

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VICTORIA PESTA,	§
	§ No. 210, 2005
Plaintiff Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ C.A. No. 03C-04-294
GAIL WARREN and	§
GARY WARREN,	§
	§
Defendants Below,	§
Appellee.	§

Submitted: November 10, 2005

Decided: December 14, 2005

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 14th day of December 2005, it appears to the Court that:

1) The plaintiff-appellant, Victoria Pesta, appeals from the Superior Court's denial of her motion for a new trial on her personal injury claim. Pesta was injured while descending a staircase in an apartment complex owned by the defendants-appellees, Gail Warren and Gary Warren. Pesta argues that the Superior Court abused its discretion in refusing to grant a new trial for two reasons: first, the jury verdict was logically inconsistent with the jury instruction, indicating that the jury was either confused or that the instructions were deficient; and second, the jury verdict was against the

great weight of the evidence. We have concluded that the judgment of the Superior Court must be affirmed.

2) Late in the evening on June 26, 2001, Pesta and Deborah Colburne were delivering household items to Regina Sheets at her second-floor apartment on the Warrens' property. Both of them ascended the steps without incident. After delivering some boxes, Pesta began to descend the staircase. Pesta claimed that the second step pivoted and she fell forward down the entire staircase, twisting her ankle as it became wedged between the steps.

3) Pesta sustained an ankle fracture that was treated soon after the accident. Six months later, she discovered that she had torn a ligament in her knee. Almost three years later, a partial dislocation in her shoulder joint was diagnosed. Dr. Kalman, Pesta's physician, testified at trial that all these injuries were a result of her fall down the staircase.

4) During a jury trial on her personal injury claim, Pesta introduced photographs of the staircase. None of those photographs, however, depicted the second step as loose. The photographs did show that the handrail was in disrepair. Pesta was the only witness to testify that the second step caused her fall. Pesta did not call either Colburne or Sheets as a trial witness to corroborate her testimony.

5) According to Pesta, the defendants did not provide any alternate explanation for her fall. Although the defendants conceded that some of Pesta's injuries were caused by the fall, they denied any negligence. They also denied that the allegedly defective second step was the proximate cause of Pesta's fall. Mr. Warren testified that he used that staircase during the month before the accident twice without incident, and that he never received any report of a broken step.

6) At the close of the evidence, the trial judge gave the following instructions to the jury:

Negligence

Victoria Pesta alleges that Gail and Gary Warren failed to reasonably inspect and discover a dangerous condition on the premises. An owner who has exclusive control over premises must inspect the premises and discover dangerous conditions that would be apparent to a person conducting a prudent inspection. Ms. Pesta is entitled to expect that the defendants will take reasonable care to know the actual condition of their premises and, if a dangerous condition is discovered, to either make it reasonably safe by repair or to warn of the dangerous condition and the risk involved. If you find that the defendants failed to reasonably inspect the premises, failed to discover a dangerous condition that should have been discovered, or failed to warn of that condition, then you may find the defendants were negligent.

Proximate Cause

A party's negligence, by itself, is not enough to impose legal responsibility on that party. Something more is needed: the party's negligence must be shown by a preponderance of the evidence to be a proximate cause of the accident. Proximate cause is a cause that directly produces the harm, and but for which the harm would not have occurred. A proximate cause

brings about, or helps to bring about, the accident, and must have been necessary to the result.

7) The jury found that although the Warrens were negligent, their negligence was not the proximate cause of Pesta's injuries. Pesta moved for a new trial, on the basis that the jury verdict was logically inconsistent with the jury instructions. Pesta argued that the jury was either confused or that the instructions were deficient. Pesta also claimed that the jury verdict was against the great weight of the evidence.

8) The trial judge denied Pesta's new trial motion on the grounds that there was no jury confusion over the law and the evidence supported the jury's decision. The trial judge reasoned that because Pesta's credibility was repeatedly challenged during the trial, the jury apparently rejected Pesta's testimony that the loose second step had caused her to fall.

9) This Court views the Superior Court's denial of a motion for a new trial for abuse of discretion.¹ The trial judge's decision will be reversed on appeal only if it "exceeded the bounds of reason"² or was arbitrary and capricious.³ The denial of a motion for a new trial will constitute an abuse of discretion if the jury verdict was against the great weight of the evidence,

¹ *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979), citing *Chavin v. Cope*, 243 A.2d 694, 695 (Del. 1968).

