IN THE COURT OF APPEALS OF IOWA

No. 8-1031 / 08-0289
Filed February 4, 2009

ROBERT HILSMAN and
KAREN NORBY,
Plaintiffs-Appellants,

vs.

TIMOTHY PHILLIPS
d/b/a PHILLIPS REFRIGERATION,
Defendant-Appellee.

Appeal from the Iowa District Court for Chickasaw County, Bruce B. Zager, Judge.

Plaintiffs appeal from the district court's directed verdict and ruling denying their motion for a new trial following a jury verdict in favor of defendant. **AFFIRMED.**

Judith O'Donohoe of Elwood, O'Donohoe, Braun & White, Charles City, for appellants.

David L. Riley of McCoy, Riley, Shea & Bevel, P.L.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

Robert Hilsman and Karen Norby appeal from the district court's directed verdict and ruling denying their motion for a new trial following a jury verdict in favor of Timothy Phillips d/b/a Phillips Refrigeration (Phillips). We affirm the judgment of the district court.

I. Background Facts and Proceedings.

Robert Hilsman purchased a wood-burning stove from Phillips in October or November 2005 to help heat a large pole building he owned. The pole building was constructed in 1995 and insulated with cellulose insulation. It was located next to the home Hilsman shared with his girlfriend, Karen Norby. Hilsman and Norby planned to operate a business specializing in leather crafts out of the building.

Hilsman placed the wood-burning stove in the north end of the building where they planned to display and sell their leather crafts. The south end of the building, which housed Hilsman's tools, pickup, snowplow, and motorcycles, was heated by an LP furnace that had been installed by Phillips some years prior. Hilsman lined the north wall of the building with a steel sheet and set the stove on blocks about three to four feet away from that wall. He then contacted Phillips to install a chimney for the stove.

Hilsman told Phillips he would like the chimney to go out the side of the building and up the outside, referred to as a "tee-supported installation." In order to install the chimney in that manner, Phillips had to order a tee support, which was not immediately available. Hilsman and Norby were anxious to have the chimney installed so the stove would be operational for the grand opening of their

store on December 22, 2005. Phillips told them the only way the chimney could be installed before the tee support came in was to install it inside the building, through the ceiling and out the roof. That type of installation is referred to as a "ceiling-supported installation." Hilsman and Norby decided to have the chimney installed in that manner.

Cory Phillips, Timothy's son, began installing the chimney for Hilsman and Norby on December 19. He used a chimney flue manufactured by Simpson Dura-Vent. Cory installed a single-wall vent pipe from the wood-burning stove to the ceiling. He then attached an anchor plate to the ceiling and used double-wall vent pipe, which is specially designed to withstand high temperatures, in the attic. A sticker on the pieces of the double-wall vent pipe instructed that a two-inch clearance should be maintained between the pipe and any combustible material. In order to maintain that clearance, Cory notched a groove into a two-by-four piece of wood near the pipe in the attic and packed the cellulose insulation in the attic away from the pipe. He finished installing the chimney on December 20, and Hilsman and Norby began using it almost every day thereafter.

On January 22, 2006, Hilsman was in the building with the wood-burning stove running all day. At about 8:00 p.m., he went into the house to call his brother and eat dinner with Norby. He left the fire in the stove going because he planned to go back out to the building. While he was in the house, Hilsman noticed smoke coming from the building. He ran outside and tried to open a door on the south end of the building. All he could see was black smoke. He yelled at Norby to call 911. The fire was reported at 8:11 p.m. that night. The building and most of the items in it were destroyed by the fire.

Michael Keefe, a special agent with the state fire marshal's office, investigated the fire. He examined the scene of the fire three days after it occurred. By that time, the roof on the north end of the building had collapsed. He concluded that the structural damage to the building, specifically "the damage to the wood, the damage to the tin and the damage to the stovepipe," indicated the fire started above the ceiling in the northwest corner of the building.

Hilsman and Norby filed a petition against Phillips in July 2006, seeking damages for breach of contract, negligence, and intentional infliction of emotional distress.[1] The case proceeded to a jury trial. At the close of the plaintiffs' evidence, Phillips moved for a directed verdict as to the breach of contract and products liability claims against it. The district court granted Phillips's motion and submitted the case to the jury on only the plaintiffs' negligence claim. The jury returned a verdict in favor of Phillips, finding he was not at fault. Hilsman and Norby filed a motion for new trial, asserting the court erred in directing a verdict in Phillips's favor and that the jury's verdict on their negligence claim was not supported by sufficient evidence. The district court denied that motion.

Hilsman and Norby appeal. They claim the district court erred in (1) refusing to submit their breach of contract, breach of implied warranty, and strict liability claims to the jury; (2) allowing Phillips's expert to testify; and (3) denying their motion for new trial on their negligence claim.

[1] The plaintiffs later amended their petition to include two additional specifications of negligence: (1) "The installer utilized inappropriate parts in the design of the chimney and failed to use appropriate shielding for the insulation above the ceiling" and (2) "The design of the chimney and venting system as a whole was unreasonably dangerous."

II. Motion for Directed Verdict.

We review the district court's grant of a directed verdict for correction of errors at law. *Felderman v. City of Maquoketa*, 731 N.W.2d 676, 678 (Iowa 2007).

> In doing so we take into consideration all reasonable inferences that could be fairly made by the jury and view the evidence in the light most favorable to the nonmoving party. If there is substantial evidence in the record to support each element of a claim, the motion for directed verdict must be overruled. Evidence is substantial when reasonable minds would accept the evidence as adequate to reach the same findings. Our role, then, is to determine whether the trial court correctly determined that there was insufficient evidence to submit the issue to the jury.

Id. (internal citations and quotations omitted).

A. Breach of Contract.

Hilsman and Norby first claim the district court erred in refusing to submit their breach of contract claim to the jury. In order to establish that claim, the plaintiffs were required to prove the following: (1) the existence of a contract; (2) the terms and conditions of the contract; (3) performance of those terms and conditions; (4) Phillips's breach of the contract; and (5) damages as a result of the breach. *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998).

Hilsman and Norby argue they presented sufficient evidence at trial to establish "there was a contract for safe installation of a chimney flue system for a wood burning stove." Phillips admitted he entered into a contract with the

plaintiffs to install a chimney for their wood-burning stove.[2] There was also sufficient evidence presented at trial, which Phillips does not seriously contest on appeal, that a term of the contract was that the chimney would be installed safely. The parties' dispute thus centers on whether Phillips breached that contract and caused the plaintiffs' damage.[3]

"A party breaches a contract when, without legal excuse, it fails to perform any promise which forms a whole or a part of the contract." *Id.* Hilsman and Norby assert they presented sufficient evidence establishing Phillips failed to perform his promise to install the chimney safely by showing he did not install it according to the manufacturer's instructions. Upon viewing the evidence in the light most favorable to the plaintiffs and affording them all reasonable inferences that could fairly be made, we must agree.

George Wandling Sr., the plaintiffs' expert, testified at length about Phillips's failure to follow the manufacturer's installation instructions for the ceiling-supported chimney installed in the plaintiffs' building. He noted that the instructions required Phillips to install an attic insulation shield above the ceiling where the chimney passes into the attic, which Phillips did not do. The purpose of such a shield according to the manufacturer's instructions "is to prevent debris and insulation from getting too close to the chimney." Wandling also noted that

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[2] We note although Phillips admitted he entered into a contract with the plaintiffs in his answer to plaintiffs' petition, there was no evidence presented at the trial that Norby was a party to that contract.

[3] Phillips alternatively argues the plaintiffs failed to establish the third element of a breach of contract claim because they did not pay Phillips for installing the chimney. There was conflicting evidence as to whether the plaintiffs refused to pay Phillips before the fire occurred. Moreover, Timothy Phillips testified he did not expect payment from the plaintiffs after the fire. *See In re Guardianship of Collins*, 327 N.W.2d 230, 233 (Iowa 1982) (stating contract rights can be waived).

