

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

| | | |
|--------------------------|---|--------------------------|
| ROMAN OIL COMPANY, |) | |
| |) | |
| Defendant Below, |) | |
| Appellant, |) | |
| |) | C.A. No. N12A-05-002 EMD |
| v. |) | |
| |) | |
| STANZETTA BIBBS and RYAN |) | |
| BIBBS, |) | |
| |) | |
| Plaintiffs Below, |) | |
| Appellees. |) | |

Submitted: January 4, 2013

Decided: March 14, 2013

On Appeal from the Court of Common Pleas

*Decision **AFFIRMED***

John V. Work, Esquire, Law Office of John V. Work, 800 N. King Street, Suite 303,
Wilmington, Delaware 19801, *Attorney for Appellant.*

Douglas A. Shachtman, Esquire, The Shachtman Law Firm, 1200 Pennsylvania Ave.,
Suite 302, Wilmington, Delaware 19806, *Attorney for Appellees.*

DAVIS, J.

INTRODUCTION

This is an appeal from a decision of the Court of Common Pleas awarding Appellees Stanzetta Bibbs and Ryan Bibbs damages in the amount of \$10,612.24 for losses they incurred when heating oil spilled in the basement and driveway of their home during and after a delivery by Appellant Roman Oil Company (“Roman Oil”). After a trial on the matter, the Court of Common Pleas concluded that Roman Oil was 60%

negligent and the Bibbs were 40% negligent in causing the Bibbs' claimed damages. The Court based its determination on a finding that Roman Oil primarily caused the spill because its employees failed to remain at the home's fill connection while oil was being pumped from a truck into the home. Roman Oil appeals the decision on the basis that the Court of Common Pleas erred in applying the doctrine of *res ipsa loquitur*. For the reasons set forth below, the Court of Common Pleas' decision is **AFFIRMED**, as the Court of Common Pleas' decision rests upon a finding of negligence—a basis independent from an application of *res ipsa loquitur*.

PROCEDURAL POSTURE

The Court of Common Pleas held a trial for this matter on December 1 and December 2, 2011. The Court allowed for post-trial briefing on the applicability of the doctrine of *res ipsa loquitur* to the case. Roman Oil submitted a memorandum on December 16, 2011. The Bibbs submitted a memorandum on December 23, 2011. The Court of Common Pleas issued its Decision After Trial on April 2, 2012.

Roman Oil filed its Notice of Appeal with this Court on May 2, 2012. The Court issued a briefing schedule on August 21, 2012. Roman Oil submitted its Opening Brief on September 10, 2012. The Bibbs submitted their Answering Brief on October 1, 2012. Roman Oil submitted its Reply Brief on October 16, 2012. This matter was assigned to a judge on October 24, 2012. It was reassigned to this Judge on January 4, 2013.

FACTUAL BACKGROUND

The factual conclusions of the Court of Common Pleas are straightforward and uncontested. The Bibbs reside in a home in New Castle, Delaware which uses oil to produce heat. Until December 2009, the Bibbs procured oil under a delivery contract

with Burns and McBride Oil Company (“Burns and McBride”). On December 2, 2009, while the Bibbs were at work, Burns and McBride delivered oil to the Bibbs’ residence and placed an invoice in the mailbox. Unaware of the delivery, and under the belief that she had cancelled oil deliveries from Burns and McBride, Ms. Bibbs placed an order on December 2, 2009 with Roman Oil for 200 gallons of oil to be delivered the next day. Ms. Bibbs testified that she did not see the Burns and McBride delivery invoice when she placed a check for the Roman Oil delivery in her mailbox on the morning of December 3, 2009.

