Third District Court of Appeal

State of Florida

Opinion filed April 15, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-48
Lower Tribunal No. 14-22236

The Graham Companies, etc.,
Appellant,

vs.

Jason Amado,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Rodney Smith, Judge.

Chartwell Law, and Mitchell L. Lundeen, Marcus G. Mahfood and Anaeli C. Petisco-Rojas, for appellant.

The Law Offices of Robert Parks, P.L. and Gabriel A. Garay; Philip D. Parrish, P.A., and Philip D. Parrish, for appellee.

Before SALTER, HENDON, and LOBREE, JJ.

HENDON, J.

The Graham Companies, d/b/a St. Tropez Apartments ("Graham") appeals from an adverse final judgment in favor of Jason Amado ("Amado"). We affirm.

Amado's amended complaint against Graham alleged two counts for negligence and negligent repair, seeking damages for injuries that occurred when he slipped in the apartment's bathtub. The record on appeal indicates that prior to Amado moving into the unit, Graham, the owner, had the unit inspected by its maintenance team. No defects or problems with the plumbing were discovered at that time. A week after moving in, Amado's wife sent Graham a detailed checklist of items to be addressed, one of which indicated that the bathtub was draining slowly. Graham sent a maintenance person to address that item, who afterward noted that the bathtub drains were draining properly. During the trial, Amado and his wife testified that they did not notice any drainage problem in the tub after the initial service call until Amado slipped a month later. Amado testified that while showering, the water failed to drain properly and rose up over his feet. When he reached for his towel, he slipped and hit his back against the porcelain soap dish, which broke off, impaling him on the jagged porcelain. Amado sustained a deep cut requiring thirty stitches, a hospital stay and subsequent therapy. After the incident, Graham called in a professional plumber who noted that the drain was functioning properly. The drain has not clogged since then, four years on.

Graham raises two issues in this appeal. First, did the trial court err when it denied Graham's motion for a directed verdict at trial? Second, did the trial court err by failing to grant Graham's motion for a new trial because the jury verdict was allegedly against the manifest weight of the evidence? We answer both in the negative.

Graham's motion for directed verdict

The denial of a directed verdict is reviewed *de novo*, viewing all evidence adduced at trial and every reasonable inference from that evidence in the light most favorable to the non-moving party. Int'l Sec. Mgmt. Grp., Inc. v. Rolland, 271 So. 3d 33, 44 (Fla. 3d DCA 2018) (citing Northrop Grumman Sys. Corp. v. Britt, 241 So. 3d 208, 213 (Fla. 3d DCA 2017)). When determining the propriety of granting a directed verdict, an appellate court must determine whether the facts, when viewed in the light most favorable to the non-moving party, provided a prima facie case in support of its cause(s) of action. See Lipsig v. Ramlawi, 760 So. 2d 170, 175 (Fla. 3d DCA 2000) (citing Houghton v. Bond, 680 So. 2d 514, 522 (Fla. 1st DCA 1996)) (holding that "[a] motion for directed verdict should not be granted unless the trial court, after viewing the evidence in the light most favorable to the non-moving party, determines that no reasonable jury could render a verdict for the non-moving party"); see also Woods v. Winn Dixie Stores, Inc., 621 So. 2d 710, 711 (Fla. 3d DCA 1993).

Viewing the record on appeal and evidence presented below in the light most favorable to Amado, the non-moving party, we conclude the trial court correctly denied Graham's motion for a directed verdict. In the context of a landlord/tenant relationship, after a tenant takes possession of a residential dwelling unit, a landlord has a continuing statutory duty to maintain the common areas in a safe condition and to repair dangerous, defective conditions upon notice of their existence, unless otherwise agreed to by the tenant. See § 83.51(2)(a) 3., Fla. Stat. (2013).[1]

With that in mind, the issues to be resolved by the trier of fact included whether Graham breached this statute by failing to clear the drains properly; whether the injuries suffered by Amado are the type that this statute was intended to prevent; and whether Graham's alleged breach of the statute was the proximate cause of Amado's injuries. Smith v. Grove Apartments, LLC, 976 So. 2d 582, 586 (Fla. 3d DCA 2007); Bosket v. Broward Cty. Hous. Auth., 676 So. 2d 72, 74 (Fla. 4th DCA 1996) (holding whether appellee breached these duties of reasonable care

