

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000257-MR

THE ESTATE OF JENNIFER GAYLE
TRIPLETT; GINA LYNNETT TRIPLETT,
ADMINISTRATRIX; GINA LYNNETT
TRIPLETT; AND TIMOTHY ALAN TRIPLETT

APPELLANTS

v. APPEAL FROM BATH CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 07-CI-90187

CHRIS JAMISON

APPELLEE

AND

NO. 2009-CA-000283-MR

THE ESTATE OF TUESDAY NICOLE
HELTON; AND MARSHA HELTON,
ADMINISTRATRIX

APPELLANTS

v. APPEAL FROM BATH CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 07-CI-90187

CHRIS JAMISON

APPELLEE

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: KELLER, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: Appellants, as the estates, administratrixes of the estates, and family members of Jennifer Gayle Triplett and Tuesday Nicole Helton, appeal from a Bath Circuit Court order granting Chris Jamison’s motion for summary judgment. For the following reasons, we vacate the order and remand the case for further proceedings consistent with this opinion.

I. Factual Background.

In the early 1990’s, Johnnie Maze and some of his friends constructed a garage on Maze’s property. Maze and his friend, Johnny McCarty, performed the electrical work on the garage, which satisfied an electrical inspection in 1993. The garage initially contained a 100 ampere breaker panel. At some point, Maze replaced that breaker panel with a 200 ampere one, and added an upstairs apartment to the garage. Maze’s son, Jared, occupied the apartment from 2000 until the structure burned in 2006.

The source of the fire initially was classified as electrical, but it later was changed to “undetermined due to not being able to determine the point of origin nor the cause of the fire.” Several months before the fire, Chris Jamison, a licensed electrician, performed some electrical work on the structure at Maze’s

request. Thereafter, other people performed additional electrical work, including the installation of a central heating and air unit, washer, and dryer.

At the time of the fire, Jared, Tuesday Helton and Jennifer Triplett were in the apartment. Only Jared survived. Thereafter, appellants filed suit seeking damages for wrongful death and personal injury. The named defendants included, among others, Maze, Jamison, the electrical inspector, and persons involved with the installation of the central heating and air unit, washer, and dryer.¹

Jamison filed a motion for summary judgment on the basis that Darwin Spencer, appellants' expert witness, had not attributed any fault to Jamison's limited work of installing light switches or installing outside lights. As noted, the trial court granted Jamison's motion for summary judgment.

II. Standard of Review.

In reviewing summary judgments, we note that

[w]hile it has been recognized that summary judgment is designed to expedite the disposition of cases and avoid unnecessary trials when no genuine issues of material fact are raised . . . the rule is to be cautiously applied. The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor. Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact. The trial judge must examine the evidence, not to decide any issue of fact, but to discover if a real issue exists. It clearly is not the purpose of the summary judgment rule, as we have often declared, to cut litigants off from their right of trial if they have issues to try.

¹ At the time the trial court granted Jamison's motion for summary judgment, some but not all of the other claims had been resolved.

Steelvest Inc. v. Scansteel Serv. Ctr. Inc., 807 S.W.2d 476, 480 (Ky. 1991)

(citations omitted).

On appeal from a granting of a motion for summary judgment, our standard of review is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky.App. 2001) (quoting *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996)). Because no factual issues are involved and only legal issues are before the court on a motion for summary judgment, we do not defer to the trial court and our review is *de novo*. *Hallahan v. Courier-Journal*, 138 S.W.3d 699, 705 (Ky.App. 2004).

III. Issues on Appeal.

On appeal, appellants raise two arguments. First, they contend the trial court erred by granting Jamison’s motion for summary judgment, since a factual dispute exists regarding the extent of electrical work performed by Jamison in or on the structure. Second, appellants assert the trial court erred by failing to recognize Jamison’s duty to obtain inspections and certificates of compliance for the work he performed.

In any negligence action brought under Kentucky law, a plaintiff must prove the existence of a duty, breach thereof, and consequent injury. *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 247 (Ky. 1992) (citing *Illinois Cent. R.R. v. Vincent*, 412 S.W.2d 874, 876 (Ky. 1967)). The existence of a duty is

a question of law for the court, while breach and injury are questions of fact for the jury. *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 89 (Ky. 2003). Causation presents a mixed question of law and fact. *Id.* Therefore, we review *de novo* appellants' allegation that the trial court erred by finding they had failed to prove Jamison owed them a duty, since it presents a question of law.