Phillips attached the single-wall vent pipe to an anchor plate on the bottom of the ceiling instead of one of the support boxes specified in the manufacturer's instructions. The purpose of the support boxes is to "provide proper insulation from combustibles." Timothy and Cory Phillips testified they did not believe either an attic insulation shield or support box was necessary because the steel ceiling was not combustible.

Wandling, however, testified that because Phillips used an anchor plate instead of a support box, the single-wall vent pipe could have reached temperatures high enough at the point where it met the ceiling to cause the cellulose insulation located above the ceiling to eventually ignite. He thus concluded that with Phillips's failure to install the chimney in the manner instructed by the manufacturer "and the location of the cellulose insulation, . . . it was just a matter of time with use of the wood stove that we would have a fire." Wandling accordingly agreed with Keefe, the fire marshal who investigated the fire, that the fire started above the ceiling. He additionally testified that he believed the ignition source of the fire to be the cellulose insulation in the building's ceiling.

There was evidence presented that contradicted Wandling's testimony about whether Phillips's failure to follow the manufacturer's instructions resulted in an unsafe installation of the chimney thereby causing the fire on January 22, 2006. There was also evidence presented that contradicted Wandling and Keefe's conclusions about the origin and cause of the fire. However, as we previously indicated, "[i]n reviewing an appeal from a directed verdict, 'we view the evidence in the light most favorable to the resisting party, even in the face of

contradictory evidence.'" *Pancratz v. Monsanto Co.*, 547 N.W.2d 198, 200 (Iowa 1996) (citation omitted). "Our function is to review the evidence to determine, not whether it proves [the plaintiff's claim], but whether it is sufficient so the trial court was justified in submitting the question to the jury as the trier of the facts." *Miller v. Young*, 168 N.W.2d 45, 51 (Iowa 1969).

Given our standard of review, we believe Wandling's testimony, in conjunction with Keefe's testimony about the origin and cause of the fire, constituted sufficient evidence to generate a jury question as to whether Phillips breached his contract with the plaintiffs to safely install a chimney for their wood stove. We therefore conclude the district court erred in directing a verdict on plaintiffs' breach of contract claim.[4] Phillips argues, however, that such error was harmless because the "facts that the Plaintiff now claims as breach of contract were covered by the court in its fault instruction." We agree. The jury determined Phillips was not at fault based upon the same specifications of negligence the plaintiffs claim constituted Phillips's breach of contract. We therefore conclude any error in the court's failure to submit the breach of contract claim does not require a reversal in this case.

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[4] We note in addition to finding there was not "substantial evidence in this record to support a theory of a breach of contract claim" in granting Phillips's motion for directed verdict, the district court also stated,

> I believe that it really lies in negligence as opposed to contract about whether or not he breached that duty of installing a chimney that was not done in a negligent or in a faulty manner so as to result in a fire in this case.

We need not and do not determine whether the court erred in so concluding because the plaintiffs do not challenge that determination on appeal. *See Feldhahn v. R.K.B. Quality Corp.*, 356 N.W.2d 226, 229-30 (Iowa 1984) (concluding court erred in limiting plaintiff claim to a breach of contract claim and refusing to submit a negligence claim to the jury).

B. Implied Warranty of Merchantability.

Hilsman and Norby next claim the district court erred in refusing to submit their breach of implied warranty of merchantability claim to the jury. Bypassing any error preservation concerns,[5] *see State v. Taylor*, 596 N.W.2d 55, 56 (Iowa 1999), we disagree.

Section 554.2314 of Iowa's Uniform Commercial Code (UCC) sets out the criteria for an implied warranty of merchantability. In order to establish a breach of that warranty, the plaintiffs were required to prove the following: (1) a merchant sold the goods; (2) the goods were not "merchantable" at the time of the sale; (3) injury or damage occurred to their person or property; (4) the defective nature of the goods caused the damage "proximately and in fact"; and (5) notice of the injury was given to the seller. *Van Wyk v. Norden Lab., Inc.*, 345 N.W.2d 81, 87 (Iowa 1984). Hilsman and Norby argue, in relevant part, they established "the chimney *assembly* was defective in nature because it did not conform to the requirements of the manufacturer for installation." (Emphasis added.) There are several problems with this argument.

