IN THE COURT OF APPEALS OF IOWA

No. 1-421 / 10-1304
Filed August 10, 2011

LINDSEY LIGHT, Individually and as Next Friend for CAMERON LIGHT, a minor, JOSEPH PASA and LINDA PASA, Individually and as Co-Administrators for the Estate of LUCA J. PASA,
Plaintiffs-Appellants,

vs.

MIDWEST HOSPITALITY INVESTMENTS L.L.C. d/b/a THE LUMBERYARD, SLR CONSULTING, L.L.C., KENNETH FORD, and MICHAEL KENT,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge.

The plaintiffs appeal from the denial of their motion for new trial following a jury verdict in favor of the defendants. **AFFIRMED.**

Jeffrey M. Lipman of Lipman Law Firm, P.C., Clive, Shane C. Michael, Des Moines, and A. Zane Blessum, Winterset, for appellants.

Guy R. Cook and James W. Bryan of Grefe & Sidney, P.L.C., Des Moines, for appellee Midwest Hospitality Investments, L.L.C.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

Luca Pasa suffered a fatal stab wound while patronizing a strip club in Des Moines. His family sued the owners and operators of the club, claiming they were at fault in his death. Following a verdict in favor of the defendants, the plaintiffs appeal contending the district court erred in instructing the jury. Because we find the plaintiffs failed to preserve error on their claims, we affirm.

I. Background Facts and Proceedings.

Luca Pasa was a patron of The Lumberyard in the early morning hours of April 5, 2006. Another patron, Erik Gilge, stabbed and killed Pasa inside the club. Gilge was convicted of voluntary manslaughter as a result of Pasa's death.

On March 27, 2008, Lindsey Light; her son, Cameron (Luca Pasa's son); and Joseph and Linda Pasa—individually as Luca Pasa's parents, as well as in their capacity as the administrators of his estate—filed suit against the company owning The Lumberyard (Midwest Hospitality Investments, L.L.C), the company that provided security to The Lumberyard (SLR Consulting, L.L.C.), a manager of the club (Michael Kent), and one of the bouncers (Kenneth Ford). The petition claims the defendants were negligent in failing to protect Luca Pasa from harm.

On June 8, 2009, the defendants moved for summary judgment. The court denied the motion in its entirety in a November 17, 2009 order. As part of that ruling, the court held, "Mr. Gilge's action cannot be the sole proximate cause of Mr. Pasa's injury as a matter of law." The case proceeded to trial and on December 21, 2009, the jury returned a verdict in favor of the defendants. The

jury found the defendants were at fault for Luca Pasa's death, but were not the proximate cause of his death.

The plaintiffs filed a motion for new trial on December 23, 2009, alleging the jury's finding on proximate cause was not supported by sufficient evidence and was contrary to law. The plaintiffs also alleged the jury instructions were "contrary to current law. Further, the jury obviously misunderstood or misinterpreted proximate cause." Finally, they alleged the verdict of no proximate cause "cannot be sustained based upon all of the instructions given."

The court held a hearing on the motion for new trial on April 16, 2010. On July 9, 2010, the district court filed its order, denying the plaintiffs' motion. It stated,

> The jury instructions correctly stated the law as it pertained to this case and the jury rendered a verdict which was internally consistent, was consistent with the law as stated in the jury instructions and was adequately supported by the evidence.

The plaintiffs filed their notice of appeal on August 2, 2010.

II. Scope and Standard of Review.

Our scope of review depends on the grounds raised in the motion for new trial. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). If the motion was based on discretionary grounds, we review for an abuse of discretion. *Id.* Where, as here, the motion was based on a legal question, review is on error. *Id*.; *Herbst v. State*, 616 N.W.2d 582, 585 (Iowa 2000). Error in giving or refusing to give a particular instruction does not warrant reversal unless the error is prejudicial to the party." *Herbst*, 616 N.W.2d at 585.

III. Analysis.

The plaintiffs contend the district court erred in giving jury instruction number 16, which states:

> The defendant claims the sole proximate cause of the plaintiff's damages was the criminal conduct of Erik Gilge. Sole proximate cause means the only proximate cause. The defendant must prove both of the following propositions:
>
> 1. The criminal conduct of Erik Gilge occurred.
>
> 2. The criminal conduct of Erik Gilge was the only proximate cause of plaintiff's damage.
>
> If the defendant has failed to prove either of these propositions, the defendant has failed to prove the defense of sole proximate cause. If the defendant has proved both of these propositions, the defendant has proved the defense of sole proximate cause and you must find the fault of the defendant, if any, was not a proximate cause of plaintiff's damages when you answer the questions in the verdict form.

On appeal, the plaintiffs argue the court should not have instructed the jury on the defense of sole proximate cause because its ruling on the defendants' motion for summary judgment decided that issue as a matter of law. They also claim the instruction blurred the distinction between Gilge's criminal act as proximate cause for the injury and the defendants' failure to protect patrons as proximate cause.