The Bibbs’ oil tank was located in the basement of their home, without a gauge on the exterior of the house to show a measurement of its contents. Like most other houses that have oil tanks in their basements, the Bibbs’ house has two outlets located outside the house. According to David Roman, the owner of Roman Oil Company, one outlet is a fill connection, and the other is a vent alarm. A vent alarm produces a whistling sound caused by the output of air from the tank while it is being filled through the fill connection. The whistle ceases once the tank is full. When a delivery person hears the whistle stop, he or a co-delivery person should stop the flow of oil. Mr. Roman testified that a deliveryman should never walk away from the connection while oil is pumping as the oil tank could rupture if the pumping is not stopped within seconds of when the whistle stops. Mr. Roman also testified that an oil tank which is considered full would produce at least some whistling sound upon the pumping of additional oil into the tank.

On the morning of December 3, 2009, two Roman Oil employees arrived at the Bibbs’ home to deliver oil. The driver, James Lcomb, testified that his co-deliveryman, John Finch, connected the truck’s hose to the fill connection and turned on the oil pump,

while Mr. Lecombe got back inside the truck to set the truck's GPS system for the next delivery location. Fifteen to twenty seconds later, Mr. Finch ran up to the truck and informed Mr. Lecombe there was a problem. The employees observed oil spilled in the driveway near the fill connection. Mr. Finch had shut off the pump. The two employees took measures to clean the spill and informed Roman Oil of the incident.

When Mr. Bibbs returned home for lunch on December 3, 2009, he observed the oil spill in the driveway. Upon entering the home, he discovered the floor of the basement was covered in about half an inch of oil. Mr. Bibbs called Ms. Bibbs, and she called Roman Oil. Roman Oil employees (Mr. Roman, Mr. Finch, James Rider and Jabaar Rider) arrived to the home later in the afternoon to clean up basement. The oil tank had ruptured, and carpeting, wood wall paneling, furniture, appliances, and personal belongings were damaged and had to be removed from the basement.

Ms. Bibbs testified that Mr. Finch apologized for the spill and stated that he was next to the truck, dealing with family issues, when he should have been standing next to the house while the oil was pumping. Ms. Bibbs further testified that Mr. Rider told her that he was part of the oil delivery team, and that Mr. Finch was standing next to the truck when Mr. Finch should have been standing next to the house when the oil was pumping. Ms. Bibbs also stated that Mr. Rider told her that, on December 3, 2009, Mr. Rider knew that Mr. Finch was having issues with his family and told Mr. Finch to "get his head on straight" so that he did not cause an accident. Ms. Bibbs testified that she overheard Mr. Rider tell Mr. Finch that Roman Oil was "fixing your mistake."

The Court of Common Pleas also made specific findings of fact and conclusions of law with respect to damages (amount or otherwise) and contributory negligence. On

appeal, the Appellant does not contend that the Court of Common Pleas erred on the element of damages or contributory negligence. Accordingly, for purposes of the appeal, this Court will not address the decision below on these issues.

THE COURT OF COMMON PLEAS' DECISION AFTER TRIAL

The Court of Common Pleas' Decision After Trial contains a detailed recitation of its factual findings. In the discussion that follows, the Court first notes that the Bibbs claims were “set forth in narrative form and [did] not clearly articulate” a theory for recovery.¹ The Court acknowledged that “the language of the original complaint and the amended complaint [was] sufficient to make a claim based upon negligence”² and, “Further, prior to trial, the Bibbs notified the Court on November 22, 2011 that plaintiff will rely upon the legal doctrine of *res ipsa loquitur* [to] establish liability.”³ The Court proceeded to set forth the legal standards for negligence and negligence by *res ipsa loquitur*.⁴

After citing the doctrine of *res ipsa loquitur*, the Court commenced application of the law to the facts. The Court considered evidence that it was company policy for a Roman Oil employee to remain at the fill connection while oil is being pumped, that Mr. Finch did not remain at the fill connection while pumping oil into the Bibbs' home, and that Ms. Bibbs failed to notice a delivery ticket from Burns and McBride in her mailbox when she placed a check there to pay for the Roman Oil delivery on December 3, 2009.⁵ The Court then determined that

¹ *Bibbs v. Roman Oil Co.*, CPU4-10-001652, 2012 WL 1114617, at *6 (Del. Com. Pl. Apr. 2, 2012). [Hereinafter “Op. at * ____.”]