We first question whether the UCC applies in this case. *See Moore v. Vanderloo*, 386 N.W.2d 108, 112 (Iowa 1986) (stating Article 2 of the UCC expressly governs transactions involving goods and does not apply to services). *But see Semler v. Knowling*, 325 N.W.2d 395, 398 n.1 (Iowa 1982) (recognizing

[5] Phillips argues the plaintiffs did not preserve error on the issue of whether the district court erred in refusing to submit both the breach of implied warranty and strict liability claims because the plaintiffs did not plead such claims in their petition or amendment thereto. We note, however, that the plaintiffs did include both theories in their proposed jury instructions and trial brief. Phillips also moved for a directed verdict as to the plaintiffs' "product liability theory." Finally, the court referred to the breach of implied warranty claim in its ruling on Phillips's motion for directed verdict.

the UCC can apply to mixed contracts for goods and services). Phillips, however, does not raise that as an argument on appeal. *See Hyler v. Garner*, 548 N.W.2d 864, 876 (Iowa 1996) ("In a case of this complexity, we will not speculate on the arguments [a party] might have made and then search for legal authority and comb the record for facts to support such arguments."); *see also United Props., Inc. v. Walsmith*, 312 N.W.2d 66, 70 (Iowa Ct. App. 1981) (stating our review is confined to those propositions relied upon by each party for reversal or affirmance).

Furthermore, the plaintiffs' argument in support of their implied warranty claim clearly shows they sought to hold Phillips liable under an "assembler liability theory" whereby a party that "incorporates a *defective component part* into its finished product and places the finished product into the stream of commerce is liable for injuries caused by a defect in the component part." *Weyerhaesuer Co. v. Thermogas Co.*, 620 N.W.2d 819, 824 (Iowa 2000) (emphasis added). The plaintiffs presented no evidence nor do they claim that any of the parts used by Phillips in the installation of the chimney were defective. Instead, as Phillips argues, the plaintiffs' evidence at trial focused on the alleged improper installation of the chimney. Such a theory of liability does not appear to be redressable under a breach of implied warranty of merchantability claim. We therefore conclude the district court did not err in directing a verdict in favor of Phillips on that claim.

C. Strict Liability.

The plaintiffs' final claim as to the district court's ruling on Phillips's motion for directed verdict is that the court erred in refusing to submit their breach of strict liability claim to the jury. We do not agree.

"Products liability law broadly refers to the legal responsibility for injury resulting from the use of a product." *Lovick v. Wil-Rich*, 588 N.W.2d 688, 698 (Iowa 1999). In *Lovick*, our supreme court adhered to the traditional view that product liability law "encompasses three separate and distinct theories of liability: negligence, strict liability, and breach of warranty" with "underlying theories" of "improper design, inadequate warnings, or mistakes in manufacturing." *Id.* However, "[a]lthough each is a separate and distinct theory of recovery, the same facts often give rise to all three claims." *Id.*

Thus, in the context of design defect cases, the court acknowledged there is "an academic debate over whether the distinction between strict liability and negligence theories should be maintained when applied to a design defect case." *Id.* Despite its decision to merge the negligence and strict liability theories in the context of a failure to warn claim in *Olson v. PROSCO, Inc.*, 522 N.W.2d 284, 288-90 (Iowa 1994), the court in *Lovick* declined the opportunity to merge the two theories in design defect cases. *Lovick*, 588 N.W.2d at 699. Our courts continued to recognize the negligence/strict liability distinction in design defect cases, *see, e.g.*, *Mercer v. Pittway Corp.*, 616 N.W.2d 602, 620 n.4 (Iowa 2000), until *Wright v. Brooke Group Ltd.*, 652 N.W.2d 159 (Iowa 2002).

In *Wright*, our supreme court adopted Restatement (Third) of Torts: Product Liability sections 1 and 2 for product defect cases. 652 N.W.2d at 169.

