IN THE COURT OF APPEALS OF IOWA

No. 7-582 / 06-0926
Filed October 24, 2007

CAROL ANN HULLINGER and WILLIAM ENOS HULLINGER, SR.,
Plaintiffs-Appellants/Cross-Appellees,

vs.

WESTON HINTZ and MICHELLE HINTZ,
Defendants-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Clinton County, Bobbi M. Alpers, Judge.

Plaintiffs-appellants Carol and William Hullinger, appeal the final judgement entered in their premises liability action against defendants-appellees Weston and Michelle Hintz following a jury verdict in favor of the defendants. The Hintzes conditionally cross-appeal. **APPEAL AFFIRMED; CROSS-APPEAL MOOTED.**

Michael K. Bush of Bush, Motto, Creen, Koury & Halligan P.L.C., Davenport, for appellants.

Brian C. Ivers of McDonald, Woodward & Ivers, P.C., Davenport, for appellees.

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

MILLER, J.

Plaintiffs-appellants Carol and William Hullinger appeal the final judgment entered in their premises liability action against defendants-appellees Weston and Michelle Hintz following a jury verdict finding Carol's negligence constituted fifty-one percent of the causal fault for the injury she sustained while jumping on the Hintzes' trampoline. The Hullingers contend the trial court erred in (1) failing to direct a verdict finding the Hintzes negligent, (2) submitting the issue of comparative fault to the jury, (3) submitting incorrect instructions on comparative fault to the jury, and (4) instructing the jury it could find the Hintzes not liable if a condition that caused Carol's injury was known or obvious. The Hintzes conditionally cross-appeal. We affirm on the Hullingers' appeal, a decision rendering moot the Hintzes' cross-appeal.

I. BACKGROUND FACTS AND PROCEEDINGS.

From the evidence presented at trial the jury could find the following facts. The Hullingers and Hintzes were long time friends and neighbors. On July 12, 2003, the Hintzes were hosting a backyard barbecue. In the year prior, they had purchased a trampoline for use in their backyard. The trampoline came with instructions on how to assemble it, as well as instructions on its safe and proper use. The owner's manual also instructed the owner to post an enclosed safety placard on the trampoline for the benefit of all users.

At the barbecue, thirty-eight year old Carol Hullinger decided to jump on the Hintzes' trampoline. At the time, Carol's daughter, Ashleigh, and her boyfriend, Chris, were already jumping on the trampoline. Carol asked Ashleigh

and Chris to move to the side of the trampoline and stand on the metal frame because she knew it was unsafe to have multiple persons jumping at the same time and told them she would not jump when anyone else was on the trampoline. Ashleigh and Chris apparently did move off to the side of the trampoline. However, it is unclear whether after doing so they were standing completely on the metal frame of the trampoline, standing completely on the mat, or standing partially on the frame and partially on the mat. It is also unclear whether one of them continued to bounce lightly on the mat or they were just standing still when Carol began to jump.

Carol crawled to the middle of the trampoline and began making small jumps, going a maximum of two feet in the air. She bounced a few times and as she landed from a jump she severely broke her right ankle. Her orthopedic surgeon described it as a severe bimalleolar ankle fracture dislocation, where the entire foot and talus are angulated and basically dislodged from the rest of the lower extremity.

Susan Keister, another neighbor, was also at the barbecue and testified at trial for the Hullingers. She observed Carol bouncing on the trampoline and stated she was not bouncing very high and estimated she had only been on the trampoline two minutes when the injury occurred. However, Keister did not see the actual injury occur because she had turned away to attend to her infant daughter. She did hear Carol scream and saw her foot “dangling” from her leg as if it would “fall off” her leg. Keister testified that after the paramedics arrived on the scene she had a conversation with Michelle Hintz in which Michelle

mentioned there were six springs missing on the trampoline and she wondered if that could have been a contributing factor to the injury. Keister testified she told Carol about her conversation with Michelle a couple days after the accident. Carol testified she does not remember such a conversation. Carol did testify that Michelle Hintz told her about the missing springs the day after she got home from the hospital.

