

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THEODORE LAGODMOS,	§
	§ No. 40, 2011
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
HOME DEPOT, INC. and U.S.	§ C.A. No. 09C-04-264
LEISURE/SUN TERRACE, INC.,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: August 12, 2011  
Decided: September 9, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 9<sup>th</sup> day of September 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Theodore Lagodmos, has filed an appeal from the Superior Court’s January 4, 2011 order granting the motion of the defendants-appellees, Home Depot, Inc. and U.S. Leisure/Sun Terrace, Inc., for judgment as a matter of law pursuant to Superior Court Civil Rule 50. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in April 2009, Lagodmos, acting *pro se*, filed a complaint in the Superior Court alleging that he was injured when

a plastic picnic bench manufactured by U.S. Leisure/Sun Terrace, Inc. and offered for sale at the Home Depot in New Castle, Delaware, collapsed when he sat on it. In January 2010, when Lagodmos was unable to produce a medical expert to testify on his behalf, defense counsel filed a motion for summary judgment. The Superior Court denied the motion without prejudice pending a medical examination of Lagodmos by a medical expert designated by the defense. In April 2010, the medical examination took place. The medical expert's report found that Lagodmos had sustained soft tissue injury as a result of his fall at Home Depot, but that his numerous other medical complaints were unrelated to the fall.

(3) By June 2010, Lagodmos had located an attorney who agreed to represent him in reaching a settlement of the case. Counsel for the parties entered into a settlement agreement, the Superior Court was so advised and the July 14, 2010 trial date was removed from the court calendar. In July 2010, Lagodmos filed a motion disavowing the settlement. The Superior Court then re-scheduled the trial for January 4 and 5, 2011.

(4) Prior to trial, defense counsel filed a motion in limine to preclude any claims of product or design defect and a motion for summary judgment on the ground that Lagodmos had failed to designate a medical expert. The Superior Court granted the motion in limine, but permitted trial

to proceed on Lagodmos's personal injury claims, with the limitation that only the medical expert who had examined Lagodmos for the defense could testify. Defense counsel made clear that the expert would not be called on behalf of the defendants. Lagodmos made no arrangements for the expert to testify on his behalf at trial. Following presentation of Lagodmos's case in chief, defense counsel moved for judgment as a matter of law under Rule 50. The Superior Court granted the motion.

(5) In this appeal from the Superior Court's grant of the defense motion for judgment as a matter of law, Lagodmos claims that a) he presented sufficient evidence at trial to permit the jury to find the defendants liable for his injuries; and b) defense counsel and the Superior Court conspired to thwart his efforts to obtain compensation for his injuries.

(6) In Delaware, in order to prevail in a negligence action, a plaintiff must prove by a preponderance of the evidence that the defendant's actions breached a duty of care in a way that proximately caused injury to him.<sup>1</sup> In a claim for bodily injuries, the causal connection between the defendant's alleged negligent conduct and the plaintiff's alleged injuries must be proven by the direct testimony of a competent medical expert.<sup>2</sup> Our

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<sup>1</sup> *Russell v. K-Mart Corp.*, 761 A.2d 1, 5 (Del. 2000).

<sup>2</sup> *Money v. Manville Corp.*, 596 A.2d 1372, 1376-77 (Del. 1991).

review of the trial transcript in this case reveals that Lagodmos, who was the sole witness in his case, failed to present any such evidence.

(7) Under Rule 50, the Superior Court may grant a motion for judgment as a matter of law if “a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue . . . .” Because there was no legally sufficient evidentiary basis for the jury to find for Lagodmos, the Superior Court’s grant of the defense motion for judgment as a matter of law was proper. Finally, seeing absolutely no basis in the record for Lagodmos’s second claim of impropriety on the part of either defense counsel or the Superior Court, we summarily reject that claim.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice