

IN THE COURT OF APPEALS OF IOWA

No. 9-233 / 08-1258
Filed May 6, 2009

**MARTIN L. WATERS and
LESLIE WATERS,**
Plaintiffs-Appellees,

vs.

DONALD DEEDS, LANCE E. MADSEN,
Defendants, and

STATE OF IOWA,
Defendant-Appellant.

Appeal from the Iowa District Court for Madison County, Martha L. Mertz,
Judge.

On interlocutory appeal, the State of Iowa appeals the district court's ruling
affirming its prior summary judgment ruling and setting a date for trial.

AFFIRMED.

Thomas J. Miller, Attorney General, and Richard E. Mull and Robin G.
Formaker, Assistant Attorneys General, for appellant.

Dean T. Jennings of Jennings Law Firm, Council Bluffs, and Jerry W.
Katskee of Katskee, Henatsch & Suing, Omaha, Nebraska, for appellee.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

DOYLE, J.

The issue presented to us on interlocutory appeal is very narrow: Can the State be ordered to trial in view of the district court's resolution of the State's motion for summary judgment? The State argues there is no issue left to be submitted to the jury regarding the State's liability in the aftermath of Judge Mertz's summary judgment ruling. Upon our review for the correction of errors at law, Iowa R. App. P. 6.4, we affirm the district court.

I. Background Facts and Proceedings.

The record on summary judgment, when viewed in the light most favorable to the nonmoving party, see *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000), reveals the following: During the night of February 8, 2004, portions of Interstate 80 in Madison County became 100% snow and ice covered due to severe winter weather conditions. In the early morning hours of February 9, Donald Deeds was driving on I-80 when his Jeep Liberty spun out of control and landed on its side in the median.¹ He was not injured and had a ride take him from the scene. He left his Jeep in the interstate median, and no warning devices indicated the Jeep's location.

Sometime between 3:00 a.m. and 4:00 a.m., Iowa Highway Patrol Trooper Jody Elliott came upon the abandoned Jeep. He found the Jeep completely within the median and not on any part of the roadway. He determined the Jeep was not a hazard to other traffic, and he left the scene to resume his patrol. At the time, the blowing snow was so bad that authorities banned towing operators

¹ Deeds testified the Jeep came to rest in the median five feet beyond the edge of the shoulder. Waters asserts Deeds's vehicle was not completely off the highway.

from this segment of the interstate. At about 5:15 a.m., Martin Waters was riding as a passenger in a Ford Expedition driven by Lance Madsen on I-80. As they neared the location of Deeds's incident, Madsen lost control of the Expedition and struck Deeds's Jeep.

On January 24, 2006, Martin and his wife, Leslie Waters, filed a lawsuit against Deeds, Madsen, and the State seeking recovery of personal injury and loss of consortium damages.² Martin alleged the State was negligent in the following particulars: (a) failing to timely remove the obstruction to highway travel caused by Deeds's vehicle, (b) failing to timely remove accumulated snow and ice from the traveled portion of the roadway, (c) failing to guard the area of the highway obstruction, (d) failing to warn of the obstruction, (e) failing to warn of the slippery condition of the highway surface, (f) failing to follow its own policies pertaining to removal of snow and ice and obstructions.

On May 10, 2007, the State filed a motion for summary judgment or dismissal, asserting seven grounds for judgment or dismissal in its favor. At issue here are three of the seven grounds. The first ground addressed Martin's claim against the Iowa Department of Public Safety, asserting the claim failed because there was no special relationship between the department and Martin,

² In the original petition, Leslie asserted a claim for loss of consortium damages against defendants Deeds and Madsen only. Later, the Waters filed an amended and substituted petition adding a loss of consortium claim against the State; however, this claim was dismissed by the district court for failure to properly amend the petition as required by Iowa Rule of Civil Procedure 1.402(4). The Waters later settled their claims against Deeds and Madsen, and those defendants were dismissed from the suit. Additionally, the Iowa Departments of Transportation and Public Safety, named as defendants in the original petition, were dropped from the suit after the State filed a motion to dismiss the departments. This left Martin as the sole plaintiff and the State as the sole defendant in the litigation.

and thus the State had no legal duty to protect him from colliding with the Jeep.³ As its relief pertaining to this ground, the State requested summary judgment “be granted in favor of the [State] upon the claims made by [Martin] regarding the Department of Public Safety.” The second ground asserted the State was immunized by the discretionary function immunity afforded in Iowa Code section 669.14(1) (2003), and requested judgment be entered in favor of the State on all claims made by Martin. The fourth ground raised by the State alternatively alleged that the State did not have a reasonable opportunity to remove Deeds’s vehicle prior to the subject accident. Martin resisted the State’s motion, and a hearing was subsequently held.

