IN THE COURT OF APPEALS OF IOWA

No. 7-268 / 06-0970
Filed June 13, 2007

RONALD JOHNSON, CHAD FESER, NICK CALDWELL and DAVE ROTHE,
Plaintiffs-Appellees,

vs.

DALTON AUTO SALES, INC.,
Defendant-Appellant.

Appeal from the Iowa District Court for Crawford County, Gary E. Wenell, Judge.

The defendant appeals from the judgment entered in favor of the plaintiffs on their negligence claim. **AFFIRMED.**

Michael R. Mundt of Mundt, Franck & Schumacher, Denison, for appellant.

Reed H. Reitz of Reimer, Lohman & Reitz, Denison, for appellees.

Heard by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

The defendant, Dalton Auto Sales, Inc. (Dalton Auto), appeals from the judgment entered in favor of the plaintiffs, Ronald Johnson, Chad Feser, Nick Caldwell, and David Rothe, on their negligence claim. The defendants contend the district court erred in submitting the theories of res ipsa loquitur and bailment to the jury. We find no error and therefore affirm.

I. Background Facts and Proceedings. Bryan and Cindy Dalton leased property to Dalton Auto, a business selling and repairing vehicles. Bryan Dalton was president of Dalton Auto and made all decisions regarding management repair. On February 4, 2004, a fire destroyed the building.

The plaintiffs were all employees of Dalton Auto. Employees were required to provide their own tools for repairing vehicles. The tools were left on the premises after business hours as it was not practical to transport them daily between work and home. Randy Johnson also kept a vehicle on the premises that he was allowed to work on after-hours. The plaintiffs' tools and the vehicle were destroyed in the fire.

On July 23, 2004, the plaintiffs filed a petition against the defendants, alleging they sustained damage based on the theories of negligence and res ipsa loquitur. They later amended the petition to add the theory of bailment.

At trial, two expert witnesses testified regarding the cause of the fire: Denison Police Chief Mike McKinnon and George Howe, a fire investigator. Both men concluded the fired originated in the southwest corner of the building, but could not determine the cause of the fire. McKinnon, however, believed the fire

was caused when water leaked into the building and made contact with an electrical component. In his report, McKinnon wrote:

> *****EXACT REPORT INFO: Fire Origin: SE corner of building. Fire Cause: Undetermined.*****
>
> A very probable scenario is: water leakage through the roof into the electrical components of the building, very possibly a light fixture in the suspended ceiling. The light fixture may have fallen onto the couch igniting it, thereby giving the low burn area. FACT: The electrical wiring received EXTREME damage. Very heavy electrical beading was located. The overhead wire was still energized when the fire department arrived. The neighbors noted a loud "pop" and their lights flickered around 7:15 P.M.

Water leakage had been a problem with the building for years and, despite many repairs, was observed the day of the fire.

The jury was instructed on the plaintiffs' three theories of recovery. The first two questions on the verdict form dealt with the negligence theory, the third and fourth questions dealt with the bailment theory, and the fifth and sixth questions dealt with the res ipsa loquitur theory. The jury found Dalton Auto was not negligent under a strict negligence theory, but that it was negligent under a bailment theory. The jury did not need to address the question of whether Dalton Auto was negligent under the res ipsa loquitur theory. The jury then awarded damages in the amount of $61,578.26 to Randy Johnson, $19,148.90 to Chad Feser, $25,345.22 to Nick Caldwell, and $17,095.43 to Dave Rothe. The district court overruled the defendants' motion for judgment not withstanding the verdict.