On November 1, 2004, the Hullingers filed a petition against the Hintzes alleging they were liable for damages resulting from Carol's broken ankle. They relied on a theory of premises liability. They alleged Carol was injured due to latent defects in the trampoline of which she had no notice and of which the Hintzes, as owners, knew or should have known, and which they failed to warn her of prior to her use of the trampoline. They also alleged the Hintzes were aware of the defects in the trampoline, which they failed to cure prior to Carol's use of the trampoline, and they failed to warn and enforce the safety rules which came with the trampoline. The Hintzes filed an answer generally denying fault and asserting that any damages sustained by Carol were a result of Carol's own fault.

The case proceeded to jury trial on March 20, 2006. At the close of the evidence the Hullingers made a motion in which they initially requested "partial summary judgment on product liability" and later requested that the court "direct a verdict on liability alone and leave the issue of proximate cause open for the

jury." They argued the evidence was uncontroverted that the Hintzes had failed in a duty to warn Carol of the missing springs and the danger of more than one person being on the trampoline at the same time, and thus the only issue for the jury should be proximate cause. The trial court denied the motion. The jury returned a verdict finding fifty-one percent of the causal fault was Carol's negligence and forty-nine percent of the causal fault was the Hintzes' negligence. The Hullingers filed a motion for new trial arguing, in part, there was not sufficient evidence to warrant the court's instruction on comparative fault and the comparative fault instruction was fatally flawed because a specification of negligence was not sufficiently specific. Following arguments by the parties the trial court denied the motion for new trial.

On appeal the Hullingers contend the trial court erred by: (1) failing to direct a verdict finding the Hintzes negligent; (2) submitting the issue of comparative fault to the jury; (3) submitting incorrect instructions on comparative fault to the jury; and (4) instructing the jury it could find the Hintzes not liable if a condition that caused Carol's injury was known or obvious. The Hintzes conditionally cross-appeal, claiming that if we reverse and remand for a new trial we must find the trial court erred in: (1) allowing the testimony of the Hullingers' expert, Scott Burton, and denying the Hintzes' motion for directed verdict on causation; (2) allowing evidence that the Hintzes breached a duty by not following the trampoline owner's manual, failing to direct a verdict on this issue, and submitting instructions to the jury as to such a duty; (3) allowing certain

deposition testimony of Carol's surgeon, Dr. Foad; and (4) refusing to allow defendants to impeach Carol with a prior consistent statement.

II. MERITS.

A. "Motion for Directed Verdict."

The Hullingers first claim the trial court erred in denying what they characterize as a "motion for directed verdict" as to the Hintzes' liability, arguing it was uncontroverted the Hintzes failed in a duty to warn Carol of the allegedly latent dangers of the missing springs, a 275 pound weight limit, and having multiple persons on the trampoline at once. Thus, they assert the only issue for the jury should have been proximate cause (and presumably damages).[1]

We review the denial of a motion for directed verdict for the correction of errors at law. *Top of Iowa Coop. v. Sime Farms, Inc*., 608 N.W.2d 454, 466 (Iowa 2000). We must determine whether there was "sufficient evidence to generate a jury question." *Id*. We view the evidence in the light most favorable to the nonmoving party, regardless of whether the evidence was contradicted. *Id*. We afford the nonmoving party every legitimate inference that can reasonably be drawn from the evidence. *Id*. If reasonable minds could differ on resolution of the issue, then it should be submitted to the jury. *Id*.

"Generally questions of negligence, contributory negligence and proximate cause are for the jury; it is only in exceptional cases that they may be decided as

[1] We note that in the Hullingers' brief on this issue they contend the issue of the Hintzes' "liability" should not have submitted to the jury. We presume, as the Hintzes apparently do, that because the Hullingers acknowledge the existence of a jury issue on proximate cause they mean the issue of Hintzes' *negligence*, not *liability*, should not have been presented to the jury. We will address the issue as such for purposes of this appeal.

matters of law." Iowa R. App. P. 6.14(6)(*j*). The trial court instructed the jury that in order to prevail on their premises liability claim, the Hullingers had to prove:

> 1. The trampoline was in a condition that involved an unreasonable risk of injury to a person in [Carol Hullinger's] position.
> 2. Weston and Michelle Hintz knew or in the exercise of reasonable care should have known the trampoline was in this condition and that this condition involved an unreasonable risk of injury to a person in Carol Hullinger's position.
> 3. The [Hintzes] knew or in the exercise of reasonable care should have known:
> a. Carol Hullinger would not discover the condition, or
> b. Carol Hullinger would not realize the condition presented an unreasonable risk of injury, or
> c. Carol Hullinger would not protect herself from the condition.
> 4. The [Hintzes] were negligent in:
> a. Failing to maintain the trampoline;
> b. Failing to enforce the rules concerning the use of the trampoline;
> c. Failing to warn Carol Hullinger (and others) of the hazardous condition of the trampoline.
> 5. The negligence was a proximate cause of Carol Hullinger's damage.
> 6. The nature and extent of damage.

