

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CECIL BROWNE,	§
	§
Plaintiff Below-	§ No. 191, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
THRIFTWAY’S MANAGER, JOHN	§ in and for New Castle County
DOE, THRIFTWAY’S SECURITY,	§ C.A. No. 99C-06-069
JOHN DOE,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: June 6, 2003
Decided: July 18, 2003

Before **VEASEY**, Chief Justice, **HOLLAND**, and **STEELE**, Justices.

ORDER

This 18th day of July 2003, upon consideration of the parties’ briefs and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Cecil Browne, filed this appeal from the Superior Court’s entry of judgment as a matter of law in defendant Thriftway’s¹ favor and from the Superior Court’s denial of his motion for new trial. The Superior Court entered judgment in Thriftway’s favor after two days of trial on Browne’s claims of negligence, false imprisonment, malicious prosecution, and

¹ Although Browne has named other parties to the appeal, the record reflects that Browne’s only direct claims in the Superior Court were against Thriftway. Accordingly, we only address Browne’s arguments regarding Thriftway.

emotional distress.² Browne's claims arose out of a March 1998 incident during which Browne alleged that Thriftway's security guard assaulted him in the Thriftway parking lot, dragged Browne back into the store, handcuffed him to a door, and conspired with another Thriftway employee to frame him on a charge of shoplifting.

(2) During the course of pretrial discovery, Thriftway informed Browne that security at its store was provided by an independent company, J.R. Gettier, Inc. Browne sought to amend his complaint to include Gettier as a defendant. The Superior Court initially granted Browne's motion to amend as unopposed but later rescinded the order, among other reasons, because Browne failed to serve the defendants. Despite being given the opportunity to do so, Browne never re-filed his motion to amend the complaint. Accordingly, the only claims Browne presented at trial were against Thriftway.³

(3) The only evidence Browne presented at trial was his own testimony. At the close of Browne's case-in-chief, Thriftway moved for judgment as a matter of law pursuant to Superior Court Civil Rule 50(b). The Superior Court deferred ruling on the motion until it heard all the evidence. To refute Browne's claims of false imprisonment and malicious prosecution,

² Browne's initial complaint also included allegations of kidnapping, lost wages, and violations of his constitutional rights. The Superior Court granted summary judgment on those claims prior to trial. Browne does not appeal from that ruling.

³ Thriftway, however, filed a third-party complaint against Gettier.

Thriftway presented undisputed evidence that the police had arrested Browne for shoplifting,⁴ based on probable cause, as a result of the March 1998 incident at the Thriftway store.⁵ Furthermore, to refute Browne's claims that Thriftway was liable for any negligent or intentional misconduct by Gettier's security guard, Thriftway presented undisputed evidence that Gettier was an independent contractor and that Thriftway exercised no control over how Gettier provided security to the store or how Gettier handled suspected shoplifters.

(4) Third-party defendant Gettier also presented the testimony of its chief financial officer to establish that Gettier was an independent contractor. At the close of all the evidence, the Superior Court granted judgment as a matter of law to Thriftway because Browne had presented no evidence from which a reasonable juror could find Thriftway liable for the alleged tortious conduct of Gettier.⁶ Browne later filed a motion for new trial, which the Superior Court denied.

(5) On appeal, this Court reviews the Superior Court's grant of judgment as a matter of law to determine whether the evidence, viewed in the light most favorable to the non-moving party, raises an issue of material fact for

⁴ The State later dropped the charge on the day of Browne's trial.

⁵ See DEL. CODE ANN. tit. 11, § 840 (d) (providing that a merchant cannot be held civilly liable for detaining a suspected shoplifter based on probable cause).

⁶ See *Fisher v. Townsends, Inc.*, 695 A.2d 53, 59 (Del. 1997) (discussing circumstances under which a "master" may be held liable for tortious conduct of an independent contractor).

consideration by the jury.⁷ The denial of a motion for new trial is reviewed for abuse of discretion.⁸

(6) After careful consideration of the parties' contentions and the record below, we find it manifest that the judgment of the Superior Court should be affirmed. Although the Superior Court gave Browne the opportunity to properly move for an amendment to his complaint, the record reflects that Browne failed to file a proper motion. Thus, Browne's only direct claims at trial were against Thriftway. Even viewing the evidence presented at trial in the light most favorable to Browne, the record supports the Superior Court's conclusion that no reasonable juror could have found Thriftway liable based on the evidence presented.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁷ *Russell v. Kanaga*, 571 A.2d 724, 731 (Del. 1990).

⁸ *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979).