II. Analysis. Our review of trial court determinations concerning jury instructions is for correction of errors at law. *Beyer v. Todd*, 601 N.W.2d 35, 38 (Iowa 1999). Litigants are entitled to have their legal theories submitted to the jury if they are supported by the pleadings and substantial evidence in the record. *Id.* Evidence is substantial when reasonable minds would accept it as adequate

to reach the conclusion. *Id.* If a requested instruction states a correct rule of law which applies to the facts of the case, and the concept is not already contained in the court's instructions, the requested instruction, or the court's own instruction with the same legal substance, should be submitted to the jury. *Id.* If the trial court errs in submitting or refusing to submit an instruction, we will reverse only when the error has caused prejudice. *Id.* 216-17.

The defendants first contend the court erred in instructing the jury on the theory of res ipsa loquitur. However, the jury did not consider this theory, as it found the defendants' negligent under the bailment theory. Accordingly, the defendants were not prejudiced by any error in submitting the instruction and reversal is not warranted.

The defendants next contend the court erred in instructing the jury on the bailment theory. A bailment occurs when personal property has been delivered by one person, the bailor, to another, the bailee, for a specific purpose beneficial to the bailee or the bailor, or both, with the understanding the property will be returned to the bailor after the purpose has been accomplished. *Khan v. Heritage Prop. Mgmt.*, 584 N.W.2d 725, 729 (Iowa Ct. App. 1998). Generally, a bailment is based on an expressed or implied agreement. *Id.* However, it can also arise by operation of law when justice requires. *Id.* Thus, when a person comes into lawful possession of personal property of another without an underlying agreement, the possessor may become a constructive bailee. *Id.* at 729-30.

Once a bailment is established, the law imposes specific duties upon bailees to care for the bailor's property while it is in their possession. *Id.* at 730.

The degree of care required to be exercised by a bailee depends upon the type of bailment. *Id.* Where there exists a bailment for hire or a bailment for mutual benefit,[1] the fact that the bailment was damaged while in the bailee's possession creates a presumption that the damage is due to the negligence of the bailee. *Naxera v. Wathan*, 159 N.W.2d 513, 518 (Iowa 1968). In contrast, where a gratuitous bailment exists, the bailee is only liable if a reasonable degree of care is not exercised. *Bowen v. First Nat'l Bank*, 200 Iowa 40, 43, 203 N.W. 569, 570 (1925).

The defendants argue the district court erred in submitting to the jury instructions regarding bailments for hire or for mutual benefit and the presumption of negligence that attends damage of a bailment under either type. The defendants claim the storage of the plaintiffs' work tools was a gratuitous bailment, which does not impose a heightened duty of care. We disagree.

"A person who takes possession of personal property solely for the benefit of its owner, without compensation, is a gratuitous bailee." 8A Am. Jur. 2d § 2, at 467 (1997). Dalton Auto did not store the plaintiffs' tools solely to the plaintiffs' benefit. Rather, it was a mutually beneficial arrangement, in which Dalton Auto stored the tools for the plaintiffs and in return received the benefit of the plaintiffs' use of those tools in making repairs to its customers' vehicles.

> Bailment of an article received by the bailee as an incident to a business in which he or she makes a profit is a bailment for mutual benefit and gives rise to corresponding duties on the part of the bailee, even though nothing is paid directly to the bailee for the care of the property.

8A Am. Jur. 2d *Bailments* § 11, at 474 (1997).

[1] A bailment for mutual benefit and a bailment for hire are two different terms for the same thing. 8A Am. Jur. 2d *Bailments* § 9, 472 (1997).

The facts of the case support the existence of a bailment for mutual benefit. Therefore, the district court properly instructed the jury regarding such bailments and the presumption arising from their existence.

The defendants further argue there was insufficient evidence by which the jury could conclude Dalton Auto was liable for the plaintiffs' damage. However, the jury could find the existence of a mutually beneficial bailment, which raises a presumption of negligence on the part of the defendants. Furthermore, one expert witness testified to his belief the fire was caused by water leakage. The water leakage was the responsibility of the defendants, as the maintenance of the building was exclusively under their control. Under these facts, the jury could reasonably determine the defendants were negligent under the bailment theory. Accordingly, we affirm.

AFFIRMED.