

**NOT DESIGNATED FOR PUBLICATION**

**DANIEL CAMPBELL, ET AL.** \* **NO. 2007-CA-1507**  
**VERSUS** \* **COURT OF APPEAL**  
**ADMINISTRATORS OF THE** \* **FOURTH CIRCUIT**  
**TULANE EDUCATION FUND,** \*  
**ET AL.** \* **STATE OF LOUISIANA**

\* \* \* \* \*

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2001-3676, DIVISION "K"  
Honorable Ernest L. Jones, Judge Pro Tempore

\* \* \* \* \*

**Judge Dennis R. Bagneris, Sr.**

\* \* \* \* \*

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Edwin A. Lombard, and Judge Pro Tempore Moon Landrieu)

David A. Abramson  
LEWIS, KULLMAN, STERBCOW & ABRAMSON  
601 Poydras Street  
2615 Pan-American Life Center  
New Orleans, LA 70130  
**COUNSEL FOR DAVID CAMPBELL AND ELIZABETH  
CAMPBELL**

Peter E. Sperling  
Angela M. Bowlin  
FRILOT L.L.C.  
1100 Poydras Street  
3600 Energy Centre  
New Orleans, LA 70163-3600  
**COUNSEL FOR TULANE UNIVERSITY HOSPITAL AND CLINIC**

Erin F. Lorio  
PERAGINE & LEA, LLC  
527 East Boston Street  
Suite 201  
Covington, LA 70433-  
**COUNSEL FOR SODEXHO, INC.**

**JUNE 18, 2008**

**AFFIRMED**

Plaintiffs-Appellants, Daniel and Elizabeth Campbell (“Appellants”), appeal from a trial court decision finding in favor of Defendants-Appellees, Tulane University Hospital Clinic and Sodexo Marriott Services, Inc., in their slip and fall case. Appellants contend that the trial court erred by submitting interrogatories on both verdict forms to the jury that were tainted with legal error regarding the respective burdens of proof and that the jury interrogatories considered in isolation, and with respect to the jury verdict forms as a whole, were misleading and confusing and did not adequately set forth the issues to be decided by the jury. For the following reasons, we affirm.

## **FACTS**

On the morning of December 3, 2000, housekeeper, Suzanne Offray<sup>1</sup>, had just finished mopping the floor in the vending machine room at Tulane University Hospital and Clinic when Appellants entered the room and fell, one after the other.

---

<sup>1</sup> Ms. Offray was an employee of defendant-appellee, Tulane University Hospital and Clinic, which contracted with defendant-appellee, Sodexo, Inc., to train and supervise Tulane’s housekeeping employees, including Ms. Offray.

Appellants sued Tulane University Hospital and Clinic and Sodexo Marriott Services alleging that: (1) the foreign substance that was on the floor of the vending machine was put there by and/or at the instruction of one of both of the defendants and (2) defendants failed to take reasonable and necessary action to remedy or to warn persons entering the vending machine room.

At trial, Appellants testified that there were no wet floor signs in the vending machine room or the entrance thereto prior to their falls. However, five witnesses, Ms. Offray, Mr. Andrew Boatner, Officer Robert Jackson, Mr. Eric Johnson, and Ms. Debra Johnson, testified that wet floor signs were present in the vending machine room at that time. At the end of the two week trial, the jury found that Appellants were injured at the Tulane University Hospital and Clinic but that their injuries were not caused by the negligence of either defendant. Thereafter, the jury returned a verdict in favor of defendants, which the trial court adopted and signed a judgment on February 8, 2007. After the trial court denied Appellants' motion for judgment notwithstanding the verdict and/or for a new trial, Appellants filed this appeal, asserting the following sole assignment of error for our review.

**Issue 1: Whether the trial court committed reversible error by submitting interrogatories on both verdict forms to the jury that were tainted with legal error regarding the respective burdens of proof, and whether said jury interrogatories considered in isolation, and with respect to the jury verdict form as a whole, were misleading and confusing and did not adequately set forth the issues to be decided by the jury.**

Appellants claim that although the trial court gave proper jury instructions in the case regarding the burden of proof for each party, the jury interrogatories do

not conform to the jury instructions. Specifically, Appellants argue, in pertinent part:

[T]he jury interrogatories did not fairly and reasonably point out the issues to guide the jury in reaching an appropriate verdict because the interrogatories were tainted with legal error that certainly prejudiced the plaintiffs, who, according to the verdict forms presented to the jury, continued to bear the burden of proof in the case when, in fact, the burden shifted to the defendants once plaintiffs proved they slipped on a foreign substance.

Misleading or confusing interrogatories may constitute reversible error, but the manifest error standard of appellate review still applies except where the jury interrogatories are so inadequate or incorrect as to preclude the jury from reaching a verdict based on the law and the facts. *Doyle v. Picadilly Cafeterias*, 576 So.2d 1143, 1153 (La. App. 3 Cir. 1991). We do not find that the exception applies in this case. Thus, we reject the Appellants' argument that we should review the verdict *de novo*.

The jury interrogatories were, in pertinent part, as follows<sup>2</sup>:

1. Do you find by a preponderance of the evidence that plaintiff, ELIZABETH CAMPBELL, sustained an injury at Tulane University Hospital and Clinic on December 3, 2000?

YES   x   NO           

2. Do you find by a preponderance of the evidence that the injury sustained by plaintiff, ELIZABETH CAMPBELL, at Tulane University Hospital and Clinic on December 3, 2000, was caused by the negligence of Tulane University Hospital and Clinic and/or its employees?

YES            NO   x  

3. Do you find, by a preponderance of the evidence that the injury sustained by plaintiff, ELIZABETH CAMPBELL, at Tulane University Hospital and Clinic on December 3, 2000, was caused by the negligence of Sodexo and/or its employees?

---

<sup>2</sup> Jury interrogatories for Mr. Campbell were identical, except his name was substituted in place of his wife's name.

YES \_\_\_\_\_

NO   x  

(If you answered “NO” to questions # No. 2 AND #3, proceed no further. Sign and date the form. Otherwise proceed to questions #4)

The trial court gave the following jury instructions regarding negligence, and the burden of proof for each party, which all parties agreed were appropriate, in pertinent part, as follows:

A hospital owes a duty to its visitors to exercise reasonable care in particular circumstances. A plaintiff in a slip – and – fall case against a hospital must show that the fall occurred and an injury resulted from a foreign substance on the premises.

**If the plaintiffs fulfill the foregoing requirement, the burden then shifts to the hospital to exculpate itself from the presumption of negligence. The hospital must then show that it acted reasonably to discover and correct the dangerous condition which was reasonably anticipated in its business activity.** (emphasis added)

\* \* \*

The plaintiffs claim that the defendants were negligent. Negligence is the doing of some act which a reasonably prudent person would not do or the failure to do something which a reasonably prudent person would do under the particular circumstances at the time. Malice, ill will, or intent are not necessary elements of negligence.

\* \* \*

Ultimately, the determination of a person’s negligence is based on reasonableness. And if you should conclude that a person acted as a reasonable and prudent person under the circumstances, then that person cannot be found to be negligent.

The instructions given by the court clearly explained the proper placement of the burdens of proof and the essential principles of negligence. Therefore, from our review of the record, we cannot say that the jury interrogatories improperly shifted the burden of proof, or created prejudice sufficient to interdict the jury’s decision making process. Accordingly, we hereby affirm the judgment of the trial court.

**AFFIRMED**