² *Id.* at *6.

³ *Id.*

⁴ *Id.* at *6-*7.

⁵ *Id.* at *7.

the primary reason the spill occurred and the damages were sustained is because Roman employees failed to remain at the fill connection when the oil was being pumped. If Finch had remained at the fill connection, he would have been in a position to hear the whistle stop and discontinue the oil flow.

Under the provisions of 10 *Del. C. § 8132 Comparative Negligence*, “in all actions brought to recover damages for negligence which results in ... injury to property, the fact that the plaintiff may have been contributorily negligent, shall not bar recovery by the plaintiff, where such negligence was not greater than the negligence of the defendant ...” Thus, while the Bibbs were in part responsible for the accidental spill, their acts are not such that will completely bar all recovery, because their negligence is not greater than that of Roman. Roman was in a position to prevent the spill if its employees had followed Company policy and exercised care when filling the oil tank.⁶

In comparing the relative parties’ responsibilities, the Court found that Roman Oil was negligent by 60%.⁷ The Court entered judgment for the Bibbs in the amount of \$10,612.24.⁸ The Court also entered a judgment in favor of the Bibbs upon Roman Oil’s counterclaim for costs incurred in cleaning up the spill because the record evidence did not establish the cost of the cleanup and Roman Oil did not establish a basis for its claim.⁹

PARTIES’ CONTENTIONS

Roman Oil contends the Court of Common Pleas erred in applying the doctrine of *res ipsa loquitur*. Roman Oil argues that the Court of Common Pleas’ conclusion that the Bibbs were comparatively negligent prohibits application of *res ipsa loquitur*, because the doctrine requires a plaintiff to exclude his own conduct as a responsible party.¹⁰

Additionally, Roman Oil argues that the Bibbs’ exclusive possession and control over the

⁶ *Id.* at *8.

⁷ *Id.*

⁸ *Id.* The Bibbs claimed \$17,687.39 as damages to their real and personal property, although they sought \$40,7735.08 in their Amended Complaint. *Id.* at *1, *8.

⁹ *Id.* at *8.

¹⁰ Appellant’s Op. Br. 10 (citing D.R.E. 304(b)).

oil tank prohibits application of *res ipsa loquitur*, as well. Roman Oil contends the Court of Common Pleas should have considered the Bibbs' liability as homeowners, namely because of the age and condition of the oil tank.

The Bibbs contend that the Court of Common Pleas' decision rests upon traditional negligence, and that the Court did not rely upon *res ipsa loquitur*. The Bibbs contend the decision is free from legal error and substantiated by the evidence. They argue that the Court properly cited and applied the law of negligence, and evidence supports each element of a finding of negligence. The Bibbs assert, for argument's sake and should this Court find the decision below was based on *res ipsa loquitur*, the decision is free from legal error because the oil tank was in Roman Oil's control at the time of the accident, and evidence excludes the Bibbs' conduct as a cause of their injury.

STANDARD OF REVIEW

“In an appeal from the Court of Common Pleas to the Superior Court, the standard of review is whether there is legal error and whether the factual findings made by the trial judge are sufficiently supported by the record and are the product of an orderly and logical deductive process.”¹¹ This Court must accept findings of the Court of Common Pleas that are supported by the record, even if this Court would have made contrary findings.¹² The Superior Court may “review *de novo* questions of law involved in the case.”¹³

¹¹ *Onkeo v. State*, 182, 2008 WL 3906076, at *1, 957 A.2d 2 (table) (Del. July 1, 2008); *Wheeler v. Clerkin*, 448204, 2005 WL 873341, at *2, 871 A.2d 1129 (table) (Del. Super. Apr. 13, 2005).

¹² *Onkeo*, 2008 WL 3906076, at *1.

¹³ *DiSabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. 2002) *aff'd*, 810 A.2d 349 (Del. 2002).