On January 15, 2008, the district court entered its ruling on the State’s motion for summary judgment.⁴ In its ruling, the district court discussed each of the grounds the State asserted on appeal. In addressing the State’s first asserted ground, the court found that Iowa Code section 321.356 (2003), which authorizes peace officers to remove vehicles from the highway, was not mandatory and did not place Martin in a special class of people to whom the State owed such a duty. The court then concluded: “In the absence of any facts establishing a special relationship between [Martin] and the State, the court

³ The State is not liable for a breach of a duty owed to the public at large unless a plaintiff can establish, based on the unique or particular facts of their case, a special relationship existed between the State and the plaintiff. *Kolbe v. State*, 625 N.W.2d 721, 725 (Iowa 2001). When the parties are not privy to a special relationship, but rather of the same status as a member of the general public, then there is no duty imposed. *Morris v. Leaf*, 534 N.W.2d 388, 390 (Iowa 1995).

⁴ The district court also ruled upon Deeds’s motion for summary judgment and the State’s motion to dismiss Martin’s wife’s loss of consortium claim. Those rulings are not at issue in this interlocutory appeal.

concludes the public duty doctrine insulates the State from liability on *this issue*.” (Emphasis added).

The court next addressed the State’s assertion of discretionary function immunity as it applied to Martin’s claims that the State was negligent in its decision not to tow Deeds’s vehicle from the scene, the decision to keep I-80 open, and the State’s road maintenance activities in clearing snow and ice. The court concluded that “the undisputed facts support a conclusion that discretionary function immunity applies to each of these decisions and the activities, or lack thereof, associated with them.” Regarding the decision not to tow Deeds’s vehicle, the court specifically concluded “the trooper’s decision and the reasons for it support a finding of immunity.” The court therefore granted summary judgment “on these issues.”

The court went on to address the State’s fourth alternative ground for summary judgment, alleging the State did not have a reasonable opportunity to remove Deeds’s vehicle prior to the subject accident. The court noted that generally what is reasonable under any given set of circumstances presents a fact question, precluding summary judgment. The court concluded that because what is a reasonable length of time to remedy the condition depends on facts and circumstances of each case presents a jury question, it was “unwilling to determine as a matter of law that the State lacked a reasonable opportunity to remove the vehicle.” The court then denied the State’s motion for summary judgment on this issue. In its order, the court denied the State’s motion for summary judgment “with regard to reasonable opportunity to remove [Deeds’s]

vehicle,” and granted summary judgment in favor of the State in all other respects.

Thereafter, the Waters settled their claims with defendants Deeds and Madsen. On July 17, 2008, Martin filed a motion for clarification, noting that the court had denied one ground asserted in the State’s motion for summary judgment; that no dismissal had been filed; and that the State had taken the position that all issues had been resolved and therefore refused to participate in mediation or trial of the matter. The State resisted, claiming the motion for summary judgment had been granted in its favor in all respects and a subsequent dismissal order was unnecessary. By calendar entry the court ruled: “Court does not change its ruling. Counsel shall obtain a new trial date, present a new order for trial on or before 2:00 p.m. on [August 18, 2008]. The scheduling conference is continued to that date.” The State appealed from this order and was granted permission by the supreme court to take the appeal in advance of final judgment.

II. Discussion.

On interlocutory appeal, the question before us is whether the State can be ordered to trial in view of the district court’s summary judgment ruling. The State argues the district court’s ruling disposed of all claims against the State. Martin argues the district court left one issue on the table to be adjudicated: whether the State had a reasonable opportunity to remove Deeds’s Jeep following Trooper Elliott’s departure from the scene.