In doing so, the court noted the "Products Restatement does not place a conventional label, such as negligence or strict liability, on design defect cases." *Id.* It thus questioned the need for

> *any* traditional doctrinal label in design defect cases because, as comment *n* [to Products Restatement section 2] points out, *a court should not submit both a negligence claim and a strict liability claim based on the same design defect* since both claims rest on an identical risk-utility evaluation.

Id. (emphasis added). The court therefore concluded it was preferable to "label a claim based on a defective product design as a design defect claim without reference to strict liability or negligence." *Id.*

Hilsman and Norby clarified in their response to Phillips's motion for directed verdict that their theory of the case as to their strict liability claim was that Phillips improperly designed the chimney. Pursuant to the court's holding in *Wright*, they were thus not entitled to have both a negligence claim and a strict liability claim submitted to the jury. *Id.* We therefore conclude the district court did not err in directing a verdict in favor of Phillips on the plaintiffs' strict liability claim.

III. Expert Testimony.

Hilsman and Norby claim the district court abused its discretion in allowing Phillips's expert, Robert Russell, to testify because he was neither qualified nor competent to render an opinion as to the nature and cause of the fire in this case. We reject this assignment of error.

Iowa Rule of Evidence 5.702 provides the standard for the admission of expert testimony:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness *qualified as an expert by knowledge, skill, experience, training, or education* may testify thereto in the form of an opinion or otherwise.

(Emphasis added.) A witness's ability to testify as an expert is determined in reference to the topic under examination. *Hyler*, 548 N.W.2d at 868. "The witness must be qualified to answer the particular question propounded. Whether a witness is sufficiently qualified to testify as an expert is within the court's discretion." *Id.* (internal citation omitted). "We are 'committed to a liberal rule on the admissibility of opinion testimony.'" *Id.* (citation omitted). We thus apply an abuse of discretion standard to review a ruling by the district court on the admissibility of expert testimony, giving great deference to the decision of the court. *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 532 (Iowa 1999).

The plaintiffs assert Russell was not qualified to give an opinion about the cause of the fire in this case because his education was deficient and he did not demonstrate he had specific knowledge about or experience with cellulose fires and wood-burning stoves. We do not agree.

Russell graduated from college with a bachelor of arts in history. He began working for Packer Engineering as a fire investigator in 1981. At the time of the trial, he was employed as the director of fire investigations for that company. Russell is a certified fire investigator through the International Association of Arson Investigators and regularly attends training seminars to maintain and improve his proficiency in electrical, fire, and explosion investigations. Although he specializes in electrical investigations, he has

investigated fires involving cellulose insulation in the past. He is qualified to "examine fires in all areas from all sources."

We conclude the district court did not abuse its discretion in admitting the expert testimony of Russell. As the foregoing demonstrates, he is sufficiently qualified in fire investigation to address the matters covered in his testimony. "[N]o particular education is required; experience is sufficient to qualify a witness as an expert." *Id.* at 535. Any deficiency in Russell's college education is offset by his considerable experience and continuing education in fire investigation and goes to the weight of his testimony rather than its admissibility. *See* Iowa R. Evid. 5.702 (stating a witness may be qualified as an expert "by knowledge, skill, experience, training, *or* education" (emphasis added)); *see also Hutchison v. American Family Mut. Ins. Co.*, 514 N.W.2d 882, 885 (Iowa 1994) (stating if witness has threshold qualifications to testify as an expert, any inquiry concerning the *extent* of his qualifications goes to the weight of his testimony). Moreover, a witness does not need to be "a specialist in the particular area of testimony so long as the testimony falls within the witness'[s] general area of expertise." *Mensink v. American Grain*, 564 N.W.2d 376, 379 (Iowa 1997).

We also reject the plaintiffs' argument that Russell was not competent to render an opinion as to the cause of the fire because he did not have sufficient data upon which an expert judgment could be made. "For an expert's opinion to be competent, sufficient data must be presented on which an expert judgment can be made. The facts must support a conclusion more than mere conjecture and speculation." *City of Oelwein v. Board of Trustees of the Mun. Fire & Police Ret. Sys. of Iowa*, 567 N.W.2d 237, 239 (Iowa Ct. App. 1997).

