

IN THE SUPREME COURT OF IOWA

No. 19 / 06-1198

Filed October 10, 2008

JOEL A. HARPER and **KATHY L. HARPER**,

Appellants,

vs.

PELLA CORPORATION,

Appellee.

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Court for Marion County, Gary G. Kimes and John D. Lloyd, Judges.

Plaintiffs appeal district court's grant of summary judgment in favor of defendant on their premises-liability claim, and defendant cross-appeals district court's denial of summary judgment on statute-of-limitations grounds. **DECISION OF COURT OF APPEALS AND DISTRICT COURT JUDGMENT AFFIRMED.**

Robert A. Wright, Jr. of Wright and Wright, Des Moines, for appellants.

Ross W. Johnson and Carolyn A. Gunkel of Faegre & Benson LLP, Des Moines, for appellee.

PER CURIAM.

Iowa resident Joel Harper and his wife, appellant Kathy Harper, brought this premises-liability lawsuit against Pella Corporation for injuries sustained by Joel Harper when he fell in a house owned by Pella and located in Kentucky. Pella moved for summary judgment, contending Kentucky's one-year statute of limitations should apply to bar this action, which was filed more than one year after the incident occurred. *See* Ky. Rev. Stat. Ann. § 413.140(1)(a) (West 2003). The plaintiffs argued Iowa's two-year limitations period governed. *See* Iowa Code § 614.1(2) (2003). The district court (Judge Kimes) determined Iowa's statute applied and denied summary judgment. Pella moved for summary judgment again, this time contending the plaintiffs failed to generate a genuine issue of material fact on the liability issue. The district court (Judge Lloyd) granted Pella's motion, concluding there was no evidence from which a jury could find that a dangerous condition existed at the time Harper fell, and therefore, Pella was entitled to judgment as a matter of law.

The plaintiffs appealed the district court's dismissal of their lawsuit, and Pella cross-appealed the court's denial of summary judgment on the basis the Harpers' lawsuit was untimely. The case was transferred to the court of appeals. That court affirmed the district court's dismissal of the case on liability grounds and did not reach the statute-of-limitations issue raised in Pella's cross-appeal. This court granted further review.

The members of the court taking part in the decision being equally divided on the plaintiffs' appeal, the court declares the decision of the

district court is affirmed by operation of law.¹ See Iowa Code § 602.4107 (2007). This decision makes it unnecessary to consider the defendant's cross-appeal.

**DECISION OF COURT OF APPEALS AND DISTRICT COURT
JUDGMENT AFFIRMED.**

All justices concur except Baker, J., who takes no part.

This is not a published opinion.

¹Ternus, C.J., and Cady and Appel, JJ., would affirm; Streit, Wiggins, and Hecht, JJ., would reverse.