IN THE COURT OF APPEALS OF IOWA

No. 8-888 / 08-0647
Filed December 17, 2008

CHARLES W. THOMPSON and
KARYL J. THOMPSON,
Plaintiffs-Appellants,

vs.

JAMES F. KACZINSKI and
MICHELLE K. LOCKWOOD,
Defendants-Appellees.

Appeal from the Iowa District Court for Madison County, Darrell J. Goodhue, Judge.

Plaintiffs appeal the district court's grant of summary judgment in favor of the defendants in their negligence lawsuit. **AFFIRMED.**

Randy Hefner of Hefner & Bergkamp, P.C., Adel, for appellant.

Sharon Greer of Law Offices of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

VAITHESWARAN, P.J.

Charles and Karyl Thompson appeal the district court's grant of summary judgment in favor of the defendants in their negligence lawsuit.

I. Background Facts and Proceedings

Charles Thompson was driving on a gravel road when he suddenly encountered a large, flat object in the roadway. The object was later identified as the top of a trampoline. Thompson swerved to avoid the trampoline. In the process, he lost control of his vehicle, landed in an adjacent ditch, and sustained injuries.

Thompson and his wife sued nearby homeowners James Kaczinski and Michelle Lockwood. They alleged "[t]he traveled portion of the roadway was obstructed as a result of Defendants' negligence in failing to properly secure their property and in failing to timely remove their property from the traveled portion of the roadway." Kaczinski and Lockwood moved for summary judgment on both specifications of negligence.

The summary judgment record revealed the following undisputed facts. Kaczinski and Lockwood lived next to the gravel road. For approximately one to two weeks before the accident, their yard contained a partially disassembled trampoline. The trampoline top rested over thirty-eight feet from the traveled roadway. In the overnight or early morning hours before the accident, the area experienced a thunderstorm and accompanying winds which blew over trees and tree branches. The trampoline top was partially blown onto the roadway.

Lockwood awoke to the sound of screaming. The source of the noise was Charles Thompson, who by that time had sustained injuries after losing control of

his vehicle. Lockwood woke up Kaczinski, and both immediately proceeded toward the screams. Kaczinski found and attended to Thompson while Lockwood removed the trampoline from the roadway.

Based on these undisputed facts, the district court granted the summary judgment motion. This appeal followed.

II. Analysis

On review of a summary judgment ruling, we will affirm if there is "no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." *Virden v. Betts & Beer Constr. Co.*, 656 N.W.2d 805, 806 (Iowa 2003). As the material facts are undisputed, the only question is whether Kaczinski and Lockwood were entitled to judgment as a matter of law.

The district court framed the issue and discussed its conclusion as follows:

> Viewing the facts of this case in the most favorable light for the plaintiffs, the issue[] becomes, does the placing of an untethered trampoline top in one's yard in the proximity of the roadway create a foreseeability or probability of harm to one traversing a nearby roadway? This involves not only the probability that it would move to the roadway by natural processes but also, if so moved, it would create a probability of harm to a user of the roadway. Due care requires only that one guards against probabilities and not possibilities. That a wind would remove the trampoline from the yard and place it in the roadway was simply not a foreseeable result of placing the trampoline in the defendants' yard. Events have established it as a possibility but not a probability. Placing the untethered trampoline in the yard was simply not a failure to exercise due care.

(Citation omitted). The Thompsons argue that this conclusion amounted to legal error. They assert that Kaczinski and Lockwood owed them a statutory and common law duty to keep the roadway free of obstructions and to remove obstructions from it.

"Whether a duty arises out of the parties' relationship is always a matter of law for the court." *Shaw v. Soo Line R.R. Co.*, 463 N.W.2d 51, 53 (Iowa 1990). A legal duty requires an actor to conform to a given standard of conduct for the protection of others. *Bain v. Gillispie*, 357 N.W.2d 47, 49 (Iowa Ct. App. 1984). The standard includes "foreseeability of harm or probability of injury." *Id.* This is a standard "of reasonable foresight, not prophetic vision." *Id.* While forseeability is not "determinative on the question of duty," it is the only factor at issue here. *See J.A.H. v. Wadle & Assocs.*, 589 N.W.2d 256, 262 (Iowa 1999) (noting relationship of parties and public policy considerations were also factors for consideration).

A. Statutory Duty

The Thompsons maintain that Kaczinski and Lockwood owed them a duty under Iowa Code section 318.3, which provides:

> A person shall not place, or cause to be placed, an obstruction within any highway right-of-way. This prohibition includes, but is not limited to . . . [t]he placement of trash, litter, debris, waste material, manure, rocks, crops or crop residue, brush, vehicles, machinery, or other items within the highway right-of-way.

Iowa Code § 318.3(6) (2007). The defendants did not owe a duty under this provision unless they "cause[d]" the trampoline top "to be placed" within the highway right of way. *Id.* The district court concluded they did not. The court correctly decided this question as a matter of law, as it was undisputed that the trampoline top simply blew into the highway. Under this factual scenario, a statutory duty under section 318.3 was not triggered and the district court did not err in granting summary judgment for the defendants. *See Shaw,* 463 N.W.2d at

54 (holding statutory provision created no statutory duty under "the facts of this case").

B. Common Law Duty

The Thompsons next contend that the defendants owed a common law duty to exercise reasonable care in keeping the roadway free of obstructions. The Iowa Supreme Court has recognized such a duty. *Fritz v. Parkinson*, 397 N.W.2d 714, 715 (Iowa 1986) ("[W]e have at various times imposed liability against individuals responsible for allowing a highway to become obstructed or hazardous."); *Weber v. Madison*, 251 N.W.2d 523, 527 (Iowa 1977) ("While an abutting landowner is not liable with respect to highway hazards over which he has no control, he is under an obligation to use reasonable care to keep his premises in such condition as not to create hazards in the adjoining highway."). It is clear, though, that the duty only requires a person to guard against reasonably foreseeable harm. *Kapphahn v. Martin Hotel Co.*, 230 Iowa 739, 747, 298 N.W. 901, 906 (1941). As the court stated in *Kapphahn*,

> One is bound to anticipate and provide against what usually happens and what is likely to happen, but is not bound in like manner to guard against what is unusual and unlikely to happen, or what, as is sometimes said, is only remotely and slightly probable.

Id. at 750, 298 N.W. at 907 (quoting *Falk v. Finkelman*, 168 N.E. 89, 90 (Mass. 1929)).

It is undisputed that the trampoline top was within the defendants' yard more than thirty-eight feet away from the highway. It is also undisputed that the town in which the defendants lived experienced a storm carrying winds of unknown but high enough speeds to fell trees. Finally, it is undisputed that the

storm swept through during the nighttime or early morning hours when Kaczinski and Lockwood were asleep. On these undisputed facts, the district court correctly ruled as a matter of law that the defendants could not have foreseen the movement of the trampoline top from their yard onto the roadway. The court's ruling applied equally to both of the Thompsons' specifications of negligence, leaving no issue for trial.

We affirm the district court's grant of summary judgment in favor of Kaczinski and Lockwood.

AFFIRMED.