The State’s motion for summary judgment asserted that Martin’s claim of failure to remove the vehicle was barred by public duty doctrine and requested

summary judgment be granted in its favor upon the claims made by Martin regarding the Department of Public Safety. The court agreed, concluding the public duty doctrine “insulate[d] the State from liability on this issue,” and granted the relief requested by the State. The court’s ruling is silent as to whether the public duty doctrine extended to any duty the State may have had to remove the vehicle after the trooper left the scene, as that issue was not raised by the State in its motion.

The State’s motion also asserted it was immunized from Martin’s claim of failure to remove the vehicle by the discretionary function immunity. Although the State sought summary judgment in its favor as to all of Martin’s claims, in ruling upon Martin’s failure to remove the vehicle claim, the court apparently only ruled upon the discretionary function immunity as it applied to the trooper’s actions. It concluded the “trooper’s decision [not to have Deeds’s vehicle towed] and the reasons for it support a finding of immunity.” The court’s ruling is silent as to whether the discretionary function immunity extended to any duty the State may have had to remove the vehicle after the trooper left the scene.

As to the State’s alternative ground for summary judgment, that it did not have a reasonable opportunity to remove Deeds’s vehicle prior to the incident involving Martin, the court clearly denied summary judgment on the issue, concluding it was “unwilling to determine as a matter of law that the State lacked a reasonable opportunity to remove the vehicle.” In addressing this issue, the district court cited to *Koehler v. State*, 263 N.W.2d 760, 765 (Iowa 1978). *Koehler* points out that the State had a statutory duty to maintain its highways and a specific statutory duty to remove all obstructions in highways, citing Iowa

Code sections 313.36 and 319.1 (1973).⁵ *Id.* The source of the State's obligation to remove obstructions from the highway are separate and distinct from a peace officer's section 321.356 authority to remove a vehicle the officer finds standing upon the highway. Therefore, the district court's discussion and rulings concerning the immunities applicable to Trooper Elliott's decision not to remove Deeds's Jeep are not necessarily, or automatically, applicable to Martin's claim the State was negligent in failing to timely remove the vehicle after the trooper left the scene.

On appeal, the State suggests:

[Martin's argument] is, in essence, a claim the district court's ruling preserved for the jury the issue of whether or not the State of Iowa was negligent in failing to remove Deeds's vehicle "following the officer's departure." Under this tortured reasoning, the State of Iowa is immune from liability "up to and including the officer's arrival at [Deeds's] vehicle." However, this immunity magically evaporates . . . the minute the officer departs the scene since the State was on notice once the trooper observed the disabled vehicle.

We do not read the court's decision that way. A careful reading of the decision leads us to conclude the court addressed only application of the public duty and discretionary function defenses to the actions of the trooper. The decision is silent as to application of these defenses to the State's conduct after the trooper left the scene.⁶ Thus, Martin's claim for failure to timely remove the vehicle was left viable for litigation.⁷ To find otherwise ignores the plain language of the

⁵ Iowa Code sections 313.36 and 319.1 (1973) had not been substantively changed in the 2003 Iowa Code, the Code in effect at the time the petition was filed. Chapter 319 was repealed by the legislature in 2006 and was replaced with the provisions that currently appear in chapter 318 of the 2009 Code.

⁶ On remand, the State will no doubt ask the district court to revisit this issue.

⁷ Due to the posture of this appeal, it is not necessary for us to comment or decide the merits of this or any other substantive or procedural issues raised by the parties in their pleadings or pretrial motions.

court's ruling. This conclusion is further bolstered by the court's subsequent calendar entry ordering the parties to obtain a new trial date. It is elementary that a trial would not be necessary if there were nothing to litigate. Accordingly, we affirm the district court's July 28, 2008 calendar entry order requiring the parties to obtain a new trial date.

III. Conclusion.

Because we conclude the district court only addressed the application of the public duty and discretionary function defenses to the actions of the trooper, leaving Martin's claim for failure to timely remove the vehicle viable for litigation, we affirm the district court's July 28, 2008 calendar entry order requiring the parties to obtain a new trial date.

AFFIRMED.