² *Peters v. Gelb*, 314 A.2d 901, 903 (Del. 1973).

³ *Chavin v. Cope*, 243 A.2d at 695.

no reasonable jury could have reached the result, and the denial was untenable and unreasonable.⁴

10) Pesta's first claim on appeal is that the jury verdict was inconsistent with the jury instructions on negligence and proximate cause. On appeal, this Court does not inquire into the specific wording of jury instructions, but reviews whether the instructions, taken as a whole, correctly stated the law and was "not so confusing or inaccurate as to undermine the jury's ability to reach a verdict."⁵

11) Pesta challenges the Superior Court's statement that the jury found that the Warrens had been negligent in "failing to maintain their property"⁶ because the jury negligence instruction charged the jury to find whether a dangerous condition existed. If that was a misstatement, it is harmless. The jury's verdict of negligence was not inconsistent with the instructions for two reasons: first, the instructions in their entirety, correctly stated the law; and second, there was sufficient evidence to support the jury's finding that a dangerous condition did indeed exist, specifically from the pictures showing the railing in disrepair. From that evidence, the jury

⁴ *Storey v. Camper*, 401 A.2d at 465; *Luskin v. Stampone*, 386 A.2d 1137, 1138 (Del. 1978).

⁵ *Cabrera v. State*, 747 A.2d 543, 543 (Del. 2000). *See also Culver v. Bennett*, 588 A.2d 1094, 1096 (Del. 1991);

⁶ *Pesta v. Warren*, No. Civ. A. 03C-04-294-SCD, 2005 WL 400578 at *2 (Del. Super. Ct. Jan. 7, 2005).

could reasonably have inferred that the Warrens had negligently failed to maintain their property.

12) The jury verdict on proximate cause was also consistent with the proximate cause instruction. That instruction accurately stated the law, because Delaware follows the “but for” rule of proximate causation.⁷ In Delaware, a finding of negligence does not automatically require a finding of proximate cause,⁸ which is essentially what Pesta is arguing in this appeal.

13) Pesta submits that this Court should follow the Superior Court decision in *Savignac v. Canteen Corporation*.⁹ In that case, the plaintiff was injured after slipping in a puddle of water on the defendant’s property. The *Savignac* plaintiff, however, presented witnesses who testified at trial that the puddle of water was what caused her to slip. In this case, Pesta herself was the only witness who testified that the faulty step caused her to fall. Pesta did not provide corroborating testimony, nor did her photographs of the stairway show that the step was defective. It was reasonable, therefore, for the trial judge to conclude that although the jury found the Warrens

⁷ *Culver v. Bennett*, 588 A.2d 1094, 1097 (Del. 1991) (defining the “but for” rule as “[t]he defendant’s conduct is a cause of the event if the event would not have occurred but for that conduct; conversely, the defendant’s conduct is not a cause of the event, if the event would have occurred without it”).

⁸ *Wilmington Country Club v. Cowee*, 747 A.2d 1087, 1097 (Del. 2000).

⁹ *Savignac v. Canteen Corporation*, No. 96C-02-104-JOH, 1999 WL 517408 (Del. Super. Ct. Apr. 6, 1999).

negligent, the jury doubted the credibility of Pesta's version of the events and found that she fell for reasons unrelated to the Warrens' negligence.

14) Pesta's second claim on appeal is that the jury's verdict was against the great weight of the evidence, and therefore, it was an abuse of discretion for the trial judge to deny her motion for a new trial. The record reflects that the trial judge did not abuse any discretion because the evidence supported the jury verdict. Pesta testified that the defective step caused her to fall. However, the Warrens contradicted her claim that the second step was defective and challenged her credibility throughout the trial. Pesta's photographs did not show that the second step was defective.

15) It is the exclusive province of the jury, as the trier of fact, to evaluate the credibility of the witnesses. The jury is entitled to base its verdict on the testimony that it believes to be credible. The weight of the non-testimonial evidence does not conflict with the jury's verdict.

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

BY THE COURT:

/s/ Randy J. Holland
Justice