

IN THE COURT OF APPEALS OF IOWA

No. 6-250 / 05-1218
Filed August 9, 2006

TERESA BRAMMER,
Plaintiff-Appellant,

vs.

SIOUX CENTER COMMUNITY SCHOOL DISTRICT,
Defendant-Appellee.

Appeal from the Iowa District Court for Sioux County, James D. Scott,
Judge.

Plaintiff appeals from the district court's denial of her motion for new trial.

AFFIRMED.

David J. Siegrist and Brian D. Jones of Siegrist & Jones, P.C., Britt, for
appellant.

Michael Hellige, of Hellige, Frey & Roe, R.L.L.P., Sioux City, for appellee.

Heard by Sackett, C.J., and Vogel and Hecht, JJ., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

SACKETT, C.J.

Plaintiff-appellant Teresa Brammer sued the defendant-appellee Sioux Center Community School District on a premises liability claim, contending that while a student at the Sioux Center Community School she injured her hip when she brushed along the front edge of a wooden table in a science room and was stabbed in her right hip by a splinter. The matter was tried to a jury who found the school district was not at fault. Plaintiff, who failed to order a trial transcript, claims on appeal that the district court did not properly instruct the jury and should have sustained her motion for a new trial. We affirm.

I. SCOPE OF REVIEW.

Our scope of review in this law action is for the corrections of error at law. Iowa R. App. P. 6.4. The standard of review applicable to motions for new trial depends on the nature of the ground asserted and ruled on by the district court. *Hansen v. Central Iowa Hosp. Corp.*, 686 N.W.2d 476, 480 (Iowa 2004). If the ground alleged is a question of law, such as sufficiency of the evidence, review is for the correction of errors at law. *Estate of Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004). If the motion seeks relief based on a matter committed to the trial court's discretion, review is for abuse of that discretion. *Id.* at 87-88; see also *Hansen*, 686 N.W.2d at 480.

II. NO TRANSCRIPT.

Defendant contends that plaintiff should not have a new trial because she has not secured a transcript of the trial. Plaintiff, who did not order a transcript, argues she has provided the relevant portion of the transcript, which includes the objections made to the jury instructions. She further advances she is without

funds to purchase a complete transcript, which she contends would be of no benefit to this court.

In certain cases, a transcript is not necessary if the issue presented is a purely legal question. *In re Richardson's Estate*, 250 Iowa 275, 285, 93 N.W.2d 777, 783 (1958). The absence of a trial transcript may provide an adequate and independent reason to affirm the district court's judgment. *Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 3 (Iowa 2005).

Plaintiff argues that once the district court determined she had presented substantial evidence to require an instruction on her premises liability claim, the court was required to instruct the jury so it understood the law it was to apply. Plaintiff specifically argues that the jury was not instructed the defendant had a duty to "ascertain the actual condition of the premises and discover any dangerous condition or latent defect."

A defendant's duty of reasonable care as possessor of the premises extends to an inspection of the premises to discover any dangerous conditions or latent defects. *Richardson v. Commodore, Inc.*, 599 N.W.2d 693, 694 (Iowa 1999); *Wieseler v. Sisters of Mercy Health Corp.*, 540 N.W.2d 445, 450 (Iowa 1995). The action necessary to satisfy this duty of reasonable care depends upon the nature of the land and the purposes for which it is used. *Richardson*, 599 N.W.2d at 698; *Grall v. Meyer*, 173 N.W.2d 61, 63 (Iowa 1969). Whether the affirmative duty to inspect requires an inspection of the premises is dependent on the circumstances. *See Richardson*, 599 N.W.2d 698; *Estate of Vazquez v. Hepner*, 564 N.W.2d 426, 430 (Iowa 1997). A landlord has no duty to inspect unless there is a "foreseeable potential of danger." *Vazquez*, 564 N.W.2d at 430.

A litigant is entitled to have his or her legal theories submitted to a jury if those theories are supported by the pleadings and substantial evidence in the record. *Fratzke v. Meyer*, 398 N.W.2d 232, 234 (Iowa 1986).

All we have been given to review are (1) the pleadings, (2) plaintiff's proposed jury instructions, (3) a transcript of arguments made to the court outside the presence of the jury addressing the jury instructions and including the district court's ruling thereon, (4) the judgment entry, and (5) plaintiff's motion for new trial and the ruling thereon.

Here we are required to determine whether the plaintiff's theories are supported by both the pleadings and substantial evidence in the record. The absence of a transcript of the trial precludes us from doing this. The failure to order a trial transcript has arguably left us with nothing to review. *Alvarez*, 696 N.W.2d at 3; *see also In re F.W.S.*, 698 N.W.2d 134, 136 (Iowa 2005). The factual assertions made by the parties in their briefs, to the extent that they relate to trial testimony—even if not contested—are not supported in any record properly before us. *Alvarez*, 696 N.W.2d at 3 (citing Iowa R. App. P. 6.14(1)(d)).

AFFIRMED.