ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION II

CA06-1091

May 30, 2007

LON DENTON	APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [CV-2005-262-2]
V.		HON. JODI RAINES DENNIS, CIRCUIT JUDGE
ROBERT WILLIAMS	APPELLEE	AFFIRMED

Appellant Lon Denton appeals from a summary judgment entered by the trial court. He contends that summary judgment was improper because there were genuine issues of material fact to be litigated. We disagree and affirm.

On October 18, 2003, the home and garage that appellee Robert Williams was renting from Denton burned to the ground. The fire originated where Williams kept his automobile. Denton sued Williams for negligence and breach of contract, arguing that according to the parties' lease agreement, Williams was "responsible for damages caused by his negligence and that of his family or invitees and guests." As proof of negligence, Denton submitted a document signed by Williams that read: "I, Robert Williams, state that the cause of the fire in the garage owned by Lon Denton was my 1993 Lincoln Town Car. The car, and house I rented

from Lon Denton burned completely."

At the hearing, Denton acknowledged that the cause of the fire was unknown. However, relying on the doctrine of res ipsa loquitur, he claimed that the damage to the dwelling and garage was caused by Williams's negligence. In response, the trial court concluded that the essential elements of a res ipsa loquitur claim were not shown and that Denton failed to make a prima facie case of negligence. The trial court then granted Williams's motion for summary judgment. It is from this order that Denton appeals.

Summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Stoltze v. Ark. Valley Elec. Coop. Corp.*, 354 Ark. 601, 127 S.W.3d 466 (2003). The moving party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Gafford v. Cox*, 84 Ark. App. 57, 129 S.W.3d 296 (2003). The burden of sustaining a motion for summary judgment is always the responsibility of the moving party. *Flentje v. First Nat'l Bank of Wynne*, 340 Ark. 563, 11 S.W.3d 531 (2000). All proof submitted must be viewed in the light most favorable to the party resisting the motion, and any doubts and inferences must be resolved against the moving party. *Id.* Once the moving party has established a prima facie entitlement to summary judgment, the opposing party must meet

proof with proof and demonstrate the existence of a material issue of fact. *Id.* On appeal, the reviewing court need only decide if the grant of summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of the motion left a material question of fact unanswered. *Liberty Mut. Ins. Co. v. Whitaker*, 83 Ark. App. 412, 128 S.W.3d 473 (2003). In making this decision, we view the evidence in a light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Saine v. Comcast Cablevision*, 354 Ark. 492, 126 S.W.3d 339 (2003). Our review focuses not only on the pleadings, but also on the affidavits and other documents filed by the parties. *Id.*

Denton argues that a genuine issue of material fact existed as to his negligence claim because the doctrine of res ipsa loquitur allows negligence to be inferred in this case. In *Sherwood Forest Mobile Home Park v. Champion Home Builders Co.*, 89 Ark. App. 1, 3, 199 S.W.3d 707, 710 (2004), we noted that the res ipsa loquitur doctrine was "developed to assist in the proof of negligence where the cause of an unusual happening connected with some instrumentality in the exclusive possession and control of defendant could not be readily established." We went on to cite the four essential elements that must be established before the doctrine of res ipsa loquitur is applicable: (1) the defendant must owe a duty to the plaintiff to use due care; (2) the accident must be caused by the thing or instrumentality under the control of the defendant; (3) the accident that caused the injury must be one that, in the ordinary course of things, would not occur if those having control and management of the instrumentality used

proper care; (4) there must be an absence of evidence to the contrary. *Barker v. Clark*, 343 Ark. 8, 33 S.W.3d 476 (2000). In addition, it must be shown that the instrumentality causing the injury was in the defendant's exclusive possession and control at the time of the injury. *Id*.

Viewing the evidence in the light most favorable to Denton, we conclude that he did satisfy the first required element—their lease agreement was proof that Williams owed Denton due care. However, the remaining three elements were not established. The vehicle was not in Williams's exclusive possession and control at the time of the fire. The day prior to the fire, Williams's wife operated the vehicle, then—later that evening—Williams moved the car into an open parking canopy where the car remained until the morning of the fire. For the eight hours immediately preceding the fire, the Lincoln was parked in an open-air structure out of Williams's exclusive control.

Further, there was no evidence that, in the ordinary course of things, the fire would not have occurred if Williams used proper care. The evidence merely showed that a fire occurred, and the cause of the fire was unknown. Our supreme court has long held that a fire can result with no intelligent explanation as to cause. *See Little Rock, MR & T.R.R. Co. v. Talbot*, 47 Ark. 97, 14 S.W. 471 (1885). The *Talbot* court succinctly concluded that such an occurrence is not so unusual that negligence can be inferred from the mere fact of the fire. *Id*.

Therefore, because Denton failed to establish any negligence attributable to Williams—either directly or via the res ipsa loquitur doctrine—the trial court did not err in its entry of summary judgment on the tort claim. Furthermore, because the breach-of-contract

claim asserted by Denton also required a finding of negligence, once the negligence claim was resolved in Williams's favor, the breach-of-contract claim was resolved as well.

Affirmed.

MARSHALL and HEFFLEY, JJ., agree.