

**IN THE COURT OF APPEALS OF IOWA**

No. 6-832 / 06-0101  
Filed December 28, 2006

**TOM MCNEIL and BETH MCNEIL**  
**d/b/a TM WOODWORKS,**  
Plaintiffs-Appellees,

**vs.**

**RICHARD KENNEY, d/b/a KENNEY WELDING,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Jackson County, Charles H. Pelton,  
Judge.

Defendant appeals from the district court's grant of a new trial to plaintiffs.

**AFFIRMED.**

Roger A. Lathrop and Edward J. Rose of Betty, Neuman and McMahon,  
P.L.C., Davenport, for appellant.

A. John Arenz and Stephen C. Krumpe of O'Connor & Thomas, P.C.,  
Dubuque, for appellees.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**SACKETT, C.J.**

Defendant-appellant, Richard Keeney, d/b/a Keeney Welding, appeals from the district court's grant of a new trial to plaintiffs-appellants, Tom and Beth McNeil, d/b/a TM Woodworks, following a jury verdict for the defendant in this negligence action. He contends the court abused its discretion in granting a new trial.

**I. Background**

TM Woodworks hired Keeney Welding to repair a crack in its dust collection system, as had been done several times before. A spark (slag) from the welding caused a fire in one of the wall cavities surrounding the dust collection room. The fire caused damage to TM Woodworks's business. TM Woodworks sued Keeney Welding, alleging negligence and breach of contract. Keeney Welding raised several affirmative defenses: (1) comparative fault, (2) assumption of risk, (3) failure to mitigate, and (4) issue preclusion arising from defendant's exoneration, in another lawsuit, from fault or responsibility for the fire.

The case was tried to a jury. Only negligence was submitted to the jury. On the special verdict form, the jury answered the first question, "Was the Defendant, Keeney Welding, at fault?" in the negative. Plaintiffs moved for a new trial, alleging (1) irregularities in the proceedings, (2) the verdict was influenced by passion, (3) the verdict was not supported by sufficient evidence, and (4) the verdict failed to do substantial justice between the parties.

The district court granted the motion for new trial on every ground alleged. It found the reference to certain fire protection standards by defendant was a surprise that prejudiced the plaintiffs. It found the verdict may have been affected by an appeal to "city/rural prejudice." The court found the verdict was not supported by

“the weight of the credible evidence.” It found the verdict failed to do substantial justice between the parties. The defendant appeals.

## **II. Scope and standards of review**

Our review is for correction of errors at law. Iowa R. App. P. 6.4. Review of a district court’s ruling on a motion for new trial depends on the grounds raised in the motion. When, as here, the motion was based on a discretionary ground, we review it for an abuse of discretion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). To show an abuse of discretion, the moving party must show the court exercised its discretion on grounds clearly untenable or to an extent clearly unreasonable. *Lehigh Clay Prods., Ltd. v. Iowa Dep’t of Transp.*, 512 N.W.2d 541, 543 (Iowa 1994). A district court may grant a new trial if the jury verdict was apparently influenced by passion or prejudice, is not sustained by sufficient evidence, or is contrary to law. *Ort v. Klinger*, 496 N.W.2d 265, 269 (Iowa Ct. App. 1992). We are slower to interfere with a district court’s grant of a new trial than with its denial. *Lehigh*, 512 N.W.2d at 543. “We view the evidence in the light most favorable to the jury’s verdict.” *Lara v. Thomas*, 512 N.W.2d 777, 781 (Iowa 1994).

## **III. Discussion**

The district court found the verdict failed to do justice between the parties. From our review of the evidence and the district court’s ruling, we cannot say the court abused its discretion in granting a new trial. We affirm the district court’s exercise of discretion in granting a new trial.

**AFFIRMED.**