1. Missing springs.

The Hullingers first claim they were entitled to a directed verdict in their favor on the Hintzes' negligence because it was undisputed that the trampoline was missing springs, the Hintzes knew about the missing springs, they knew the missing springs created a "condition" that involved an "unreasonable risk of injury" to Carol, they knew she would not discover or realize the risk of the condition, and they did not warn her of this condition. They contend there was no evidence in the record to contest these facts, the only evidence presented at trial

by the Hintzes went to proximate cause, and thus the court should have granted their motion for directed verdict. We disagree.

Michelle Hintz testified she was aware the trampoline had some missing and some stretched springs. The precise number of missing and stretched springs is controverted, however it is undisputed the maximum number of missing springs at the time of the accident was six. Michelle testified that any missing springs were adjacent to each other right at the opening where everyone entered the trampoline through a net that surrounded it. The Hullingers' expert, Scott Burton, testified that missing or stretched springs in the same general area could cause a defect in the bounce and could create unreasonably dangerous "soft-spots" on the surface of the trampoline resulting in the type of injury Carol sustained. However, the Hintzes presented contrary evidence at trial through their expert, Dr. Gerald George, who opined that six missing springs, out of the ninety-six total springs, would not have affected the performance of the trampoline in any way and had nothing to do with Carol's injury. Thus, there was a jury question as to whether missing and/or stretched springs constituted a condition that created an unreasonable risk of injury.

Furthermore, in order to obtain a directed verdict on the Hintzes' negligence the Hullingers also had to prove the Hintzes knew or should have known that two to six missing springs constituted a condition that created an unreasonable risk of injury to someone in Carol's position. However, Michelle testified that although she knew the springs were missing, she had no idea that two missing springs could affect the performance of the trampoline. She testified

she did not believe the missing springs were a danger and in fact let her own children jump on the trampoline four to five times a week despite the missing springs.

The Hullingers further allege that even if the Hintzes did not know the missing springs constituted a dangerous condition, they *should have known* because the trampoline manual informed them they should inspect frequently and replace any worn, defective or missing parts, and that "ruptured or missing springs" can "increase the danger of personal injury." However, the manual does not explain that missing springs could cause "soft spots," the specific unreasonable risk the Hullingers contend the missing and/or stretched springs caused.

Accordingly, there was sufficient evidence presented to create a jury question as to whether missing and stretched springs created an unreasonable risk of injury and whether the Hintzes knew or should have known about this risk, as reasonable minds could differ on these issues. The court did not err in overruling the Hullingers' motion for directed verdict on this ground.

2. Multiple persons.

The Hullingers next allege they were entitled to a directed verdict on the Hintzes' negligence because they proved as a matter of law that having more than one person on the trampoline at a time created an unreasonable risk and that the Hintzes knew or should have known this created a dangerous condition because the owner's manual warned against it.

The evidence is clear that Carol told Ashleigh and Chris to move off to the side of the trampoline while she was jumping, as she would not jump while anyone else was on the trampoline because she knew it was dangerous to have multiple people either standing or jumping on the trampoline at the same time. It is equally clear that both Ashleigh and Chris were still somewhere on the trampoline when Carol began to jump. However there is varying and uncertain evidence concerning where Ashleigh and Chris were on the trampoline, what one or both of them were or may have been doing on the trampoline, what if any effect they had on the trampoline, and, in turn, what part, if any, their presence may have played in Carol's injury. From the evidence the jury could find one or both of them were standing completely on the metal frame, standing partially on the metal frame and partially on the mat, or standing completely on the mat. It could also find they were just standing still or one of them continued to bounce slightly on the mat after Carol began to jump.