The Superior Court reviews evidentiary rulings by the Court of Common Pleas under an abuse of discretion standard.¹⁴ ““An abuse of discretion occurs when a court has . . . exceeded the bounds of reason in view of the circumstances, [or] . . . so ignored recognized rules of law or practice . . . as to produce injustice.””¹⁵ The Court should only reverse a lower court’s evidentiary decision where there was a clear abuse of discretion.¹⁶

DISCUSSION

A. The Court of Common Pleas decision is free from legal error because it did not rely upon the evidentiary rule of *res ipsa loquitur* in its finding that Roman Oil was negligent.

Res ipsa loquitur, as it is implicated in this case, “is a rule of circumstantial evidence, not affecting the burden of proof, which permits, but does not require, the trier of the facts to draw an inference of negligence from the happening of an accident” under specific circumstances.¹⁷ Those circumstances are as follows:

- (1) The accident must be such as, in the ordinary course of events, does not happen if those who have management and control use proper care; and
- (2) The facts are such as to warrant an inference of negligence of such force as to call an explanation or rebuttal from the defendant; and
- (3) The thing or instrumentality which caused the injury must have been under the management or control (not necessarily exclusive) of the defendant or his servants at the time the negligence likely occurred; and

¹⁴ *Delaware Acceptance Corp. v. Swain*, N12A-03-012MM, 2012 WL 6042644, at *6 (Del. Super. Nov. 30, 2012).

¹⁵ *Id.* (quoting *Culp v. State*, 766 A.2d 486, 489 (Del. 2001)); *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 571 (Del. 1998)); *see also* D.R.E. 103(a) (“Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected . . .”); *Mercedes-Benz of N. Am. Inc. v. Norman Gershman's Things to Wear, Inc.*, 596 A.2d 1358, 1365 (Del. 1991) (“For [the Supreme] Court to find reversible error in an evidentiary ruling, [it] must find not only error in the ruling, but that a ‘substantial right of the party is affected.’”).

¹⁶ *Delaware Acceptance Corp.*, 2012 WL 6042644, at *6.

¹⁷ D.R.E. 304(a).

- (4) Where the injured person participated in the events leading up to the accident, the evidence must exclude his own conduct as a responsible cause.¹⁸

When applied, a trier of fact uses *res ipsa loquitur* as a means of finding a plaintiff has proved negligence where there is no direct evidence of negligence.¹⁹ In other words, a trier of fact need only rely upon *res ipsa loquitur* when no direct evidence supports a finding of negligence.²⁰

In this case, the Court of Common Pleas did not need to rely upon *res ipsa loquitur* to find Roman Oil was negligent. Moreover, beyond reciting Delaware Rule of Evidence 304(b) and some case law setting out how that rule could be applied, the Court clearly (i) did not conduct an analysis of the facts under the evidentiary rule for *res ipsa loquitur* and (ii) reached no conclusion that Roman Oil was negligent based upon *res ipsa loquitur* or due to circumstantial evidence. In actuality, the Court of Common Pleas did just the opposite. Instead of applying Delaware Rule of Evidence 304(b), the Court of Common Pleas determined that direct evidence supported a finding of negligence. This determination by the Court of Common Pleas obviated any necessity to rely upon *res ipsa loquitur*.

The Court specifically found that “the primary reason the spill occurred and the damages were sustained is because Roman employees failed to remain at the fill connection when oil was being pumped.”²¹ While the Court of Common Pleas acknowledged *res ipsa loquitur*, the applicability of which was at issue, the Court of Common Pleas did not apply or rely upon *res ipsa loquitur* in its decision. Rather, the

¹⁸ D.R.E. 304(b).

¹⁹ See *Harris v. Cochran Oil Co.*, 282, 2011 WL 3074419, at *4 (Del. July 26, 2011).

²⁰ *Vattilana v. George & Lynch, Inc.*, 154 A.2d 565, 567 (Del. Super. 1959); see *Harris*, 2011 WL 3074419, at *4.

