

IN THE COURT OF APPEALS OF IOWA

No. 0-882 / 10-0584
Filed March 7, 2011

WILLIAM N. PLYMAT,
Plaintiff-Appellant,

vs.

**THE CITY OF MASON CITY,
BRENT TROUT, ROGER BANG,
MAX WEAVER, SCOTT TORNQUIST,
JEFF MARSTER, STEVE TYNAN,
DON NELSON, JOHN JASZEWSKI,
WILLIAM STRANGLER and
ROBERT BERGGREN,**
Defendants-Appellees.

Appeal from the Iowa District Court for Cerro Gordo County, Carl D.
Baker, Judge.

William Plymat appeals from the district court order entering judgment in
favor of the defendants on his claims. **AFFIRMED.**

William N. Plymat, Thornton, appellant pro se.

Timothy C. Boller of Gallagher, Langlas & Gallagher, P.C., Waterloo, for
appellees.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

EISENHAUER, P.J.

William Plymat appeals from the district court order entering judgment in favor of the defendants on his claims. He contends summary judgment was improvidently granted because there are genuine issues of material fact in dispute. Our review is for the correction of errors at law. *Green v. Racing Ass'n of Cent. Iowa*, 713 N.W.2d 234, 238 (Iowa 2006).

A motion for summary judgment should only be granted if, viewing the evidence in the light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Otterberg v. Farm Bureau Mut. Ins. Co., 696 N.W.2d 24, 27 (Iowa 2005).

On June 8, 2008, the Mason City home occupied by Plymat and his wife was flooded when the nearby Winnebago River overflowed its banks. Plymat lost personal property he alleges was worth \$28,500. He filed a petition seeking compensation from the City of Mason City and various individual city officials for their alleged negligence. To sustain his claims, the burden of proof is on Plymat to prove the defendants owed him a duty of care, a breach of the duty, and damages. See *Viriden v. Betts & Beer Constr. Co.*, 656 N.W. 2d 805, 807 (Iowa 2003). Plymat claims the defendants breached a duty of care when it “did not take necessary and obvious precautions” to prevent the flooding. He admits the flooding would have been inevitable given the levee’s break later that day, but argues action by the defendants would have delayed the flooding for a sufficient period of time to allow him to remove the valuables from the home.

Although Plymat makes much of alleged factual findings by the trial court, his claims hinge on the functionality of the culvert check valves. Culvert pipes were installed to allow runoff from rainfall and melting snow to drain through the city's levee and into the Winnebago River. The culvert check valves prevent river water from backflowing through the culvert pipes to the land when the river reaches a certain flood level. When this type of flooding occurs, the force of the floodwaters automatically closes the valves; no other action needs to be taken.

Plymat challenges the district court's conclusion no genuine issue of material fact exists regarding whether the check valves were functioning on the day of the flooding. He admits "no evidence exists that the 'check valves' were not functioning" but argues "this does not prove that they were functioning." Plymat has the burden of proving his claim by a preponderance of the evidence. *See Easton v. Howard*, 751 N.W.2d 1, 5 (Iowa 2008) ("[I]t is the plaintiff's burden to prove fault by a preponderance of the evidence."). Although he claims he saw water flowing through the culverts and into the street when he awoke on the morning of June 8, 2008, he testified at his deposition that the culverts were submerged when he went outside. Because he can point to no evidence to establish the check valves were not functioning, his claim fails.

Because Plymat failed to prove negligence by the city or its employees on the undisputed facts before us, we need not consider whether the defendants are also immune from liability. We affirm the district court's grant of summary judgment in favor of the defendants.

AFFIRMED.