Furthermore, there was a question as to whether the Hintzes knew or should have known that multiple people merely standing, perhaps even on the metal frame, on the trampoline can cause "tight spots," a specific dangerous condition the Hullingers contend may have been created here and caused Carol's injury. The Hullingers' own expert testified the manual provides no specific warning about "tight spots" from persons standing on the trampoline frame, where Carol testified the other two people were standing.

Therefore, there was sufficient evidence to create a jury question as to whether having multiple persons on the trampoline created an unreasonable risk

and whether the Hintzes knew or should have known that having multiple people even standing on the metal frame can cause "tight spots" resulting in an alleged unreasonable risk to Carol. Reasonable minds could differ on the issue. A directed verdict was not warranted on this issue.

Finally, we note that in their brief the Hullingers also claim they established the Hintzes were negligent as a matter of law because they failed to post the safety placard on the trampoline as directed by the safety manual. However, they did not urge this to the trial court as a ground for a directed verdict and thus it was never presented to or ruled upon by the court. Generally, issues must be presented to and passed upon by the trial court before they may be raised and adjudicated on appeal. *Metz v. Amoco Oil Co*., 581 N.W.2d 597, 600 (Iowa 1998); *Benavides v. J.C. Penney Life Ins. Co*., 539 N.W.2d 352, 356 (Iowa 1995). Thus, we find this issue is not properly preserved for our review.

We conclude there was sufficient evidence to engender a jury issue on the question of the Hintzes' negligence. The trial court therefore properly denied the Hullingers' motion for directed verdict on the issue of the Hintzes' negligence.[2]

B. Comparative Fault.

The Hullingers next claim the trial court erred in submitting the issue of comparative fault to the jury because there was no evidence Carol acted unreasonably and thus the evidence did not support such an instruction. They

[2] We do note that the jury assigned forty-nine percent of the causal fault to the Hintzes for their negligence. Under such circumstances the Hullingers cannot have been prejudiced by the trial court not finding the Hintzes negligent as a matter of law and "directing a verdict" so finding. *See Waits v. United Fire & Cas. Co.*, 572 N.W.2d 565, 569 (Iowa 1997) (finding an erroneous instruction does not entitle the party claiming error to reversal unless the error was prejudicial).

further contend that the two specifications of negligence contained in the comparative fault instruction were flawed.

Alleged errors regarding jury instructions are reviewed for correction of errors at law. *Sleeth v. Louvar*, 659 N.W.2d 210, 213 (Iowa 2003). An erroneous instruction does not entitle the party claiming error to reversal unless the error was prejudicial. *Waits v. United Fire & Cas. Co*., 572 N.W.2d 565, 569 (Iowa 1997). "Prejudice results when the trial court's instruction materially misstates the law, confuses or misleads the jury, or is unduly emphasized." *Anderson v. Webster City Cmty. Sch. Dist*., 620 N.W.2d 263, 268 (Iowa 2000). It is reversible error to submit an instruction which does not have evidentiary support in the record. *Waits*, 572 N.W.2d at 575. When considering whether an instruction has evidentiary support, we give the evidence the most favorable construction it will bear. *Id.*

At trial, the marshalling instruction concerning Carol's fault in relevant part informed the jury that the Hintzes were alleging Carol was at fault in one or more of the following ways, "1. In jumping on the trampoline when multiple persons were on the trampoline, or 2. In jumping on the trampoline when she failed to possess the experience or knowledge required to safely jump on the trampoline." The instruction further informed the jury that in order for the Hintzes to prevail they had to prove Carol was at fault and her fault was a proximate cause of her damage. If the jury found the Hintzes had proved both of these propositions, then the jury was to assign a percentage of fault, in the total percentage of fault found, to Carol.

> Parties are entitled to have their legal theories submitted to the jury when the instructions expressing those theories correctly state the law, have application to the case, and are not otherwise covered by other instructions. Proposed instructions must be supported by the pleadings and substantial evidence in the record. Evidence is substantial if a reasonable person would accept it as adequate to reach a conclusion.

Wolbers v. The Finley Hosp., 673 N.W.2d 728, 731-32 (Iowa 2003) (citations omitted).

