

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 2211

RAYMOND SMITH, JR.

VERSUS

JOSEPH RILEY, SR. and TOWN OF WHITE CASTLE

Judgment Rendered: AUG 20 2014

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On Appeal from the Eighteenth Judicial District Court
In and for the Parish of Iberville
State of Louisiana
No. 68195

Honorable James J. Best, Judge Presiding

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

JMC

James J. Best

McCLENDON, J.

The plaintiff appeals a trial court's judgment that granted a directed verdict and dismissed plaintiff's suit. For the following reasons, we affirm.

Facts and Procedural History

On September 12, 2008, Raymond Smith, Jr. tripped and fell in a yard owned by Joseph Riley. Mr. Smith alleges that his fall was due to soggy and uneven ground caused by a defective water meter, which was supposed to be inspected and was maintained by the Town of White Castle and located on Mr. Riley's property.

On September 4, 2009, Mr. Smith, who suffered a fractured ankle that required surgery as a result of the fall, filed suit against the Town of White Castle and Mr. Riley alleging that the defendants' negligence was the sole cause of his injuries. Specifically, Mr. Smith asserted that the Town of White Castle knew of or should have known of the presence of the defective water meter and failed to repair it. Mr. Smith also alleged that both defendants failed to use reasonable care to keep the premises in a reasonably safe condition, failed to inspect the premises to remove defects and dangers, and failed to correct conditions which they knew or should have known created an unreasonable risk of injury.

The matter proceeded to a bench trial, and after plaintiff's case-in-chief, the Town of White Castle and Mr. Riley moved for a directed verdict, contending that Mr. Smith failed to prove that the defendants had notice of any defect in the water meter. The trial court granted a directed verdict, but did so on the issue of causation, as opposed to the issue of notice.

Mr. Smith has appealed the trial court's judgment, assigning the following as error:

The trial court erred by granting a directed verdict on the basis that Plaintiff was intoxicated when there is no evidence to support this conclusion. Even if the plaintiff's intoxication was a factor the trial court erred by failing to assign comparative fault.

Discussion

The defendants moved for a directed verdict based on the issue of lack of constructive notice. The court granted the motion finding that causation had not been proven by a preponderance of the evidence.¹

Initially, we note that a directed verdict is only appropriate in a jury trial. Louisiana Code of Civil Procedure article 1672B provides the basis for an involuntary dismissal at the close of a plaintiff's case in an action tried by the court without a jury.² Nevertheless, that error is one of form rather than substance, as the ultimate object of both motions is the same. **Tate v. Tate**, 09-2034 (La.App. 1 Cir. 6/11/10), 42 So.3d 439, 442, writ granted on other grounds, 10-1964 (La. 8/31/11), 68 So.3d 513.

In determining whether an involuntary dismissal should be granted, the appropriate standard is whether the plaintiff has presented sufficient evidence in his case-in-chief to establish his claim by a preponderance of the evidence. **Tate**, 42 So.3d at 442. Proof by a preponderance simply means that, taking the evidence as a whole, the evidence shows the existence of a fact or cause sought to be proved is more probable than not. **Id.** Further, an involuntary dismissal should not be reversed by an appellate court unless there is a showing of manifest error. **Id.**

Mr. Smith contends that the trial court erred in dismissing his claim insofar as the trial court found Mr. Smith's alleged intoxication to be the cause of his fall. Mr. Smith avers that his medical records indicated that he was intoxicated, but did not give any measure of intoxication. Moreover, Mr. Smith testified that he

¹ On appeal, Mr. Smith does not allege that the trial court did not have authority to grant the motion on a basis different than that sought by the defendants, nor would we find merit in this argument given that this issue does not arise within the context of a motion for summary judgment.

² Louisiana Code of Civil Procedure article 1672B provides:

In an action tried by the court without a jury, after the plaintiff has completed the presentation of his evidence, any party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal of the action as to him on the ground that upon the facts and law, the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff and in favor of the moving party or may decline to render any judgment until the close of all the evidence.

had only consumed one beer on the date of the incident. Alternatively, Mr. Smith asserts that the defendants have not shown that he was intoxicated to any degree that would be a complete bar to his recovery and that comparative fault should apply.

Despite Mr. Smith's argument on appeal, we note that the trial court did not determine that Mr. Smith's intoxication caused his fall. Although the trial court mentioned that the medical records indicated that Mr. Smith was intoxicated when he was brought to the hospital, the trial court also indicated that Mr. Smith did not meet his burden to establish what caused him to fall "by a preponderance of the evidence." Specifically, the trial court noted that "[p]eople fall for various and sundry reasons. There's water all over the place. There's rain, there's meter leaks." The trial court then indicated that "I don't know why [Mr. Smith] fell. He didn't know why he fell. He said he fell. ... People fall for all kinds of reasons."

Further, we note that the testimony presented in Mr. Smith's case-in-chief does not establish by a preponderance of the evidence that water from the leaking water main caused him to fall. Specifically, Mr. Smith acknowledged that at the time of the accident, he did not know what caused him to fall but that he was wet and muddy following his fall. Mr. Smith noted that he later found out that a water meter was leaking. Similarly, Travis Foster, who arrived at the scene shortly after Mr. Smith fell, testified that Mr. Smith did not indicate why he fell. Mr. Foster indicated that the area was wet and muddy, but offered nothing further to suggest a reason for Mr. Smith's fall. Considering the foregoing, we cannot conclude that the trial court committed manifest error in determining that Mr. Smith did not present sufficient evidence to establish his claim by preponderance of the evidence.

CONCLUSION

For the foregoing reasons, we affirm the trial court's January 28, 2013 judgment. Costs of this appeal are assessed to plaintiff, Raymond Smith, Jr.

AFFIRMED.