Here, Russell "reviewed the depositions of all the participants in this case" in addition to the "site photographs taken both by the fire marshal and [Norby's daughter] as well as others." He also "examined information about the stove." We believe the information examined by Russell provided sufficient data for him to reach a conclusion that was "more than mere conjecture and speculation." *Cf. Iowa Power & Light Co. v. Stortenbecker*, 334 N.W.2d 326, 331 (Iowa Ct. App. 1983) (finding expert not competent to testify where testimony about health hazards to humans from electric transmission lines was based on incomplete studies conducted on small laboratory animals).

IV. Motion for New Trial.

Hilsman and Norby finally claim the district court erred in denying their motion for new trial as to their negligence claim. Our review of a motion for new trial depends on the grounds raised in the motion. *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609 (Iowa 2006). In this case, the plaintiffs' motion for new trial argued the jury's verdict finding in favor of Phillips on the plaintiffs' negligence claim was not supported by sufficient evidence. Because the sufficiency of the evidence presents a legal question, we review the court's ruling on this ground for the correction of errors at law. *Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 87 (Iowa 2004).

The jury was instructed as follows:

> The Plaintiffs claim the Defendant was at fault in one or more of the particular(s):
>
> a. by installing the chimney pipe so that excessive heat radiated to surrounding wood and other combustible materials;
> b. by installing inappropriate parts in the design of the chimney; or

> c. in failing to use appropriate shielding for the insulation.
>
> The Plaintiff must prove all of the following propositions:
> 1. The Defendant was at fault.
> 2. The Defendant's fault was a proximate cause of the Plaintiffs' damage.
> 3. The amount of damage.

The jury determined Phillips was not at fault. We believe sufficient evidence supports this finding.

The plaintiffs argue "Phillips made no serious attempt to argue that he properly installed the chimney flue." However, "it is the plaintiff's burden to prove fault by a preponderance of the evidence." *Easton v. Howard*, 751 N.W.2d 1, 5 (Iowa 2008). In order to prove Phillips's installation of the chimney was negligent, the plaintiffs needed to establish the fire originated in the ceiling of the building due to ignition of the cellulose insulation. However, there were diverse opinions as to the origin and cause of the fire.

Russell testified that he believed the fire started below the ceiling in the northwest corner of the building. His opinion was based on photographs taken one day after the fire before the north end of the building collapsed that showed the presence of wooden trusses supporting the roof of the building on the north side. He testified that if the fire had started above the ceiling in the attic as Keefe and Wandling believed, "the lower webs of the truss members would have been the first items attacked by a cellulose fire if it started in that attic space, but the fact of the matter is, they're still there." Russell opined that had those wooden trusses been at the point of origin of the fire, "they should have been turned to charcoal and not been able to be supported."

Russell further testified he did not believe the fire was caused by ignition of the cellulose insulation in the attic as Wandling had testified. According to Russell, Wandling, and Keefe, a cellulose fire "smolders." As Russell explained,

> Because of the nature of the cellulose being a wood product that is finally ground and again in today's world mixed with a flame-retardant material, cellulose once ignited will burn as a smoldering fire much as a cigarette burns at the tip . . . . [I]f a fire does begin the smoldering process, it migrates from the point of ignition . . . until it meets some other combustible.
>
> And, for example, in a pole barn like this or in an attic space, the combustibles could be the roof truss members, the structural members of the roof, ceiling joists. And when it strikes those members, it will cause a charring and a deeper charring and ultimately ignition of the wood framing members of that structure.

All of the experts agreed it would "take a considerable amount of time" for smoldering cellulose insulation to ignite. During the smoldering phase, a significant amount of smoke would be produced, which in this case, would have been vented out of the top of the pole building.

