

Case Update

By John Werner
with assistance from Allison Doherty

LEGAL EXCUSE DEFENSE

Rowling v. Sims, 732 N.W.2d 882 (Iowa 2007).

FACTS: Sims was in her car at 2130 Grand Avenue, facing north, waiting to turn west. A pile of snow prevented Sims from seeing cars coming from the west, heading eastbound on Grand. Sims nonetheless pulled out into traffic, deciding it was probably safe because she could not see any headlights coming from the west. Rowling, who was traveling eastbound, struck Sims' vehicle.

Rowling sued Sims for negligence, alleging Sims did not yield the right-of-way and failed to operate her vehicle in a safe manner. Sims argued she was legally excused from her statutory duty to yield because it was impossible for her to see oncoming traffic, given the snow pile. Over Rowling's objection, the court instructed the jury that it should find Sims not liable for failure to yield if she had established it was impossible for her to see oncoming traffic. The jury found Sims was not liable.

HOLDING: The district court erred in instructing the jury on legal excuse.

ANALYSIS: The Court declined to give a "narrow, literal construction to 'impossible' as used in the legal excuse doctrine" and decided "impossible" means "not reasonably practicable." The Court concluded there was no evidence to suggest it was "impossible" (i.e. "not reasonably practicable") for Sims to yield the right-of-way to Rowling. Instead of blindly pulling onto Grand, Rowling could have taken other actions, such as turning right instead of left or positioning her car so as to get a better view, which would render compliance with her obligation to give Rowling the right-of-way reasonably practicable (i.e. "possible").

PREMISES LIABILITY

Karns v. Lipovac, No. 06-1543, 2007 WL 2004707 (Iowa Ct. App. July 12, 2007).

FACTS: While attending a garage sale, Evelyn Karns tripped and fell. LAB Investment Co. Inc. owned the residence where this incident occurred. However, Karen Idso, the previous home owner, was residing in the property pursuant to a lease with LAB. Soon after the garage sale at which Karns tripped and fell, Idso moved out, and LAB sold the house to the Lipovacs. Karns filed a tort suit against the Lipovacs and LAB. The district court granted the defendants' motion for summary judgment, which alleged that because the defendants were not in possession of the land when Karns was injured, they owed Karns no duty of care.

HOLDING: The district court erred in granting summary judgment to LAB, but properly granted summary judgment to the Lipovacs.

ANALYSIS: The general rule is that a possessor of land may be liable to invitees for harm that occurs on the land. The Court found that a landlord is generally not a “possessor” of land liable for injuries resulting from unsafe conditions of leased property, unless the landlord has agreed to keep the property in repair. In this case, LAB had agreed to keep the premises in repair, and consequently it owed Karns a duty to keep the premises in a reasonably safe condition. Though the district court’s grant of summary judgment to LAB was thus error, the district court properly granted summary judgment to the Lipovacs because no evidence suggested the Lipovacs had control or possession of the property at the time of injury.

PREMISES LIABILITY

Nellis v. City of Sutherland, No. 06-2043, 2007 WL 2004464 (Iowa Ct. App. July 12, 2007).

FACTS: Mark Nellis attended a concert and street dance, which were part of the Town of Sutherland’s Labor Day festivities. Nellis was listening to the band Zwarte when a fellow spectator, Gary Willson, joined the band on stage. Willson then jumped into the crowd, landing on Nellis. Nellis filed a personal injury lawsuit against the Town, alleging it failed to exercise reasonable care to protect him from Willson. Sutherland moved for summary judgment, claiming it had no duty to protect Nellis and was immune from suit under Iowa Code section 670.4(10). The district court granted summary judgment to Sutherland.

HOLDING: The district court properly granted summary judgment to Sutherland.

ANALYSIS: The court applied section 344 of the Restatement (Second) of Torts, which states:
A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to: (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise protect them against it.
The Town did not owe a duty of care to Nellis under this section because the concert and street dance had no business purpose. The Labor Day Celebration Committee rather than the Town was responsible for planning and operating the celebration, and the Town did not profit from the celebration.

UIM

Easton v. Howard, No. 06-0936, 2007 WL 2493535 (Iowa Ct. App. Sept. 6, 2007).

FACTS: Jeannette Howard and Steven Easton spent June 3, 2005 at a family gathering in Wadena, Iowa. Howard became intoxicated at this gathering, but nonetheless drove Easton and their two daughters sixty miles to their shared residence. When Howard and Easton arrived home, they dropped off their daughters and went to a park, where an argument ensued. Howard eventually drove off without Easton. However, Howard apparently had a change of heart, thus returning to the park to pick up Easton. Easton got into the passenger side of the truck, and Howard drove out of the park, turning in the opposite direction from home. Howard drove two miles and then did a U-turn. During the U-turn, Easton somehow fell out of the passenger side of the truck and suffered massive head injuries. Howard placed Easton back in the truck and transported him to a hospital.