The defendants assert the plaintiffs failed to preserve error on the objections to the sole proximate cause jury instruction advanced on appeal. The defendants claim the record is insufficient to show the plaintiffs raised their claims with enough specificity to alert the district court to the error now alleged. In their appellate brief, plaintiffs claim they preserved error by lodging the following objection during discussion of the proposed jury instructions: "Furthermore, your honor, I object to No. 16 as to the sole and proximate cause."

In response to the plaintiff's general objection, the defendants argued that the sole proximate cause instruction was a "stock instruction" and a "careful and correct statement of the law." The district court overruled the plaintiffs' objection to instruction number 16, noting its reluctance to change a "stock" instruction.

During the jury instruction conference, the plaintiffs did not make it clear that they objected to the district court giving the sole-proximate cause instruction to the jury. Rather, their bare-bones objection indicated to the defendants and the court that the plaintiffs found something amiss with the wording of the instruction. Moreover, the plaintiffs did not articulate their current arguments, i.e. that the ruling on the defendants' motion for summary judgment precluded instructing the jury as to the defense of sole proximate cause and that the instruction "improperly marshaled the jury away from a finding of liability against the defendants" by removing the distinction between Gilge's criminal conduct causing the injury and the defendants' failure to protect.

The error preservation requirement allows trial courts the opportunity to avoid or correct error in judicial proceedings. *DeVoss v. State*, 648 N.W.2d 56, 60 (Iowa 2002). It also provides appellate courts with an adequate record to review errors purportedly committed during trial. *Id.* "To be sufficient, an objection must reasonably alert the trial court to the claimed error to give the court an opportunity to correct it." *Rudolph v. Iowa Methodist Med. Ctr.*, 293 N.W.2d 550, 561 (Iowa 1980) (finding objection alleging that instruction misstated the law did not preserve error when counsel articulated no legal theory to inform the trial court why the instruction was incorrect).

> [I]t is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider. Furthermore, it is unfair to allow a party to choose to remain silent in the trial court in the face of error, taking a chance on a favorable outcome, and subsequently assert error on appeal if the outcome in the trial court is unfavorable.

Sorci v. Iowa Dist. Court, 671 N.W.2d 482, 489 (Iowa 2003).

On appeal, the plaintiffs only provide a transcript of the portion of the trial where the parties discuss the jury instructions. At that conference, in addition to the general objection cited in the plaintiffs' brief, the plaintiffs' counsel stated: "Number 16, I know that Defendant has indicated that is the sole proximate cause. I don't know if that is the correct standard." Later, when discussing instruction number eleven, setting out the elements necessary for the plaintiffs' claim, counsel stated:

> [The defendants] already get a specific harm in Instruction No. 16 about the sole proximate cause.
>
> . . . . There is a lack—the premises were not free from someone that could injure someone else, could assault them. The specific act, of course, was the stabbing. You are right, it could have been a fistfight. It could have been a push-down. There is a whole host of actions. They need to guard against any type of assault, not a specific one. I think to say it is a specific one confuses the jury, will confuse them. *That is why we objected to 16 about the sole and proximate cause.* But what they are trying to get is two bites out of that. There is only one thing they should have guarded against, that is the stabbing, and that is not the correct general jury instruction. I agree with the Court. It is a general jury instruction.

At this juncture, the plaintiffs' attorney seemed to be asserting that their objection to instruction number 16 was based on how specifically it described the harm from which the defendants had a burden to protect their patrons. Nothing in the record provided for this appeal shows that the district court had an

opportunity to consider the "succinct legal argument" now asserted by the plaintiffs. We may only reverse the district court's ruling on a ground that was sufficiently presented to the district court. *See State v. Bingham*, 715 N.W.2d 267, 271 (Iowa Ct. App. 2006).

In their motion for new trial, the plaintiffs asserted the instructions were "contrary to current law."[1] But even if the specific arguments raised on appeal were made at the hearing on the motion for new trial and were part of the record before us, it would be insufficient to preserve error for our review. In accordance with Iowa Rule of Civil Procedure 1.924, a party must make its objections to the jury instructions before closing arguments are made and "[n]o other grounds or objections shall be asserted thereafter, or considered on appeal." *See also Olson v. Sumpter*, 728 N.W.2d 844, 848 (Iowa 2007).

We conclude the plaintiffs failed to preserve error on the issues now raised on appeal. The plaintiffs' general objection to instruction number sixteen is insufficient to preserve error on review. *See Field v. Palmer*, 592 N.W.2d 347, 351-52 (Iowa 1999). An objection must be "sufficiently specific to alert the trial court to the basis of the complaint so that if error does exist the court may correct it before placing the case in the hands of the jury." *Olson*, 728 N.W.2d at 849. Nowhere in the record before us did the plaintiffs indicate they objected to instruction number sixteen on the basis the court had determined the issue of proximate cause as a matter of law. Nor did the plaintiffs claim the instruction was confusing because it failed to alert the jury to the possibility of multiple

[1] The hearing on the motion for new trial was not transcribed.

proximate causes. Because the plaintiffs' objection to instruction number sixteen failed to alert the trial court to the error complained of on appeal, we affirm.

AFFIRMED.