Here, as Russell pointed out, Hilsman was in the building all day preceding the fire. He did not notice anything unusual while he was in the building, although Norby testified that when she went into the building at around 5:30 or 6:00 p.m. the night of the fire, she heard a "crack." Neither she nor Hilsman noticed any smoke coming from the building in the hours before the fire. Hilsman left the building at 8:00 p.m., and the fire was reported at 8:11 p.m. Russell found that short timeline significant because a cellulose fire would not burn that rapidly:

> [F]or the fire to have somehow fallen below the steel ceiling within that ten-minute timespan and produce sufficient heat 56 feet to the south [of the building] where [Hilsman] cannot enter the structure or he will burn his hands . . . suggests strongly that the source of heat

> is below the steel ceiling and banking in what is called almost a flashover condition.

Moreover, the black smoke Hilsman testified he saw when he first tried to open the door on the southside of the building "is not characteristic of cellulose insulation" according to Russell. Instead, "[h]eavy black smoke is for a petrochemical-type of smoke. Something that will come from plastics, fuels, various solvents."

Although there was conflicting testimony about the origin and cause of the fire, the jury is ordinarily allowed to settle disputed fact questions. *Cowan v. Flannery*, 461 N.W.2d 155, 157 (Iowa 1990); *see also* Iowa R. App. P. 6.14(6)(*j*) (stating questions of negligence are for the jury). The jury here was required to choose which expert testimony it deemed correct and was "at liberty to accept or reject any such opinion testimony in whole or part." *Kautman v. Mar-Mac Cmty. Sch. Dist.*, 255 N.W.2d 146, 148 (Iowa 1977). A verdict should not be set aside simply because the reviewing court might have reached a different conclusion. *Cowan*, 461 N.W.2d at 158; *see also Kautman*, 255 N.W.2d at 147 ("It is not for us to invade the province of the jury."). "The determinative question posed is whether under the record, giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties." *Kautman*, 255 N.W.2d at 148. We conclude it does. We therefore affirm the district court's denial of the plaintiffs' motion for new trial as to their negligence claim.

V. Conclusion.

Upon viewing the evidence in the light most favorable to the plaintiffs, we conclude the district court erred in refusing to submit their breach of contract claim to the jury. Such error, however, does not require reversal because the jury determined Phillips was not at fault based upon the same specifications of negligence the plaintiffs claim constituted Phillips's breach of contract. The court did not err in directing a verdict in favor of Phillips on the plaintiffs' breach of implied warranty and strict liability claims. Nor did the court abuse its discretion in admitting the expert testimony of Russell. Finally, the court did not err in denying the plaintiffs' motion for new trial on their negligence claim because there was sufficient evidence supporting the jury's verdict finding Phillips was not at fault. We therefore affirm the judgment of the district court.

VI. Postscript.

Upon reading the plaintiffs' brief and reply brief, this court's weary eyes suspected the typeface was a wee bit small. Upon investigation, it was determined the briefs utilized a 12 point Times New Roman typeface, not 13 point as required by Iowa Rule of Appellate Procedure 6.16(1) (2008) when using Times New Roman typeface. In addition, only one space was used at the end of each sentence, rather than the customary two spaces. With the high volume of reading faced by this court, techniques that cram more words to a page, whether employed by design, accident, or ignorance, make our job more difficult and are thus frowned upon. We wholeheartedly agree with one legal writer who stated:

> Large type is a must. Judges read many, many briefs. Large type is easy to read—no, let me rephrase that: Large type is a joy to read! When I get a brief with large margins, large type, and plenty

> of white-space, I savor it as one might a fine wine or a vintage port. Other judges feel the same way. So, even if your appellate court's rules do not require "14-point type or larger" . . . do not try to squeeze words in, by either shrinking the type size, by decreasing the margins, or by narrowing the space between the lines. Lawyers who believe that they are helping their clients by jamming in more words are making a big mistake.

Ralph Adam Fine, *The "How-To-Win" Appeal Manual* 18 (Juris Publishing 2000). Hopefully, the revised rules of appellate procedure 6.903(1)(*e*), (*g*), and 6.1401—Form 7: Certificate of Compliance with Type-volume Limitation, Typeface Requirements, and Type-Style Requirements, effective January 1, 2009, will eliminate this problem.

AFFIRMED.