It is clear and undisputed that Carol was aware of, and concerned about, the danger of multiple people jumping on the trampoline at the same time. She therefore insisted her daughter and her daughter's boyfriend move to the side of the trampoline before she would jump on it. The Hullingers allege, however, that the potential effect on the trampoline of the mere presence of others on its metal frame, a different danger than the danger of more than one person jumping at the same time, was a hidden danger of which Carol had no knowledge. They argue she thus did not act unreasonably in jumping on the trampoline while Ashleigh and Chris were standing on the metal frame, and instructing on her comparative fault was therefore error.

Initially, we reiterate that from the evidence the jury could find that Ashleigh, Chris, or both, were in fact standing entirely on the metal frame, were standing only partially on the metal frame, were standing on the mat, or one of them was actually still jumping, while Carol was jumping. These potential versions of the facts were for the jury to resolve. Further, it is not clear from the evidence whether Carol believed that having other people merely standing on the metal frame could also constitute a danger. She testified she would not jump

when anyone else was "on" the trampoline. However, she clearly did jump on the trampoline while there were others still "on" the trampoline. To what extent they might have been on the mat portion of the trampoline was up to the jury to determine.

Carol did testify she was aware that "two people *standing* on the trampoline" while she was jumping could be dangerous to her. (Emphasis added). Thus, multiple people *jumping* at the same time was not her only concern. Furthermore, she testified that she was the person in the best position to determine whether the other people on the trampoline were a danger to her.

Accordingly, we conclude there was sufficient evidence in the record for a reasonable person to conclude Carol knew of the dangers of jumping on a trampoline when there are multiple people anywhere on it in, whether standing or jumping, and yet she chose to jump with multiple people on it. A reasonable jury could conclude such action was unreasonable. Thus, the comparative fault instruction was supported by substantial evidence in the record. Because the instruction was a correct statement of the law, had application to the case, and was not covered by any other instructions the trial court did not err in submitting it to the jury.

The Hullingers next contend the two specifications of negligence contained in the comparative fault instruction were flawed. More specifically, they allege the specifications violate certain principles set forth in our supreme court's decision in *Rinkleff v. Knox,* 375 N.W.2d 262 (Iowa 1985).

> The purpose of requiring the jury to consider "specifications of negligence" is to limit the determination of the factual questions

> arising in negligence claims to only those acts or omissions upon which a particular claim is in fact based and upon which the court has had an opportunity to make a preliminary determination of the sufficiency of the evidence to generate a jury question. Each specification should identify either (a) a certain thing the allegedly negligent party did which that party should not have done, or (b) a certain thing that party omitted to do which should have been done, under the legal theory of negligence which is applicable.

Rinkleff, 375 N.W.2d at 266. In *Rinkleff* the trial court instructed the jury that the claim of contributory negligence against the plaintiff included, "(1) In not knowing or applying safe scaffolding use practices as required under the laws of the State of Iowa [and] (2) In not knowing or applying safe scaffolding use practices as recommended by the American National Standards Institute." *Id.* Our supreme court concluded these specifications were

> fatally defective in the dual respect of permitting the jury to consider an extraneous duty to which Rinkleff was not subject and in failing to sufficiently specify those acts or omissions which are claimed to constitute the negligence with which he is being charged.

Id. at 267.

As set forth above, the two specifications of negligence the Hintzes relied on, and that the trial court instructed on, were that Carol was at fault for either or both "jumping on the trampoline when multiple persons were on the trampoline" or "jumping on the trampoline when she failed to possess the experience or knowledge required to safely jump on the trampoline."

Jury instructions are to be read as a whole, not in isolation. *Anderson*, 620 N.W.2d at 268; *Sanders v. Ghrist*, 421 N.W.2d 520, 522 (Iowa 1988). The jury here was first instructed as to the negligence standard:

> "Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar

> circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

It was also instructed the term "fault" means "one or more acts or omissions towards the person of the actor or of another which constitutes negligence." In addition, the comparative fault instruction went on to specify the Hintzes also had to prove Carol was "at fault failing to act as a reasonable person would under the same or similar circumstances" and her "fault was a proximate cause of her damage."

When these instructions are viewed as a whole and in the context of the evidence presented at trial, we conclude it was made clear to the jury Carol was not subject to any duty other than acting as a reasonably careful person under similar circumstances. Unlike in *Rinkleff* the specifications did not allow the jury to consider any "extraneous duty" to which Carol was not subject. In addition, the act or omission involved in the second specification of Carol's fault was sufficiently specific, jumping on the trampoline under circumstances stated in the specification.[3] Finally, the first specification is fully supported by the evidence.