[1] See Mansur v. Eubanks, 401 So. 2d 1328, 1330 (Fla. 1981). Mansur stands for the proposition that the owner has a duty "to transfer a reasonably safe dwelling unit to the tenant [and] ... to exercise reasonable care to repair dangerous, defective conditions upon notice of their existence by the tenant," unless the tenant waived such defects. The appellate court reversed and remanded, but this was a from a grant of a summary judgment: in rendering summary judgment the trial court recited that there were no genuine issues of material fact but did not indicate what principle of law entitled the defendants to judgment in their favor. Because disputed matters were never litigated due to the summary judgment, the DCA reversed and remanded for further proceedings.

was for the jury to decide). The Florida Supreme Court has stated that proximate causation is established "if prudent human foresight would lead one to expect that similar harm is likely to be substantially caused by the specific act or omission in question. . . . However, it is immaterial that the defendant could not foresee the *precise* manner in which the injury occurred or its *exact* extent." McCain v. Fla. Power Corp., 593 So. 2d 500, 503 (Fla. 1992) (citation omitted) (emphasis added). Additionally, proximate causation does not require an injury to result directly from the tortfeasor's act or omission. Rather, proximate causation exists where the injury "results as a consequence so natural and ordinary as to be regarded as probable." Bosket, 676 So. 2d at 74 (citing Bennett M. Lifter, Inc., 480 So. 2d at 1339–40). "[W]here reasonable persons could differ as to whether the facts establish proximate causation—i.e., whether the specific injury was genuinely foreseeable or merely an improbable freak—then the resolution of the issue must be left to the fact-finder. The judge is free to take this matter from the fact-finder only where the facts are unequivocal, such as where the evidence supports no more than a single reasonable inference." McCain, 593 So. 2d at 504 (citations omitted).

Further, in Pearce v. Deschesne, 932 So. 2d 640, 642 (Fla. 4th DCA 2006), the court held that the trial court erred by granting a directed verdict for the appellee landlord,

> From the evidence produced during appellant's case, reasonable persons could differ in deciding whether it was foreseeable that a fire

> and resulting injuries were likely to be substantially caused by appellee's failure to provide readable stove knobs and properly maintain the fire extinguisher. Although the failure to replace the knobs and/or maintain the fire extinguisher may not have directly caused the fire and appellant's injuries, **a jury could reasonably conclude that the fire and resulting injuries were a foreseeable and probable consequence of the failure to replace the unreadable knobs and/or maintain the fire extinguisher. Therefore, the jury should have been permitted to decide this question.**

(emphasis supplied).

In negligence cases, motions for directed verdict should be treated with special caution because it is the function of the jury to weigh and evaluate the evidence. See Jacobs v. Westgate, 766 So. 2d 1175, 1179 (Fla. 3d DCA 2000); Pascale v. Fed. Express Corp., 656 So. 2d 1351, 1353 (Fla. 4th DCA 1995). It is only where reasonable persons can come to but one possible conclusion that issues of negligence become questions of law that should not be submitted to the jury. Blake v. Hi Lu Corp., 781 So. 2d 1122, 1123–24 (Fla. 3d DCA 2001); see also Petroleum Carrier Corp. v. Gates, 330 So. 2d 751, 752 (Fla. 1st DCA 1976) ("Because of the very nature of the comparative negligence doctrine, situations in which directed verdicts will be appropriate will occur with even less frequency, particularly in cases where the plaintiff's own negligence is in issue. We do not here express an opinion as to whether a directed verdict should *ever* be granted where the negligence of both parties is at issue. We do, however, believe that such cases will be extremely rare."); Howell v. Winkle, 866 So. 2d 192, 195 (Fla. 1st DCA 2004)

(holding that when "there is evidence supporting an inference of comparative fault on the part of the plaintiff, issue of comparative negligence should be submitted to jury").

Graham cites to Cooper Hotel Servs., Inc. v. MacFarland, 662 So. 2d 710, 713 (Fla. 2d DCA 1995), a case that is very similar to Amado's in every aspect but one. In MacFarland, MacFarland showed only that she safely stepped into the tub while the water was running, washed the front of her body, and fell upon turning around. Viewed in the light most favorable to her, such evidence shows only that at some point during the course of her shower, the tub became slippery. The evidence, however, did not establish why it became slippery. In Amado's case, the facts indicate that the tub became slippery because the soapy water backed up from the clogged drain.