²¹ Op. at *15.

Court of Common Pleas relied upon direct evidence to find Roman Oil was negligent – “The testimony supports that the Roman employee failed to exercise due care when pumping the oil, and as a result of the failure, the tank was ruptured and the oil spill occurred.”²² Accordingly, the Court of Common Pleas did not commit legal error or abuse its discretion with respect to its address of the evidentiary rule of *res ipsa loquitur*.

B. Because the facts and evidence support a finding of negligence, the Court of Common Pleas’ decision is affirmed.

Although this Court has determined that the Court of Common Pleas did not apply *res ipsa loquitur* to reach its conclusion that Roman Oil was negligent, this Court nonetheless turns to the following inquiry: if the Court of Common Pleas had indeed misapplied the evidentiary rule, did it commit reversible error in doing so? This Court concludes that, even if the Court of Common Pleas applied *res ipsa loquitur* and/or Delaware Rule of Evidence 304(b), the Court of Common Pleas did not commit reversible error. This Court holds that the direct evidence—contained within the undisputed facts and record and set forth in the Court of Common Pleas’ Decision After Trial—supports a finding of negligence. It is for this additional reason that the Court affirms the decision of the Court of Common Pleas.

The elements of negligence are well settled and are as follows: (1) the defendant had a legal obligation—a duty—to protect the plaintiff from a risk of injury; (2) the defendant breached the duty toward the plaintiff; and (3) that breach proximately caused the plaintiff injury.²³ The uncontested facts and record evidence show that Roman Oil employees had a duty to protect the Bibbs’ from a risk of injury by exercising care in the filling the oil tank of Bibbs’ home, specifically by remaining near the fill connection

²² *Id.* at *14.

²³ *Roberts v. Delmarva Power & Light Co.*, 2 A.3d 131, 136 (Del. Super. 2009).

while oil was being pumped in order to hear the vent alarm. Additionally, Roman Oil employees left the fill connection unattended while oil was being pumped into the Bibbs' oil tank. Leaving the fill connection unattended proximately caused oil to spill into the Bibbs' basement and onto the Bibbs' driveway when Roman Oil overfilled the Bibbs' oil tank because they failed to stop the flow of oil within an appropriate time of when the vent whistle ceased. Finally, the record demonstrates that the Bibbs' incurred damages to their real and personal property as a result of Roman Oil's acts and omissions. Clearly, the uncontested facts and record evidence support the Court of Common Pleas' findings.

Because the facts and evidence directly support a finding of negligence, the Court of Common Pleas' application, if any, of Delaware Rule of Evidence 304(b) or the doctrine of *res ipsa loquitur* in its decision is not integral to its conclusion that Roman Oil was negligent. Consequently, the Court of Common Pleas' *res ipsa loquitur* discussion—and possible application of Delaware Rule of Evidence 304(b)—is harmless error and does not constitute reversible error.²⁴ The Court of Common Pleas applied recognized rules of law for negligence and contributory negligence to reach its conclusion that Roman Oil was 60% negligent for the Bibbs' claimed damages. Therefore, this Court declines to find that the Court of Common Pleas committed legal error or abused its discretion in reaching its decision.

CONCLUSION

For the reasons stated above, the Court of Common Pleas' finding that Roman Oil is 60% negligent for claimed damages caused to the Bibbs during an oil spill in their home on December 3, 2009 is free from legal error. The Court did not abuse its

²⁴ See, e.g., *Sussex County v. Morris*, 610 A.2d 1354, 1360 (Del. 1992); *Sears, Roebuck & Co. v. Facciolo*, 320 A.2d 347, 350 (Del. 1974).

discretion in considering, yet not applying or relying upon, the evidentiary rule of *res ipsa loquitur*. Moreover, the Court's factual findings are supported by the record and are the product of an orderly and logical deductive process. Therefore, the decision of the Court of Common Pleas is **AFFIRMED**.

/s/ Eric M. Davis

Eric M. Davis
Judge