STATE OF MICHIGAN

COURT OF APPEALS

BASLEY LONG and FAYE LONG

Plaintiffs-Appellants,

v

NBD BANK, N.A.,

Defendant-Appellee.

UNPUBLISHED
March 25, 1997

No. 180792

Washtenaw Circuit Court
LC No. 93-000090-NO

Before: Corrigan, C.J., and Doctoroff and R.R. Lamb,* JJ.

PER CURIAM.

Following a jury verdict of no cause of action on plaintiffs' claim that defendant was negligent, the trial court entered an order in favor of defendant. Plaintiffs now appeal as of right. We affirm.

Plaintiffs filed suit against defendant for the injuries sustained by plaintiff Faye Long as the result of having tripped on a single step, which she allegedly did not see, immediately after entering a branch office owned by defendant. At trial, plaintiffs proceeded on the theory that defendant was liable because it had breached its duty to plaintiff, as a business invitee, by failing to make its premises safe. More specifically, plaintiffs argued that defendant was required to warn its customers concerning the presence of the step and the potential danger it posed. On appeal, plaintiffs argue that the jury's verdict was against the great weight of the evidence because the jurors chose to believe testimony from two defense witnesses indicating that warning signs were in fact posted at the time of plaintiff Faye Long's fall. We disagree.

A verdict may be vacated only when it "does not find reasonable support in the evidence, but is more likely to be attributed to causes outside the record such as passion, prejudice, sympathy, or some extraneous influence." *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). A new trial may be ordered where the verdict has resulted in a miscarriage of justice. MCR 6.431(B). The denial of a motion for a new trial based on a great weight of the evidence argument is reviewed for an abuse of discretion, which will be found only where denial of the motion was "manifestly against the clear weight of the evidence." *People v Gonzalez*, 178 Mich App 526, 532; 444 NW2d 228 (1989).

* Circuit judge, sitting on the Court of Appeals by assignment.

First, aside from the issue concerning the presence of a warning sign, we hold that there was evidence presented at trial to reasonably support the conclusion that no warning was necessary. The evidence demonstrated that the step was not a "hidden defect," but rather an open and obvious condition that an average person with ordinary intelligence would likely discover upon casual inspection. *Riddle v McLouth Steel Products*, 440 Mich 85, 90-95; 485 NW2d 676 (1992); *Eason v Coggins Memorial Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995).

Furthermore, even if the jury were to conclude that the step was a "hidden defect" requiring a warning, we find that the record provides ample evidence to support the finding that defendant took reasonable steps to protect its customers against injury. Evidence was presented that two separate signs, stating "Watch Your Step," were posted in the entrance to the bank, and that a safety handrail was also present near the step. Also, the branch office manager confirmed that the signs had been in place since before he was hired in 1988, and had never been removed.

To the extent that plaintiffs argue that the jury should have believed their testimony as opposed to that of the defense witnesses, we note that the issue of credibility is strictly within the province of the jury. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992). Furthermore, this Court gives great deference to the lower court's unique opportunity to judge the jury's assessment of witness credibility. *In re Leone Estate*, 168 Mich App 321, 324; 423 NW2d 652 (1988). Accordingly, we find that the verdict was not "manifestly against the clear weight of the evidence," and at the very least, was "reasonably supported" by the evidence presented, even assuming that a warning was necessary. Thus, the trial court did not abuse its discretion in denying plaintiffs' motion for a new trial.

As a final matter, we note that we find this appeal to be vexatious and wholly without merit. Appellants raised no issue on which they could have had a reasonable basis for belief that there was a meritorious issue to be determined on appeal. Further, appellants failed to appear at oral argument to support their questionable claims. This Court has gone to great lengths to avoid and reduce the backlog while providing a timely disposition of its docket. However, frivolous appeals such as this divert our judicial resources from the task of expeditiously dispensing justice to worthy litigants. We wish to impress upon the parties our disapproval of this meritless appellate claim. Accordingly, upon our own motion, and pursuant to MCR 7.216(C)(1), we assess sanctions against plaintiffs/appellants in the amount of $500.00 to be paid to the Michigan Court of Appeals.

Affirmed. Defendant being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard R. Lamb