Whether Graham negligently repaired the drainage problem initially such that a backup later occurred was an issue properly sent to the jury. The facts show that the drain did clog once again, unfortunately while Amado was bathing. Reasonable people could differ whether there was sufficient notice and negligent repair, and thus any subsequent connection between the clogged drain and the incident. In this case, the trial court correctly denied Graham's motion for a directed verdict and put these matters to the jury.

Graham's motion for new trial

Our standard of review on denial of a motion for new trial is whether the trial court abused its discretion. If a review of the record establishes that conflicting evidence was presented at trial, an appellate court cannot conclude that a trial court abused its discretion in denying the motion. 50 State Sec. Serv., Inc. v. Giangrandi, 132 So. 3d 1128, 1133 (Fla. 3d DCA 2013); see also Brown v. Estate of Stuckey, 749 So. 2d 490 (Fla. 1999). In Brown, the Supreme Court articulated the following test for determining whether the trial court abused its discretion:

> [A]n appellate court must recognize the broad discretionary authority of the trial judge and apply the reasonableness test to determine whether the trial judge committed an abuse of discretion. If an appellate court determines that reasonable persons could differ as to the propriety of the action taken by the trial court, there can be no finding of an abuse of discretion.

Id. at 497–98.

Graham argues that the verdict was against the manifest weight of the evidence. As instructed by Giangrandi, a motion for new trial based on the claim that a jury verdict is against the manifest weight of the evidence is somewhat unique, in that the trial court is not limited to merely reviewing the record to determine if the verdict is supported by competent, substantial evidence. Instead, the trial court must consider its contact with the trial and its "observation of the behavior of those upon whose testimony the finding of fact must be based." Giangrandi, 132 So. 3d at 1133. In this regard, the trial judge has "broad discretion" to engage in some limited reweighing of the evidence to determine if the verdict was so contrary to the weight

of the evidence that it constituted a "miscarriage of justice" or "unjust verdict." Id. The rationale for the trial court's discretion in this regard is that it supplies "the only check against a jury that has reached an unjust decision on the facts." In doing so, however, "[t]he role of the trial judge is not to substitute his or her own verdict for that of the jury, but to avoid what, in the judge's trained and experienced judgment, is an unjust verdict." Id.

However, when an appellate court reviews the denial of a motion for a new trial, it cannot engage in any reweighing of the evidence. In other words, an appellate court reviewing the denial of a motion for new trial is not reviewing whether or not the verdict was against the manifest weight of the evidence. It is, instead, reviewing only whether the trial court abused its discretion in denying a new trial. Id. (citations omitted); see Dewitt v. Maruhachi Ceramics of Am., Inc., 770 So. 2d 709, 711 (Fla. 5th DCA 2000) (finding that "evidence must be clear and obvious, and not conflicting" in order for appellate court to determine that trial court abused its discretion in denying a new trial); Rosario–Paredes v. J.C. Wrecker Serv., 975 So. 2d 1205, 1207 (Fla. 5th DCA 2008) ("Reversal of a jury verdict is appropriate only in the absence of conflicting evidence, when there is no rational basis in the evidence to support the verdict.").

Applying this standard, we conclude the trial court did not abuse its discretion by denying Graham's motion for new trial. There was enough evidence to put the

negligence issue and comparative negligence issue to the jury. When apportionment of fault between the plaintiff and a defendant under comparative negligence is a contested issue, it is the trier of fact that must do the apportioning, not the judge. On the record before us, the jury was properly instructed on comparative negligence, and attributed zero liability to Amado. They could have found that Amado did not take any precautions to skid-proof the bathtub and found him comparatively liable, but the jury did not, and this is not our call. Graham does not argue that it would have introduced any new evidence that could or would alter the outcome of a new trial. No party has argued that the jury was not properly instructed on the elements of negligence and comparative negligence. "If reasonable people could differ as to the propriety of the court's ruling, then the abuse of discretion standard has not been met." Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980).

Affirmed.