Duty may be established in several ways, but ultimately, “[t]he most important factor in determining whether a duty exists is foreseeability.” David J. Leibson, 13 *Kentucky Practice: Tort Law* § 10:3, at 166 (2008). Although *foreseeability* tends to be elusive in definition, perhaps most famously, Judge Cardozo stated on the subject of *duty* that “[t]he risk reasonably to be perceived defines the duty to be obeyed[.]” *Palsgraf v. Long Island R.R.*, 248 N.Y. 339, 344, 162 N.E. 99, 100 (1928). Generally, each person “owes a duty to every other person to exercise ordinary care in his activities to prevent foreseeable injury.” *Isaacs v. Smith*, 5 S.W.3d 500, 502 (Ky. 1999) (citation omitted). Ordinary care is defined as the degree of care which a prudent person would exercise under the same or similar circumstances. *T & M Jewelry, Inc. v. Hicks ex rel. Hicks*, 189 S.W.3d 526, 530 (Ky. 2006). However, in cases involving professionals or professions requiring special skill and expertise, the standard is typically measured by the standard of conduct customary in the profession under the circumstances. *See, e.g., Hyman & Armstrong, P.S.C. v. Gunderson*, 279 S.W.3d 93, 113 (Ky. 2008); *Daugherty v. Runner*, 581 S.W.2d 12, 16 (Ky.App. 1978). In such cases,

expert testimony is typically required to establish the standard of care. *Greer's Adm'r v. Harrell's Adm'r*, 306 Ky. 209, 213, 206 S.W.2d 943, 946 (1947).

However, expert testimony is not always required in cases involving professional negligence. Rather, our courts have long recognized an exception in cases where the negligence of the professional is so apparent that even a layperson could recognize it. *Baptist Healthcare Sys., Inc. v. Miller*, 177 S.W.3d 676, 681 (Ky. 2005). Restated, an expert witness is required to establish the standard of care in professional negligence cases in Kentucky, unless the standard is within the general or common knowledge of laypersons. *Id.*

In this case, the standard of care is not within the general or common knowledge of laypersons. Thus, expert witness testimony is required to establish that Jamison failed to comply with that standard. The difficulty is that appellants' sole expert witness, an electrical engineer, testified that he did not know of a specific code or regulation requiring an electrical inspection in this instance. On the other hand, the certified electrical inspector who initially inspected the property in 1993 testified that in Kentucky, "all electrical alterations and inspections made by a homeowner or an electric contractor need to be inspected and approved by a certified electrical inspector before use." In his opinion, "running wire" triggers an inspection, while installing three-way switches does not.

While Jamison denied running any wires in the structure, the testimony of Johnnie Maze and Jared Maze suggested that Jamison did run wires. As such, factual issues existed as to the extent of Jamison's work and as to whether

Jamison failed to comply with the applicable standard of care by failing to obtain an inspection.

Because we hold that summary judgment was improperly granted and this matter must be remanded for further proceedings, we deem it unnecessary to address appellants' claim regarding Jamison's alleged violation of administrative regulations pertaining to inspections and certificates of compliance. *See* 815 KAR² 35:080 § 1.

IV. Conclusion.

The order of the Bath Circuit Court is vacated and this case is hereby remanded for further proceedings consistent with this opinion.

ALL CONCUR.

² Kentucky Administrative Regulations.

BRIEF AND ORAL ARGUMENT
FOR APPELLANTS THE ESTATE
OF JENNIFER GAYLE TRIPLETT;
GINA LYNNETT TRIPLETT,
ADMINISTRATRIX; GINA
LYNNETT TRIPLETT; AND
TIMOTHY ALAN TRIPLETT:

Todd Trautwein
Morehead, Kentucky

BRIEF FOR APPELLANTS THE
ESTATE OF TUESDAY NICOLE
HELTON; AND MARSHA HELTON,
ADMINISTRATRIX:

Paula Richardson
Owingsville, Kentucky

ORAL ARGUMENT FOR THE
ESTATE OF TUESDAY NICOLE
HELTON:

David A. Barber
Owingsville, Kentucky

BRIEF AND ORAL ARGUMENT
FOR APPELLEE:

Farrah W. Ingram
Mount Sterling, Kentucky