**IN THE COURT OF APPEALS OF IOWA**

No. 8-354 / 07-0368
Filed October 1, 2008

**KAREN M. VERWERS,**
Petitioner-Appellant,

**vs.**

**CENTRAL IOWA HOUSING ASSOCIATION LIMITED PARTNERSHIP,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Jasper County, Dale Hagen, Judge.

The plaintiff appeals from a jury verdict for the defendant in a negligence action. **AFFIRMED.**

Harley Erbe of West Des Moines and Chris Spaulding of Des Moines, for appellant.

Mark Wiedenfeld of Wiedenfeld Law Office, Des Moines, for appellee.

Heard by Huitink, P.J., and Vogel and Eisenhauer, JJ.

**VOGEL, J.**

Karen Verwers appeals from the jury verdict in favor of Central Iowa Housing Association Limited Partnership (Central Iowa). Verwers argues that the district court erred in instructing the jury and seeks a new trial. We affirm.

On December 5, 2003, Verwers slipped and fell on a thin patch of ice on the sidewalk at Hunter's Run, an apartment complex owned by Central Iowa. As a result of the fall, Verwers broke her left ankle and incurred medical bills in excess of $23,000. On August 18, 2005, Verwers filed a negligence action against Central Iowa. At trial, Verwers objected to several of the district court's jury instructions.[1] The jury found that Central Iowa was negligent, but allocated thirty percent fault to Central Iowa and seventy percent fault to Verwers. Verwers appeals and requests a new trial.

***Scope of Review.*** Verwers asserts that the district court erred in instructing the jury. We review challenges to jury instructions for errors at law. Iowa R. App. P. 6.4; *Kragel v. Wal-Mart Stores, Inc.*, 537 N.W.2d 699, 702 (Iowa 1995).

***Duty of Care Instructions.*** Verwers contends that the district court erred in instructing the jury on the defendant's duty of care, which resulted in an unreasonable burden of proof. The district court instructed the jury as follows:

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[1] The district court instructed the jury as to Iowa Civil Jury instruction 100.9 (Credibility of Witnesses). In addition, Verwers requested that the district court instruct the jury as to Iowa Civil Jury instruction 100.15 (Statement by a Party Opponent), which the district court denied. On appeal, she claims that the district court erred by not including this instruction. Central Iowa disputes this assertion noting that the witness, Doug Peterson, was not a "party opponent," and further that Verwers has waived this issue by failing to cite legal authority in support of her argument. We agree, and conclude that Verwers has waived this issue pursuant to Iowa Rule of Civil Procedure 6.14(1)(*c*) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.").

Instruction No. 13:

The plaintiff claims that defendant Central Iowa Housing Association was at fault through negligence. Negligence has been explained to you in Instruction No. 10.

The plaintiff must prove all of the following propositions:

1. The defendant Central Iowa Housing Association knew, or in the exercise of reasonable care should have known, of a condition on the premises which was an unreasonable risk of injury to a person in Karen Verwers' position.
2. The condition was one that a person in the defendant's position should have expected would not have been discovered or realized by the plaintiff.
3. The plaintiff Karen Verwers did not know or have reason to know of the condition and the risk involved.
4. The defendant Central Iowa Housing Association was negligent in one or more of the following ways:
   a. In failing to exercise ordinary care to remove the snow and ice from the sidewalk.
   b. In failing to warn plaintiff that there was ice on the sidewalk.
5. The negligence was a proximate cause of the plaintiff's damages.
6. The amount of damage.

If the plaintiff Karen Verwers has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, then you will consider the defense of comparative fault as explained in Instruction No. 16.

*See* II Iowa Civ. Jury Instructions 900.2 (2007).

Instruction No. 14:

Concerning number 2 of Instruction No. 13, the defendant is not liable for injuries or damages caused by a condition that is known or obvious to a person in the plaintiff's position, unless the defendant should anticipate the harm despite such knowledge or obviousness.

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 the plaintiff, exercising ordinary perception, intelligence, and judgment.

*See* II Iowa Civ. Jury Instructions 900.6, 900.7 (2007).

Verwers objected to the above instructions, and instead proposed instructions that defined a possessor's duty in terms of reasonable care.[2] In the alternative, she requested that the jury be instructed according to Iowa Civil Jury Instruction 900.1 (Essentials for Recovery–Conditions of Premises–Duty to Invitees), instead of the instruction given, which was adopted from Iowa Civil Jury Instruction 900.2 (Essentials for Recovery–Condition of Premises–Duty to Licensees). Finally, she requested an instruction adopted from Iowa Civil Jury Instruction 740.2 (Owner/Occupant Liability for Sidewalks–Artificial Accumulation of Snow and Ice).[3]

Although Verwers asserts that the given instructions resulted in an unreasonable burden of proof, she met this burden of proof as the jury found that Central Iowa was at fault and such fault was a proximate cause of the damages Verwers sustained. Thus, Verwers can show no prejudice. *See Conner v. Menard*, 705 N.W.2d 318, 322 (Iowa 2005) ("[E]rror in giving a challenged

