guided by two decisions of the Iowa Supreme Court. In *Randol v. Roe Enterprises, Inc.*, 524 N.W.2d 414 (Iowa 1994), a woman fell at a drop-off located between paved and graveled portions of a parking lot. In her interrogatory answer the plaintiff stated that she fell "head over heels" onto the gravel portion of the lot when she stepped on the drop-off at the edge of the surfaces. *Id.* at 416. However, in her deposition testimony the plaintiff could not say with any certainty how or why she fell, only that she fell while stepping from the pavement to the gravel. *Id.* at 416-17. She admitted that she had never determined what caused her to fall. *Id.* at 417. There were no witnesses to the accident. *Id.* at 415.

The court found these facts sufficient to raise a jury question as to causation:

Affording Marjory every legitimate inference reasonably deducible from the evidence, a reasonable mind could conclude that the drop-off caused her fall. The mechanics of her fall – head over heels – are consistent with the conclusion that she fell as a result of stepping off a paved surface onto a lower graveled surface. Marjory's testimony as to where she was when she fell, the nature of the terrain where she fell, and how she fell generate a genuine issue of material fact on proximate cause. "Proximate cause is ordinarily a question for the jury," and "it is only in rare cases that a party establishes proximate cause as a matter of law." *Johnson v. Interstate Power Co.*, 481 N.W.2d 310, 324 (Iowa 1992).

Id. at 417.

A similar conclusion was reached in the case of *Perkins v. Wal-Mart Stores, Inc.*, Store No. 753, 525 N.W.2d 817 (Iowa 1994). In *Perkins* a woman slipped and fell in a Wal-Mart store but did not recall stepping on or walking across any substance on the floor. *Id.* at 819-20. Although no one witnessed the fall, witnesses did see sand, dust and dirt on the plaintiff's hands and clothes. *Id.* at 818. There was also evidence that the floor was not regularly swept on the day of the fall, that sweeping was likely to occur only when debris was noted by employees, and that other areas of the floor were being swept during the time the plaintiff was in the store. *Id.* at 819-820. Relying on *Randol*, the court found a genuine and material dispute existed as to the cause of the plaintiff's fall:

Judy and Doug are entitled to every legitimate inference reasonably deducible from the summary judgment record. From these, a reasonable mind could conclude that debris on Wal-Mart's floor caused Judy to fall. Judy's testimony as to how she fell, how startled she was that she had fallen, and the condition of her hands and clothing immediately after the fall are consistent with this conclusion.

...

Her surprise and embarrassment at falling would also tend to explain [her inability to detect what caused her to fall]: She was too surprised and embarrassed to even look.

Id. at 820.

As with Schoemann, neither of the above plaintiffs could specifically identify what caused her fall. Nor was legal causation clearly identified. There, as here, only the possibilities of causation were set forth.

Key to both the *Randol* and *Perkins* decisions is a recognition of the value of circumstantial evidence in suggesting causation, which often meets or exceeds the probative value of direct evidence:

Circumstantial evidence in this respect is intrinsically no different from testimonial evidence. Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. All conclusions have implicit major premises drawn from common knowledge; the truth of testimony depends as much upon these, as do inferences from events. A jury tests a witness's credibility by using their experience in the past as to similar utterances of persons in a like position. That is precisely the same mental process as when they infer from an object what has been its past history, or from an event what must have preceded it.

Randol, 525 N.W.2d at 417 (quoting *State v. O'Connell*, 275 N.W.2d 197, 205 (Iowa 1979) (en banc) (citations omitted)).

We see no reason to reach a conclusion in this case different than those reached in *Randol* and *Perkins*. Although Schoemann cannot be certain as to how or why she fell, the force and nature of her fall, and her own testimony that “something” precipitated the fall, indicate a causal factor independent of Schoemann herself. In addition, the testimony provided by Brisbois, and the undisputed absence of another object or substance by or under Schoemann's feet, raise a reasonable inference that Schoemann in fact tripped on the exposed edge of the empty display pallet.

Granting Schoemann every legitimate inference to be deduced from the record, we find the evidence generates a genuine issue of material fact as to the proximate cause of her fall. The district court erred in finding that no reasonable jury could find Schoemann tripped on the pallet. We therefore reverse the district court's summary judgment ruling, and remand for further proceedings.

REVERSED AND REMANDED.

Vaitheswaran, J. concurs, Sackett, C.J. dissents.

SACKETT, C.J. (dissents)

I dissent. I would affirm the district court.

Plaintiff fell in defendant's store. Plaintiff and her sole witness could not state with any certainty how she fell. The witness could think of no reason for plaintiff's fall other than she tripped on a pallet. The question we address is whether the district court correctly ruled on summary judgment that plaintiff showed no evidence to support a finding of negligence on defendant's part. I agree with the district court and would affirm.