

IN THE COURT OF APPEALS OF IOWA

No. 7-494 / 06-1667
Filed August 22, 2007

ESTATE OF MARTHA COOPER,
Plaintiff-Appellant,

vs.

ISLE OF CAPRI BETTENDORF, L.C.,
Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley,
Judge.

The Estate of Martha Cooper appeals from the district court order granting
Isle of Capri Bettendorf, L.C.'s motion for directed verdict. **REVERSED AND
REMANDED.**

Daniel D. Bernstein and William J. Bribriesco of William J. Brebriesco and
Associates, Bettendorf, for appellant.

Robert B. McMonagle of Lane & Waterman L.L.P., Davenport, for
appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

The Estate of Martha Cooper appeals from the district court order granting Isle of Capri Bettendorf, L.C.'s motion for directed verdict. The Estate contends it presented evidence that a reasonable mind would accept as adequate to reach the conclusion that one of the defendant's employees acted in a negligent manner. We reverse and remand.

I. Background Facts & Proceedings

On February 2, 2002, Martha Cooper was a patron of the Isle of Capri Riverboat Casino, which was docked in Bettendorf, Iowa. Cooper was walking on the second deck of the casino when she collided with a security guard, Curtis Shannon Jr. Cooper was knocked to the floor and sustained an injury. One of the Isle of Capri security cameras recorded the collision between Cooper and Shannon.

According to an EMT incident report, Cooper had been wearing a "Prowalker cast" on her left leg for the past six months and had a history of multiple surgeries performed on that extremity. Cooper told the EMT "it doesn't feel any different," but she wanted to make a report "just in case they found something." Cooper's husband told the EMT "[a] security guard ran her over," while Shannon alleged Cooper "walked into" him. Cooper received no treatment at the scene of the collision and left the casino accompanied by her husband.

Cooper died on January 5, 2003, from causes unrelated to any injuries she sustained in the collision. Her husband died eight days later. Neither Mr. nor Mrs. Cooper's testimony was preserved in a deposition.

On January 27, 2004, Cooper's estate filed a petition at law alleging Isle of Capri was negligent based on the doctrine of respondeat superior. The Estate also alleged Isle of Capri was negligent in hiring Shannon, for failing to properly supervise and train its employee, and for failing to set proper procedures. Isle of Capri filed a motion for summary judgment, which the district court denied.

Jury trial commenced on September 18, 2006. At the close of the Estate's case, Isle of Capri made a motion for a directed verdict, which the district court granted. The court concluded the evidence presented by the Estate was not sufficient to support a verdict of liability in the plaintiff's favor because no reasonable inferences supported a finding that Shannon breached a duty of care to Cooper. The court found "[t]he only clear conclusion that can be reasonably drawn from the tape is that Martha Cooper walked in front of Curtis Shannon, coming from his right at almost a ninety degree angle." The Estate has appealed.

II. Scope & Standards of Review

We review the district court's rulings on motions for directed verdict for the correction of errors at law. *Yates v. Iowa West Racing Ass'n*, 721 N.W.2d 762, 768 (Iowa 2006). In reviewing such rulings, we view the evidence in the light most favorable to the nonmoving party to determine whether the evidence generated a fact question. *Id.* Where substantial evidence does not exist to support each element of a plaintiff's claim, the court may sustain the motion. *Dettmann v. Kruckenberg*, 613 N.W.2d 238, 251 (Iowa 2000). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 230 (Iowa 1995).

The issue is properly submitted to the jury only if reasonable minds could reach different conclusions based upon the evidence presented. *Benham v. King*, 700 N.W.2d 314, 317 (Iowa 2005).

III. Discussion

The Estate contends that when the evidence is viewed in the light most favorable to the plaintiff, it is clear the plaintiff offered substantial evidence to support the claim that Shannon negligently collided with Cooper while in the scope of his employment. In support of its position, the Estate points to the videotape of the collision, the statement from Cooper's husband that "[a] security guard ran her over," testimony from the security manager at the casino that neither Cooper, nor Shannon were aware of their surroundings when they collided, and testimony from Shannon that he was walking faster than his normal pace and may not have been looking in front of him when he collided with Cooper. The Estate maintains the evidence it presented could have led the jury to reach a different conclusion than the district court, so the issue should have been submitted to the jury.

In response, Isle of Capri claims the surveillance videotape does not show where Shannon was looking at any time leading up to the collision and does not show how fast he was walking, so it cannot be a basis for a jury finding that he was not looking where he was walking or was walking too fast. Furthermore, Isle of Capri contends Cooper's husband's statement to the EMT does not support an inference Shannon was negligent because it is not clear Cooper witnessed the collision. Finally, Isle of Capri maintains the testimony from the security manager and Shannon does not indicate Shannon was negligent.

Negligence is conduct that falls short of the standard of care established by law for the protection of others against unreasonable risks of harm. *Benham*, 700 N.W.2d at 317. To establish a claim for negligence, the plaintiff must normally prove: (1) the existence of a duty owed by the defendant to conform to a standard of care, (2) the failure to conform to the standard, (3) proximate cause, and (4) damages. *Id.*

As we stated previously, in reviewing a district court's ruling on a motion for directed verdict, we must view the evidence in the light most favorable to the nonmoving party to determine whether the evidence generated a fact question. *Yates*, 721 N.W.2d at 768. The record reveals the district court viewed the videotape several times in chambers after the defendant moved for a directed verdict. The court concluded:

The tape allows the inference that both the decedent and Curtis Shannon were walking at nearly the same rate, although it is difficult to determine a precise rate because of the stop motion of the tape. The tape does show that Shannon was not walking faster than many of the customers seen on the tape.

The court also concluded the videotape did not reveal in which direction Shannon was looking immediately before the collision. The Estate maintains the videotape shows Shannon walking at a faster pace than Cooper and contends the jury should have been able to make its own conclusions about whether the videotape indicated Shannon was negligent.

Viewing the evidence in the light most favorable to the plaintiff, we conclude the Estate presented evidence sufficient to generate a fact question regarding whether Shannon acted negligently in colliding with Cooper. The security manager's testimony indicated "Mr. Shannon possibly was not paying

attention to his surroundings as well, but with his positioning of his head compared to Miss Cooper's, I guess it's very possible that neither one of them were paying attention." Shannon testified he "was looking every which way trying to find whoever it was I was looking for saying excuse me, and then the next thing I know, me and another person collided." Shannon also testified he was walking "at a steady pace," which for him was "more than a normal pace."¹

Although this is admittedly a close case, we conclude a jury could have concluded from the evidence presented—including, but not limited to the videotape—that Shannon was walking at a faster than normal pace and was not looking where he was going when he collided with Cooper. Because we believe the jury should have been given an opportunity to consider the evidence and return a verdict, we reverse the district court's ruling on the defendant's motion for directed verdict and remand for a retrial.

REVERSED AND REMANDED.

¹ Shannon testified his "normal pace is just slow."