FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

62

JON E. HERMAN and WENDY C. HERMAN,

Plaintiffs-Appellants,

vs.

ZAZZA LIMITED, d/b/a SHERATON MOTOR INNS,

Defendant-Appellee.

Filed September 25, 1986

6-282
86-138

Appeal from the Iowa District Court for Linn County (No. 11531), William R. Eads, Judge.

The plaintiffs-appellants sued to recover for injuries suffered by one of the plaintiffs in a slip and fall on the premises of a motel operated by the defendant. **AFFIRMED.**

James M. Powers and Mark H. Rettig of Hines, Pence, Jackson, Day & Powers, Cedar Rapids, for the plaintiffs-appellants.

John M. Bickel and Diane Kutzko of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for the defendant-appellee.

Considered by Oxberger, C.J., Snell, and Sackett, JJ.

OXBERGER, C.J.

63

Plaintiffs Jon and Wendy Herman appeal from a judgment for the defendant in a negligence action. They assert that the trial court abused its discretion by excluding the testimony of certain witnesses. We affirm.

The plaintiffs filed the underlying action seeking to recover damages for injuries sustained when Jon Herman slipped and fell in the "fire lane" in the rear of a motel operated by the defendant. Herman and his wife alleged that the defendant negligently permitted snow and ice to accumulate on the premises.

At trial, the plaintiffs' attorney attempted to introduce the testimony of three witnesses concerning the accumulation of snow and ice in the front parking lot of the motel. The trial court excluded the testimony as irrelevant and immaterial. The plaintiffs assert that the testimony was relevant because: (1) it tended to establish that if there were accumulations of ice and snow in the front lot, they were likely to have existed in the back lot; and (2) it tended to rebut the defendant's assertion that there was no accumulation in the parking lot.

After a verdict was rendered in favor of the defendant, the plaintiffs filed a motion for a new trial. In denying the motion, the trial court explained its reasons for excluding the testimony:

> The court could not permit testimony of falls in the front lot in this trial, as this would inject evidence of the factual circumstances of other unrelated falls into this trial. Even allowing just the testimony of accumulations of ice and snow in the front lot to rebut these admissions could be confusing, as there was no evidence of accumulated snow and ice in back in the fire lane. Rather than rebuttal as to credibility and observation of defendant's witnesses as to whether it was freezing and the condition of the fire lane, this evidence could be considered as substantive, to wit, because there was accumulated snow and ice in front, there were similar conditions in the fire lane.

64

A trial court has wide discretion in ruling upon the admissibility of evidence, and its rulings will not be disturbed unless a clear and prejudicial abuse of discretion is demonstrated. Carter v. MacMillan Oil Co., 355 N.W.2d 52, 55 (Iowa 1984); E.I. DuPont De Nemours v. Berkley & Co., 620 F.2d 1247, 1272 (8th Cir. 1980). The trial court's discretion is recognized in determining both what is relevant evidence and what is proper rebuttal evidence. Carter v. MacMillan Oil Co., 355 N.W.2d at 55; Karr v. Samuelson, Inc., 176 N.W.2d 204, 211 (Iowa 1970). Moreover, "[a] trial court has discretion to exclude relevant evidence when its probative value is substantially outweighed by confusion of issues or considerations of waste of time." Carter, 355 N.W.2d at 55.

In Briner v. Hyslop, 337 N.W.2d 858 (Iowa 1983), the Iowa Supreme Court set forth the following principles governing the relevancy of evidence:

> Evidence is relevant if it renders the existence of a fact more probable or less probable with it than without it. The basic test of relevancy is the question whether the challenged evidence makes the desired inference more probable than it would be without the evidence. The evidence must be probative and tend to establish a material proposition. Questions of relevancy are for the trial court to resolve.

Id. at 869 (citations omitted); see also Iowa R. Evid. 401, 403.

Generally, the existence of a particular fact or condition at issue can be proven by evidence as to the existence of a similar yet distinct fact or condition only when it has been demonstrated that the facts are likely to be the same or substantially similar. 32 C.J.S. Evidence § 584 (1964); see also Madison v. Colby, 348 N.W.2d 202, 209-10 (Iowa 1984)(evidence of prior accidents at a place admissible to show dangerous character and knowledge thereof if conditions are substantially similar or comparable and not too remote); Slinger v. Farmers Mutual Hail Insurance Ass'n, 219 Iowa 329, 332, 258 N.W. 101, 103 (1934)(evidence of crop yield in another field in same vicinity inadmissible unless demonstrated that the two farms possess similar soil conditions). Absent such

a showing of similarity, the proffered evidence is irrelevant because it is completely different from the facts at issue. See State v. Clark, 187 N.W.2d 717, 721 (Iowa 1971).

We have reviewed the record and conclude that the trial court did not abuse its discretion in excluding the testimony concerning the condition of the front parking lot. The accident occurred in the fire lane in the rear lot, which is separate and distinct from the front lot. We cannot say that the appellants have demonstrated that the condition of the front lot was necessarily substantially similar to the condition of the back lot. In fact, the evidence appears to indicate the exact opposite; those witnesses testifying as to the condition of the back lot stated their belief that any ice therein was caused by runoff rather than accumulation. When the circumstances or conditions are so dissimilar, the evidence offered lacks substantial probative value, and the danger arises that the jury's confusion of the issues will outweigh any benefit to be derived from admitting the evidence. In these circumstances, the trial court was within its discretion in excluding the evidence as irrelevant.

The plaintiffs contend that even if the testimony was irrelevant in their case in chief, it should have been admitted as rebuttal evidence. At the beginning of the trial, the plaintiffs' attorney read into evidence certain portions of the requests for admissions propounded upon the defendant. In response to one of the requests, the defendant answered, "It is not correct that on April 10, 1982, defendant's parking lot had on its surface accumulations of ice and snow." All other testimony was carefully limited to the condition of the rear lot. The plaintiffs claim that the defendant's response to the request established that the defendant denied the existence of accumulated ice upon the entire premises, and that they should be allowed to introduce the testimony concerning the front lot because it calls into question the credibility of the defense witnesses.

We have carefully reviewed the evidence, and conclude that the plaintiffs have failed to demonstrate that the trial court abused its discretion in excluding the testimony for rebuttal purposes as well. We agree with the trial court's conclusion that the nature of the testimony creates a high probability that the jury may consider it as substantive proof of the accumulation of ice and snow in the rear lot.

Having found no abuse of the trial court's discretion, it follows that the trial court did not err in overruling the plaintiffs' motion for a new trial.

AFFIRMED.