

IN THE COURT OF APPEALS OF IOWA

No. 6-1029 / 06-0356
Filed January 31, 2007

SANDRA MCMURRIN and RICHARD MCMURRIN,
Plaintiffs-Appellees,

vs.

**ROYAL FORK RESTAURANT CORPORATION, d/b/a
RF JOINT VETURE, d/b/a ROYAL FORK BUFFET
RESTAURANT,**
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas,
Judge.

The defendant contends the district court erred in denying its request for
physical examination of the plaintiff. **REVERSED.**

James E. Shipman and Webb L. Wassmer of Simmons, Perrine, Albright
& Ellwood, P.L.C., Cedar Rapids, for appellant.

Gerald J. Kucera of Tom Riley Law Firm, P.L.C., Cedar Rapids, for
appellees.

Heard by Mahan, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Sandra and Richard McMurrin filed a petition against Royal Fork Restaurant Corporation (Royal Fork), contending it was negligent in hiding from view a stack of booster seats. Sandra tripped over the seats, fell, and was injured. On interlocutory appeal, Royal Fork contends the district court erred in denying its request for physical examination of Sandra to determine the nature and extent of her peripheral vision. Because Sandra's peripheral vision is in controversy, we reverse.

I. Background Facts and Proceedings. On November 22, 2002, Sandra and Richard McMurrin dined at the Royal Fork Buffet Restaurant on Blairs Ferry Road in Cedar Rapids. Sandra alleges that while walking to the self service drink area, she turned a corner and fell over a stack of booster seats placed on the floor. The McMurrins claim the booster seats were hidden from view. Sandra sustained personal injuries as a result of her fall.

On October 6, 2004, the McMurrins filed a petition, alleging Royal Fork was negligent in failing to keep its premises free from dangerous conditions. Sandra seeks damages for her personal injuries and Richard seeks damages for loss of consortium.

On December 28, 2005, Royal Fork filed a motion seeking to compel Sandra to submit to a physical examination pursuant to Iowa Rule of Civil Procedure 1.515. Through discovery, Royal Fork obtained Sandra's medical records, which revealed she suffers from diabetes mellitus and has experienced visual complications that impair her peripheral vision. Royal Fork alleges that

the extent of Sandra's peripheral vision loss at the time of her fall can be determined by physical examination. It argues the extent of her peripheral vision loss is probative of whether Sandra had any fault and whether the condition of the restaurant was unsafe. The district court denied the motion. Royal Fork petitioned for interlocutory appeal, which our supreme court granted.

II. Analysis. At the outset, we address Royal Fork's concern that portions of the appendix are not properly part of the record, including photographs of the restaurant and Sandra's deposition. We do not consider these documents as they were never before the district court. *Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 3 (Iowa 2005).

We next turn to the issue of whether the court properly denied Royal Fork's request for a medical examination. With regard to the discovery process, our court has said:

Discovery is designed to enable preparation for trial, as well as to aid in development of proof. The very purpose of the modern rule allowing prior discovery is to learn the facts so that the court can apply the appropriate substantive rule of law. Discovery rules are to be liberally construed to effectuate the disclosure of relevant information to the parties.

Barks v. White, 365 N.W.2d 640, 643 (Iowa Ct. App. 1985) (citations omitted).

An order for medical examination under rule 1.515 is discretionary with the trial court. *McQuillen v. City of Sioux City*, 306 N.W.2d 789, 790 (Iowa 1981). It will not be overturned unless an abuse of discretion is shown. *Id.* An order for medical examination will be granted only when the mental or physical condition of the party is in controversy, and good cause is shown for the examination. *Ragan v. Petersen*, 569 N.W.2d 390, 393 (Iowa Ct. App. 1997). These two

requirements are not simply formalities and are not satisfied by mere conclusory allegations or by mere relevance to the case. *Id.*

In denying Royal Fork's request, the district court found as follows:

First, I note that the plaintiff is four years older and it is not at all clear that a test now would show the extent of the impairment, if any, of vision in 2002. Further, I note that a plaintiff is normally to be held to the standard of a reasonable person with a reasonable and normal sensory apparatus. If the plaintiff wishes to urge that her vision condition somehow affects the duty of the defendant to behave differently than defendant would behave for a normally sighted person, then defendant would have placed her vision in issue and testing might well be required. In this case the plaintiff does not appear to be seeking any exemption from responsibility for care for her own safety on the grounds of her allegedly defective eyesight and, therefore, her condition is not in issue.

Royal Fork contends the district court's conclusion that the extent of the impairment to Sandra's peripheral vision might not be discernable is not supported but the evidence. We agree. As Sandra's ophthalmologist testified in his September 14, 2005 deposition:

Q: If she were to be tested today for her visual field as her treating ophthalmologist, do you believe that would provide us with a reasonably reliable idea of what her peripheral vision on the left side would have been in late November of 2002? A: Yes.

There is no evidence in the record to dispute this testimony.

Royal Fork also contends the court's conclusion that Sandra's peripheral vision is not in controversy in the case is erroneous. We agree. Royal Fork is arguing the limitations to Sandra's visual field at the time of the accident may have affected her ability to observe the booster seats and that she was comparatively at fault for the fall. Therefore, Sandra's peripheral vision at the time of the incident is in controversy. Royal Fork has shown good cause for the examination. The examination is not intrusive and will be performed by Sandra's

own physician. Accordingly, the district court abused its discretion in denying Royal Fork's request for a medical examination. We reverse.

REVERSED.