Easton filed an uninsured motorist claim with his insurer, which the insurer denied. At trial, the jury assigned sixty-five percent of the fault to Howard and the rest to Easton. The trial court then entered a judgment in favor of Easton for the policy limit. The insurer appealed, arguing its motions for directed verdict and judgment notwithstanding the verdict should have been granted because Easton failed to prove that Howard's conduct was the proximate cause of his injuries and that Howard failed to maintain control of the vehicle.

HOLDING: The district court did not err in denying the insurer's motions for directed verdict and judgment notwithstanding the verdict.

ANALYSIS: There was substantial evidence to support a jury's finding of proximate cause; Howard was intoxicated, made a U-turn, and Easton fell from the truck during the U-turn. From this evidence, the jury could conclude Howard's driving caused Easton to somehow hit the door handle and fall out of the truck.

Substantial evidence also existed to support a jury's finding that Howard failed to maintain control of the vehicle. Howard was intoxicated at the time of the accident and admitted she generally has less control of her vehicle in this state. She admitted to making a wrong turn and to having no idea how fast she was going when she did the U-turn.

AGENCY

Rogers v. Energy Panel Structures, Inc., No. 06-0294, 2007 WL 2257566 (Iowa Ct. App. August 8, 2007).

FACTS: Because Craig Rogers noticed Frank Manning driving a truck and wearing a hat bearing the logo of Energy Panel Structures (EPS), Rogers struck up a conversation with Manning about EPS and its products. Rogers obtained Manning's business card and met with Manning to look at homes Manning had constructed with EPS materials. After Rogers viewed the EPS website, he called EPS and was informed Manning was the EPS dealer in his area. Rogers then entered into an oral contract with Manning that required Manning's construction

of a home for Rogers.

Rogers became dissatisfied with Manning's lack of attention to the construction. When Rogers called EPS to complain, Manning showed up at the worksite the next day. Eventually, after learning of major construction errors, Rogers called EPS and demanded that EPS fire Manning. EPS told Rogers it could not fire Manning because he was not an employee. Rogers fired Manning and refused to make any more payments.

Rogers filed a lawsuit against EPS alleging breach of contract, breach of implied warranties, and negligent construction. The district court dismissed Rogers' claims against EPS on the ground that no agency relationship existed between EPS and Manning.

HOLDING: The district court did not err in dismissing Rogers' claims against EPS.

ANALYSIS: No implied agency relationship existed between EPS and Manning because EPS had not manifested consent for Manning to act on its behalf and did not have control over Manning. The contract between EPS and Manning clearly stated no agency relationship existed between them, and EPS neither had oversight of Manning's work nor paid him. No proof existed that EPS ordered Manning to return to the worksite after Rogers complained.

In addition, no apparent agency relationship existed between EPS and Manning because EPS did not act in a manner that would lead Rogers to believe Manning could act on behalf of EPS. EPS had insufficient involvement in the business deal between Manning and Rogers to establish apparent agency.

BAD FAITH

R&C Industries v. Nationwide, No. 06-0437, 2007 WL 1484072 (Iowa Ct. App. May 23, 2007).

FACTS: In May 2003, a hailstorm severely damaged the roof of R&C Industries' warehouse, which was built out of concrete block and included some steel additions. R&C filed a claim with its insurer, Nationwide. The insurance policy between R&C and Nationwide contained a coinsurance provision that imposed a penalty if the covered property was underinsured.

Nationwide interpreted its policy to mean Nationwide was required to pay R&C the cost of replacing the roof with the same type of materials (concrete and steel) as had been used to build the roof. Because the roof could be replaced at less cost through the use of only steel, RCI attempted to reduce its coinsurance penalty by convincing Nationwide "replacement cost" in the contract meant the cost of replacing the roof with materials "equivalent" to those that had originally been used. RCI also claimed it had an option under its policy to have its claim paid on an actual cash value basis rather than a replacement cost basis. When Nationwide

would not reduce the coinsurance penalty and refused to acknowledge an option to have the claim paid on an actual cash value basis, RCI filed an action claiming breach of contract and bad faith.

A jury found Nationwide breached the insurance contract and acted in bad faith. Nationwide filed a motion for judgment notwithstanding the verdict. The district court granted the motion as to the bad faith claim, but upheld the jury verdict on the breach of contract claim.

HOLDING: The district court properly granted Nationwide's motion for judgment notwithstanding the verdict as to the bad faith claim and properly upheld the breach of contract jury verdict.

