

IN THE COURT OF APPEALS OF IOWA

No. 7-841 / 06-2005
Filed December 28, 2007

RAYMOND TINNIAN, and PHIL TURVIN,
Plaintiffs-Appellees,

vs.

YELLOW BOOK USA,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Amanda
Potterfield, Judge.

Yellow Book appeals the submission of negligence claims to the jury.

REVERSED AND REMANDED.

Piper Lori Hughes of Litlow Law Office, P.C., Cedar Rapids, for appellant.

Raymond Tinnian, Kalona, pro se.

Phil Turvin, Iowa City, pro se.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

Attorneys Raymond Tinnian and Phil Turvin jointly contracted with Yellow Book USA for business advertising in the 2004-05 Iowa City directory and Turvin independently contracted for business advertising in the 2004-05 Cedar Rapids directory. Both contracts included fees for internet listings. Subsequently, Tinnian and Turvin discovered errors and omissions in the directories and in the internet listings.

Tinnian and Turvin sued Yellow Book alleging breach of contract and negligence. At trial, Yellow Book moved for a directed verdict, which was partially granted. The district court ruled contract damages were limited by the contracts' limitation of liability sections. *See Woodburn v. N.W.2d. Bell Tel. Co.*, 275 N.W.2d 403, 405 (Iowa 1979) ("Courts generally enforce clauses which limit to a stated amount the liability of telephone companies on account of errors or omissions in directory listings."). Additionally, the court ruled Yellow Book had no duty to Tinnian and Turvin outside the contract for those listings; therefore, a negligence cause of action was not allowed for the contracted listings. However, the court overruled Yellow Book's motion concerning negligence claims for erroneous listings/omissions not included in the contracts and allowed those claims to go to the jury.

The jury awarded contract damages to each plaintiff, but only awarded damages for negligence to Turvin. At trial, Turvin had presented evidence showing errors and omissions in his information in the free, alphabetical yellow page listings of the 2005-06 Cedar Rapids and Iowa City directories. Yellow

Book appeals claiming there was not a sufficient relationship between the parties independent of the contract to create the legal duty required for negligence.

We review a district court's ruling on a motion for directed verdict for errors at law. Iowa R. App. P. 6.4; *Riniker v. Wilson*, 623 N.W.2d 220, 230 (Iowa Ct. App. 2000). The threshold question in a negligence case is whether the defendant owed a legal duty to the plaintiff. *J.A.H. v. Wadle & Assoc., P.C.*, 589 N.W.2d 256, 258 (Iowa 1999). Whether the facts show a duty exists is a question of law. *Id.* The plaintiff has the burden of establishing a duty and the courts look to "legislative enactments, prior judicial decisions, and general legal principles as the source for the existence of a duty." *Sanford v. Manternach*, 601 N.W.2d 360, 370 (Iowa 1999).

Turvin has failed to establish a duty owed to him by Yellow Book under any of the three sources above. The general legal principle is found in W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 92 (5th ed. 1984). The general rule in situations where privity of contract is lacking is "there is no . . . duty to exercise reasonable care to avoid intangible economic loss or losses to others that do not arise from tangible physical harm to persons and tangible things." *Id.* Therefore, "a plaintiff who merely suffers pecuniary damages does not have a legally cognizable or compensable injury under the negligence theory." *Laurent v. Flood Data Serv., Inc.*, 766 N.E.2d 221, 227 (Ohio Ct. App. 2001). Turvin suffered no tangible physical harm and his damages for lost profits are clearly pecuniary damages. General legal principles do not support the creation of a duty here.

Additionally, Turvin cites no statutory or case law basis in Iowa or in any jurisdiction for the existence of an independent duty owed to him concerning a free listing. In fact, the Iowa Supreme Court has ruled the state has a legitimate interest in regulating the listings provided free to purchasers and these free listings are subject to utility tariff limitations of liabilities. *Woodburn*, 275 N.W.2d at 405. Consequently, it is unlikely a regulated, free listing can form the basis for the independent duty of care necessary for a negligence claim.

The essence of the relationship between Turvin and Yellow Book was contractual and there are no special circumstances or special relationships created by a free listing under statute or common law. We decline to extend tort liability to the pecuniary losses caused by negligent errors or omissions in free phone book directory listings. While the district court properly submitted the contractual issues to the jury, we conclude the court should have granted Yellow Book's motion for directed verdict on Turvin's negligence claims. We therefore reverse and remand for dismissal of Turvin's negligence claim.

REVERSED AND REMANDED.