IN THE COURT OF APPEALS OF IOWA

No. 7-747 / 06-1691
Filed January 16, 2008

ROGER VAN FOSSEN, Individually, and as Personal Representative of the Estate of Ann Van Fossen, Deceased,
Plaintiff-Appellant,

vs.

MIDAMERICAN ENERGY COMPANY and INTERSTATE POWER AND LIGHT COMPANY,
Defendants-Appellees.

Appeal from the Iowa District Court for Woodbury County, John Ackerman, Judge.

Plaintiff appeals from a district court summary judgment ruling that found two premises owners did not owe a duty of care to the spouse of an independent contractor's employee. **AFFIRMED.**

Michael Jacobs of Rawlings, Nieland, Probasco, Killinger, Elwanger, Jacobs & Mohrhauser, Sioux City, and John Herrick and Benjamin Cunningham of Motley Rice, Mt. Pleasant, South Carolina, for appellant.

William Hughes of Stuart, Tinley, Peters, Thorn, Hughes, Faust & Madsen, Council Bluffs, and Jason Kennedy and Adam Jagadich of Segal, McCambridge, Singer & Mahoney, Chicago, Illinois, for appellee MidAmerican Energy Company.

Leonard Strand and Kerry Finley of Simmons Perrine, Cedar Rapids, for appellee Interstate Power and Light Company.

Heard by Vogel, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Plaintiff Roger Van Fossen appeals from a district court ruling that granted summary judgment to two defendants, MidAmerican Energy Company (MidAmerican) and Interstate Power and Light Company (IPL), on the basis that neither premises owner owed a duty of care to his spouse, Ann Van Fossen. Upon our review, we affirm the district court.

Roger Van Fossen was employed as an ironworker by two independent contractors from 1973 until he retired in 1997. From 1973 through 1981, Van Fossen worked for Ebasco Services (Ebasco), and from 1981 through 1997, he worked for W.A. Klinger Company (Klinger). Iowa Public Services, the predecessor of MidAmerican, hired Ebasco and Klinger to do construction and maintenance work on the electricity generating units at the Port Neal generating station (Port Neal) in Sioux City. Port Neal consists of four power units, designated as Unit 1 through Unit 4.[1] During his employment with Ebasco and Klinger, Van Fossen performed work at all four generating units.

Van Fossen was never an employee of MidAmerican or IPL, and no direct relationship existed between him and either company. Ann Van Fossen was never at Port Neal. There is no evidence in the record that a direct relationship ever existed between either MidAmerican or IPL and Ann Van Fossen.

Roger Van Fossen claims that while working on or near the Port Neal generating units he was exposed to various asbestos-containing products, and that he carried asbestos dust home on his work clothes. He alleges that his wife

[1] IPL is a party to this case because two of IPL's corporate predecessors, Iowa Southern Utilities and Interstate Power Company, held passive, minority, ownership interests in Units 3 and 4 at Port Neal.

contracted peritoneal mesothelioma, an incurable and fatal form of lung cancer, as a result of washing his work clothes. Ann Van Fossen died of peritoneal mesothelioma in July 2002.

In 2004 Roger Van Fossen filed suit against a variety of defendants, including MidAmerican and IPL, for the wrongful death of his wife and for his own injuries.[2] He included claims for negligent failure to warn in his suit against MidAmerican and IPL. MidAmerican and IPL each filed motions for summary judgment. They contended, among other things, that they owed no duty to Ann Van Fossen and therefore could not be held liable for her death. Roger Van Fossen filed a resistance to both of these motions.

The district court heard oral arguments on MidAmerican's and IPL's summary judgment motions and other pending motions. On February 17, 2006, the court issued its ruling with respect to all summary judgment motions. The court concluded that neither defendant owed a duty to Ann Van Fossen and granted MidAmerican's and IPL's motions for summary judgment.[3]

Roger Van Fossen subsequently filed a motion to enlarge or amend findings of fact and conclusions of law pursuant to Iowa Rule of Civil Procedure 1.904. In his motion, Van Fossen requested that the court reconsider its ruling that there can be no liability on behalf of MidAmerican and IPL for any alleged asbestos exposures while working at Port Neal. On May 11, 2006, the court denied Van Fossen's motion. In reaffirming its ruling granting MidAmerican's and

[2] Plaintiff filed an action asserting nine separate counts against fifty defendants.

[3] In the same ruling, the court denied the motions for summary judgment filed by General Electric and Foster Wheeler.

IPL's motions for summary judgment, the court stated it "does not believe Iowa would recognize a duty on the part of the landowner to persons in the position of Mrs. Van Fossen" under the circumstances of this case.

Van Fossen appeals. He asserts the district court erred in granting summary judgment to MidAmerican and IPL on the basis that neither entity owed a duty of care to Ann Van Fossen.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.4; *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Grinnell Mut. Reins. Co. v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002).

Upon our review of the district court's detailed summary judgment ruling, we conclude it correctly sets forth the undisputed facts of this case. Moreover, we conclude the court's decision is well-reasoned and its legal conclusions are correct. We find it unnecessary to repeat in detail the factual circumstances and legal analysis set forth by the district court. We note that the court correctly stated that "Iowa courts balance and weigh three factors in determining whether a duty exists—the relationship between the parties, reasonable foreseeability of harm to the injured person, and public policy considerations." *See J.A.H. ex rel. R.M.H. v. Wadle & Assocs., P.C.*, 589 N.W.2d 256, 258 (Iowa 1999) (citing *Leonard v. State,* 491 N.W.2d 508, 509-12 (Iowa 1992)). After a thorough analysis of each factor, the court concluded that it should not recognize that

MidAmerican and IPL, as landowners, owe a duty of care to the spouse of an employee where "the employee who brings the asbestos fibers to the home is not the employee of the landowner but rather [is] the employee of an independent contractor . . . who was in control of the premises when the exposures occurred."

Furthermore, as the district court explained in its ruling on Van Fossen's rule 1.904 motion, the summary judgment record demonstrates there is no evidence "which creates a fact issue as to whether a company in the position of MidAmerican or Interstate Power and Light knew or should have known that such exposure to the microscopic fibers created a risk of harm to persons in the position of Mrs. Van Fossen."

Because we agree with the district court's findings of fact, conclusions of law, and decision, we affirm. *See* Iowa Ct. R. 21.29. We leave any extension of the law in this area to the legislature or our supreme court.

AFFIRMED.