ANALYSIS: With regard to the breach of contract claim, the Court of Appeals held the term "replacement cost" was not clearly defined in the policy, thus interpreting the term favorably to the insured. The court interpreted "replacement cost" to mean the cost of replacing an asset with "functionally equivalent," but not necessarily identical, materials. RCI's bad faith claim failed because Nationwide's interpretation of the insurance policy was reasonable.

PREMISES LIABILITY

Harper v. Pella Corp., No. 06-1198, 2007 WL 2004509 (Iowa Ct. App. July 12, 2007).

FACTS: Joel Harper sued Pella on the basis of premises liability for injuries he incurred when delivering a Pella employee's goods to a house Pella owned in Kentucky. Harper slipped and fell while carrying empty boxes down hardwood stairs in his stocking feet.

HOLDING: The district court properly granted summary judgment to Pella.

ANALYSIS: Harper failed to prove Pella knew or in the exercise of reasonable care should have known of a condition on the premises that involved an unreasonable risk of injury to an individual in Harper's position. No defect existed of which Pella knew or should have known; the stairs were not unusually slick.

The court also applied the rule that a possessor of land discharges his duty to warn of dangerous conditions when an invitee has knowledge of the conditions. In this case, Harper was aware the stairs were "shiny" and that he needed to be extra careful in his socks.

PROCEDURE

Klein v. Wisman, No. 06-1245, 2007 WL 1345890 (Iowa Ct. App. May 9, 2007).

FACTS: On June 17, 2003, Klein filed a tort suit against Wisman and Menzer based on a

car accident. On July 20, 2004, the parties received notice the case would be automatically dismissed on January 1, 2005 unless tried by that date. This notice was sent pursuant to Iowa Rule of Civil Procedure 1.944, which expresses a “policy” of trying cases within a year of docketing. Trial was originally scheduled for October 19, 2004, but Klein requested and obtained a continuance to complete discovery. The case was rescheduled for trial in March 2005. In March 2005, the court entered another order continuing the trial date. Then, at a pre-trial conference in March, the judge told the parties the case was automatically dismissed on January 1, 2005.

Klein twice filed to reinstate the case pursuant to Iowa Rule of Civil Procedure 1.944(6). 1.944(6) requires reinstatement if dismissal is the result of oversight, mistake or other reasonable cause, and states a trial court may exercise its discretion to reinstate cases in other circumstances. The court overruled the first application for reinstatement because it did not cite any ground for mandatory relief listed in 1.944(6). The court overruled the second application because it was filed more than six months after the date of dismissal and thus was untimely under Rule 1.944(6).

HOLDING: The district court did not err in refusing to reinstate Klein’s case.

ANALYSIS: When Klein moved for and obtained continuances, he failed to inform the court that the case was set for automatic dismissal on January 1, 2005 and offer an explanation for why the case should be given a longer life than contemplated under Rule 1.944. Therefore, the orders continuing the trial did not operate to prevent the case’s automatic dismissal. The Court agreed the first application for reinstatement failed to cite grounds for relief and that the second application was untimely.

LANDLORD/TENANT

Amco Insurance Co. v. Johnson, No. 06-1918, 2007 WL 2119028 (Iowa Ct. App. July 25, 2007).

FACTS: Misty Johnson and Robert Stephenson leased a duplex from Brian Jennings. One night, a houseguest was alone in the duplex, cooking. He left the stove unattended, and a grease fire ignited, causing substantial damage to the duplex. The damage to the duplex was covered by a policy with Amco Insurance Co.

Amco Insurance, in Jennings’s name, sought to recover damages from tenants Johnson and Stephenson as well as their houseguest. Amco alleged the tenants breached their lease and that the tenants and their houseguest were negligent in their use of the duplex. The district court granted summary judgment for the tenants.

HOLDING: The district court properly granted the tenants’ motion for summary judgment.

ANALYSIS: The language in the lease was drafted to mirror language in Iowa Code sections 562A.17(5) and (6) requiring tenants to use appliances in a reasonable manner and not to damage premises or permit others to do so. The language implied the tenants were not insurers under the lease, but rather were liable only for their own deliberate or negligent acts or others' acts the tenants permitted. Because the tenants were not even present when the grease fire ignited and did not permit their houseguest to start the fire, they did not breach their lease agreement as a matter of law.

As for the negligence claim, no special relationship existed between the tenants and their landlord that created a duty on the part of the tenants to aid or protect their landlord from harm caused by the houseguest. *Res ipsa loquitur* was inapplicable as a matter of law because no facts were alleged to show the tenants were in exclusive control of the stove at the time of the grease fire.