IN THE COURT OF APPEALS OF IOWA

No. 7-413 / 06-1918
Filed July 25, 2007

AMCO INSURANCE COMPANY and
BRIAN JENNINGS, d/b/a JENNINGS ENTERPRISES,
Plaintiffs-Appellants,

vs.

MISTY JOHNSON and ROBERT DALE STEPHENSON,
Defendants-Appellees,

and

Ricky Smith,
Defendant.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

Landlord and his insurer appeal a district court summary judgment ruling dismissing their breach of lease and negligence claims against tenants arising from fire damage to landlord's property. **AFFIRMED.**

Theodore F. Sporer of Sporer & Ilic, P.C., Des Moines, for appellants.

Patrick Waldron of Patterson Law Firm, L.L.P., Des Moines, for appellees.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Brian Jennings, d/b/a Jennings Enterprises, (Jennings) and his insurer, AMCO Insurance Company (AMCO), appeal a district court summary judgment ruling dismissing their breach of lease and negligence claims against tenants Misty Johnson and Robert Stephenson arising from fire damage to Jennings's property. We affirm the ruling of the district court.

I. Background Facts and Proceedings.

The summary judgment record reveals the following undisputed facts: Johnson and Stephenson entered into a "Dwelling Unit Rental Agreement" with Jennings for the lease of a duplex. On April 14, 2004, Ricky Smith, the tenants' houseguest, was alone in the duplex. He left the stove on and unattended while cooking. A grease fire ignited and caused extensive damage to the duplex and an adjoining property owned by Jennings.

The damaged properties owned by Jennings were covered by an insurance policy through AMCO. AMCO paid Jennings the total amount of damages caused to the properties, $68,273.59. AMCO then brought this action in Jennings's name against Johnson, Stephenson, and Smith to recover the damages.

The petition filed by AMCO and Jennings contains three counts: (1) a claim alleging breach of lease by Johnson and Stephenson; (2) a claim alleging Johnson, Stephenson, and Smith were negligent in their use of the duplex; and (3) a claim for application of res ipsa loquitur.

Johnson and Stephenson filed a motion for summary judgment. The district court determined the undisputed facts established the tenants did not breach the lease, they did not owe Jennings a duty, and res ipsa loquitur was not applicable. The district court accordingly granted summary judgment in favor of Johnson and Stephenson.

AMCO and Jennings appeal. They assert the district court erred in dismissing their breach of lease and negligence claims against Johnson and Stephenson and in finding res ipsa loquitur was not applicable.[1]

II. Scope and Standards of Review.

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).

"If the moving party can show that the nonmoving party has no evidence to support a determinative element of that party's claim, the moving party will prevail in summary judgment." *Parish v. Jumpking, Inc.*, 719 N.W.2d 540, 543 (Iowa 2006). "We can resolve a matter on summary judgment if the record

[1] We reject Johnson and Stephenson's argument that error was not properly preserved as to the breach of lease and res ipsa loquitur claims because we find those issues were presented to and passed upon by the district court. *Stewart v. Sisson*, 711 N.W.2d 713, 719-20 (Iowa 2006).

reveals a conflict only concerns the legal consequences of undisputed facts." *City of Cedar Rapids v. James Props., Inc.*, 701 N.W.2d 673, 675 (Iowa 2005).

III. Merits.

A. Breach of Lease.

AMCO and Jennings argue the district court erred in dismissing the breach of lease claim because "Johnson and Stephenson are liable for the breach of contract on the part of their houseguest." We disagree.

The lease is specific as to the responsibility the tenants owed their landlord. The "Dwelling Rental Unit Agreement" provides in pertinent part:

> Tenant shall: . . .
> (e) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators in the premises.
> (f) Not deliberately or negligently destroy, deface, damage, impair or remove a part of the premises, or knowingly permit a person to do so.

This lease language mirrors the language in Iowa Code section 562A.17(5), (6) (2003) of the Uniform Residential Landlord and Tenant Law regarding tenants' obligations to their landlords.

In *Mastland, Inc. v. Evans Furniture, Inc.*, 498 N.W.2d 682, 686 (Iowa 1993), our supreme court found that identical language in a lease agreement drafted pursuant to section 562A.17(6) "implies that tenants are not insurers under the lease. They are responsible only for losses resulting from the *tenant's* deliberate or negligent acts or where the tenants knowingly permit such act." (Emphasis added.) Thus, according to the explicit language of the lease agreement, the tenants are not liable for Jennings's losses under a breach of

lease theory unless AMCO and Jennings can establish the tenants were negligent or knowingly permitted Smith's act.

It is undisputed that Johnson and Stephenson were not present at the duplex when the grease fire started. AMCO did not present any evidence indicating the damage to Jennings's properties was the result of the tenants' deliberate or negligent acts. Furthermore, AMCO did not present any evidence suggesting the tenants knowingly permitted Smith's act of leaving the stove unattended while cooking. We therefore conclude the district court correctly determined Johnson and Stephenson did not breach the lease agreement. Summary judgment was appropriately granted on this claim.

B. Negligence.

To prove the negligence claim, AMCO must establish (1) the tenants owed Jennings a duty of care; (2) the tenants breached or violated that duty of care; (3) the breach or violation was a proximate cause of Jennings's injuries; and (4) damages. *Raas v. State*, 729 N.W.2d 444, 447 (Iowa 2007). The issue in this case is whether Johnson and Stephenson owed Jennings a duty to protect him from the harm he suffered as a result of Smith's act.