Accordingly, we conclude the specifications of negligence set out in the comparative fault instructions do not run afoul of the principles set forth in *Rinkleff*. The trial court did not err in giving the instruction in question.

[3] We note the Hullingers' own premises liability instruction contained a vague specification of negligence. It allowed the jury to find the Hintzes were negligent in "Failing to enforce the rules concerning the use of the trampoline."

C. Known or Obvious.

Finally, the Hullingers claim the trial court erred in instructing the jury it could find the Hintzes were not liable if the condition that caused Carol's injury was known or obvious, arguing the evidence did not warrant such an instruction. As set forth above, alleged errors regarding jury instructions are reviewed for correction of errors at law. *Sleeth,* 659 N.W.2d at 213. It is reversible error to submit an instruction which does not have evidentiary support in the record. *Waits*, 572 N.W.2d at 575.

The trial court instructed the jury in part as follows:

> A condition is "known" if one is aware or conscious of its existence and of the risk of harm it presents.
>
> A condition is "obvious" when both the condition and risk of harm are apparent to and would be recognized by a reasonable person, in the position of a visitor, exercising ordinary perception, intelligence, and judgment.

The following instruction provided that

> Weston and Michelle Hintz are not liable for injuries or damages caused by a condition that is known or obvious to a person in Carol Hullinger's position unless Weston and Michelle Hintz should anticipate the harm despite such knowledge or obviousness.

First, it is clear from the record that the missing springs which the Hullingers claim is one of the possible causes of Carol's injury were adjacent to each other right at the opening where Carol gained access to the trampoline through the net that surrounded it. Therefore, she had to enter right across the area where the missing springs were located. Accordingly, it was for the jury to determine based on the evidence whether the missing springs constituted a condition known or obvious to Carol.

Second, as discussed in detail above, there was evidence in the record that Carol may have been jumping with multiple persons on the trampoline and that she knew doing so was dangerous. As such, any danger inherent in jumping on a trampoline with multiple people on it could be seen by a jury as known or obvious to Carol.

Third, the instruction on the known or obvious defense was appropriate as to the Hullingers' theory that the absence of a placard constituted a trampoline condition involving an unreasonable risk of injury to Carol. Carol testified she did not look for any warnings which may have been posted on the trampoline before getting on it. The absence of any placard or other warnings was indisputably obvious.

More importantly perhaps with respect to that part of the Hullingers' claim based on the missing placard, the only warning on the placard that is relevant to the Hullingers' claim is the one that states there should only be one person on the trampoline at a time. As we have already discussed, the Hullingers' own evidence shows that Carol was aware of this danger. Thus, there was evidence from which a jury could readily find, and perhaps was compelled to find, that the absence of the placard in question did not constitute "a condition that involved an unreasonable risk of injury to a person in [Carol's] position."

Accordingly, we conclude there was sufficient evidence in the record to warrant the trial court instructing the jury it could find the Hintzes were not liable if the condition that caused Carol's injury was known or obvious to a person in her condition.

Finally, and as previously noted, the jury was instructed that the Hintzes could not be liable if the alleged condition was known or obvious. However, because the jury did assign forty-nine percent of the causal fault to the Hintzes, it must have found at least one or more of the conditions were in fact *not* known or obvious. Thus, even if the instruction should not have ben given the Hullingers were not prejudiced by it and reversal therefore is not required. *See Waits,* 572 N.W.2d at 569 (finding an erroneous instruction does not entitle the party claiming error to reversal unless the error was prejudicial).

III. CONCLUSION.

We conclude the trial court did not err in denying the Hullingers' motion for directed verdict as to the Hintzes' negligence, as the evidence was sufficiently disputed on each element of the Hullingers' claims to engender jury questions. We further conclude the court did not err in submitting the issue of comparative fault to the jury, as there was substantial evidence in the record to support the instruction. We also conclude the Hintzes' specifications of Carol Hullinger's negligence do not suffer from the claimed flaws. Finally, the trial court did not err in submitting a "known or obvious" instruction to the jury, as there was sufficient evidence to support such an instruction. Our decision renders moot the Hintzes' cross-appeal.

APPEAL AFFIRMED; CROSS-APPEAL MOOTED.