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[2] Verwers argued that the common law distinctions between business invitee and licensee should be abrogated and proposed two instructions based upon *Sheets v. Ritt, Ritt, Ritt, Inc.*, 581 N.W.2d 602, 606 (Iowa 1998). *See Benham v. King*, 700 N.W.2d 314, 317-18 (Iowa 2005) (finding that the plaintiff was classified as an invitee and was owed a corresponding duty); *Anderson v. State*, 692 N.W.2d 360, 368 (Iowa 2005) (affirming by operation of law the use of invitee instruction instead of reasonable care instruction); *Alexander v. Med. Assocs. Clinic*, 646 N.W.2d 74, 76 (Iowa 2002) (stating that "premises liability in Iowa remains dependent on the status of the plaintiff"); *Richardson v. Commorore, Inc.*, 599 N.W.2d 693, 698 n.3 (Iowa 1999) (stating that "the status of the plaintiff continues to be a relevant consideration in premises liability law").

[3] This instruction states:

> An owner/occupant of land must exercise ordinary care to keep sidewalks next to their land free from accumulations of snow and ice caused by their acts. The plaintiff must prove that the owner/occupant knew about the cause of the accumulation of snow and ice, or that it existed long enough for the owner/occupant to have discovered and corrected/prevented it in the exercise of ordinary care.

However, this instruction is not applicable in the present case as it is used in cases where a plaintiff slips and falls on a public sidewalk and the adjacent landowner is liable for creating the icy condition. *See Beyer v. City of Dubuque*, 139 N.W.2d 428 (Iowa 1966) (discussing that where the plaintiff slipped and fell on a public sidewalk, the abutting property owner was liable for causing the icy condition).

instruction will not result in a reversal unless the challenging party has been prejudiced by it."); *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994) ("[E]rror in refusing to give a requested instruction does not warrant reversal unless it is prejudicial to the party."). As Central Iowa stated, "Verwers was not prejudiced by the court's instructions, but failed to recover because of the jury's allocation of fault." We agree there is no basis for awarding a new trial based upon these challenged instructions as given when Verwers sustained the burden of proof.

***Comparative Fault Instruction.*** Next, Verwers contends that the district court erred in instructing the jury as to Verwers's comparative fault. The district gave this instruction:

> Instruction No. 15:
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> The defendant claims that plaintiff Karen Verwers was at fault through negligence. Negligence has been explained to you in other instructions.
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> A party is required to exercise reasonable care for her own safety. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action in order to avoid injury, after an act of fault of another party, then she is under a duty to take such action.
>
> In this case defendant claims that plaintiff Karen Verwers unreasonably failed to take action to avoid an injury. The defendant must prove both of the following propositions:
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> 1. The plaintiff Karen Verwers was negligent in one or more of the following ways:
>    a. In failing to take an alternative route to avoid walking over the icy part of the sidewalk;
>    b. In failing to wear appropriate footwear for the winter conditions; or
>    c. In failing to use reasonable care for her own safety as she walked across the sidewalk.
> 2. The plaintiff's fault was a proximate cause of the plaintiff's damage.
>
> If the defendant has failed to prove either of these propositions, the defendant has not proved its defense. If the defendant has proved both of these propositions, then you will assign a percentage of fault to the plaintiff and include the plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

Verwers does not contend that there was insufficient evidence to support this instruction, but rather objects to subpart (a) and (b) as being too explicit. She claims that the jury should have been instructed only that "the plaintiff had a duty to use ordinary care." We disagree.

The jury verdict form does not specify which of the three subsections the jury rested their finding of fault on. However, there was evidence to support both subpart (a) and (b), which Verwers does not contest. At the time of Verwers's slip and fall, she was walking across the apartment complex. Verwers testified that she knew the temperature had dropped when the sun went down, what was wet and slushy could have frozen, and that she looked at the parking lot and it appeared to be slick and full of ruts. She also testified that she had previously driven to this apartment building, rather than walking across the apartment complex. At the time of the slip and fall, she stated that she could not remember if she was looking at the sidewalk in front of her as she was walking, but if she had seen the ice, then she would have walked in the snow-covered grass to avoid it. Finally, she stated that she owned winter boots, but chose not to wear them that day even though she knew there was snow on the ground and she would be walking across the apartment complex.

> 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.

*Rinkleff v. Knox*, 375 N.W.2d 262, 266 (Iowa 1985). "A specification of negligence '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.'" *Fuches v. S.E.S. Company*, 459 N.W.2d 642, 644 (Iowa Ct. App. 1990) (quoting *Rinkleff*, 375 N.W.2d at 266). Had the district court instructed the jury as Verwers requested, it would have been reversible error. *See Fuches*, 459 N.W.2d at 644 (reversing and remanding for a new trial where the "specifications of contributory negligence should have identified specific acts or omissions by plaintiff, supported by the evidence, that the defendant claimed constituted a failure to use ordinary care to avoid an injury"). Thus, we find no error in the instruction as given.

Having considered all of the issues presented on appeal, we affirm the district court.

**AFFIRMED.**