A person normally has no duty to aid or protect another or to prevent a third person from causing harm to another. *Morgan v. Perlowski*, 508 N.W.2d 724, 726 (Iowa 1993). However, exceptions to this general rule arise when a special relationship exists between the persons involved. *Id*.; Restatement (Second) of Torts §§ 314, 315 (1965). In this case, AMCO and Jennings contend

"Johnson and Stephenson owed a duty to Jennings pursuant to both their contractual obligations and the special relationship arising therefrom."[2]

We have already found that the scope of Johnson and Stephenson's duty pursuant to the lease restricts their liability to losses occasioned by their own negligence. Furthermore, the relationship between a lessor and lessee is not included among the types of special relations contemplated by the Restatement (Second) of Torts sections 314 through 320 as creating a duty to aid or protect another or to prevent a third person from causing harm to another. However, our supreme court has recognized a landlord owes a duty of care to its tenants to protect them from reasonably foreseeable harm by third parties pursuant to section 314A. *See Tenney v. Atlantic Assocs.*, 594 N.W.2d 11, 18 (Iowa 1999). We are not aware of any authority acknowledging a corresponding duty on the part of the tenant to the landlord. Moreover, the court in *Mastland* noted the common law rule whereby

> the liability of a tenant for the destruction of a building by fire depends on negligence. The tenant is only required, in the absence of stipulations in the lease, to use reasonable diligence to protect buildings on the demised premises from destruction by fire, and is not liable for accidental damages or destruction by fire; he is liable only if the buildings are destroyed through his wrongful act or negligence.

[2] AMCO and Jennings also cite sections 302B and 449 of the Restatement (Second) of Torts as a source for the special relationship between the persons involved. Neither section applies to the facts of this case. *See Bohan v. Hogan*, 567 N.W.2d 234, 236 (Iowa 1997) (noting section 302B applies where the "alleged misbehavior is an affirmative act undertaken in a negligent manner as opposed to failure to act at all"); *Stevens v. Des Moines Indep. Cmty. Sch. Dist.*, 528 N.W.2d 117, 120-21 (Iowa 1995) (finding section 449 precludes the concept of superseding cause where the likelihood that a third person may act in a particular manner is one of the hazards that makes the defendant negligent).

Mastland, 498 N.W.2d at 687 (quoting 49 Am. Jur. 2d *Landlord and Tenant* § 934, at 910 (1970)).

Even where a special relationship exists, the extent of the duty generally "turns on the foreseeability of the harm to the injured person." *Raas*, 729 N.W.2d at 450; *Morgan*, 508 N.W.2d at 726 (viewing the "duties described in Restatement sections 315 to 319 quite narrowly, guided by the principle that the scope of the duty" depends on foreseeability). AMCO and Jennings have failed to present any evidence establishing it was reasonably foreseeable Jennings would be injured by Smith. The undisputed facts reveal Johnson and Stephenson were not present at the duplex when the grease fire started. Nor did they have any reason to suspect Smith would leave their stove unattended while cooking thereby igniting a grease fire.

Therefore, we find the district court was correct in concluding Johnson and Stephenson did not owe Jennings a duty to protect him from the harm caused by Smith.[3] Summary judgment was properly granted on this claim.

C. Res Ipsa Loquitur.

Res ipsa loquitur (Latin for "the thing speaks for itself") is a rule of circumstantial evidence. *Clinkscales v. Nelson Sec., Inc.*, 697 N.W.2d 836, 847 (Iowa 2005). Res ipsa loquitur applies in negligence cases when "(1) the injury is caused by an instrumentality under the exclusive control of the defendant, and (2) the occurrence is such as in the ordinary course of things would not happen if reasonable care had been used." *Mastland*, 498 N.W.2d at 686. If there is

[3] We accordingly need not and do not reach the issue of whether the district court was correct in finding Johnson and Stephenson did not breach any duty they might have owed to Jennings.

substantial evidence to support both elements, the existence of the injury permits, but does not compel, an inference that the defendant was negligent. *Id.*

The district court found res ipsa loquitur did not apply because "[n]o facts have been alleged to show that the Defendants Johnson and Stephenson were in exclusive control and management of the stove that allegedly caused the fire." We agree. Although our supreme court has recognized that "[g]rease fires do not just happen," *Clinkscales*, 697 N.W.2d at 847, AMCO and Jennings must also establish the tenants had exclusive control of the stove at the time of the alleged negligent act. *Weyerhaeuser Co. v. Thermogas Co.*, 620 N.W.2d 819, 832 (Iowa 2000). It is undisputed Smith was alone in the duplex when he left the stove unattended while cooking, which resulted in the grease fire that damaged Jennings's properties. Thus, it is clear Johnson and Stephenson did not have exclusive control of the stove at the time of Smith's allegedly negligent act. We accordingly conclude the district court was correct in granting summary judgment in favor of Johnson and Stephenson on the applicability of res ipsa loquitur.[4]

IV. Conclusion.

We agree with the district court's conclusion that Johnson and Stephenson did not breach the lease agreement by allowing Smith to use the stove in their absence. We also agree with the district court's conclusion that Johnson and Stephenson did not owe Jennings a duty to protect him from the damage caused by Smith's use of the stove. Finally, we find the district court

[4] We also note that res ipsa loquitur is not applicable in the present case due to our determination that the tenants did not owe Jennings a duty of care. *See* Restatement (Second) of Torts § 328D(1)(c); 62 Am. Jur. *Premises Liability* § 57, at 432 (2005) ("The doctrine of res ipsa loquitur does not apply where the defendant owes no duty to the plaintiff.").

was correct in determining res ipsa loquitur does not apply where it is undisputed Johnson and Stephenson did not have exclusive control of the stove at the time of the alleged negligent act. The district court properly dismissed the claims against Johnson and Stephenson, and its summary judgment ruling is affirmed.

AFFIRMED.