

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-001422-MR

KENNETH TURNER

APPELLANT

V. APPEAL FROM CARROLL CIRCUIT COURT  
HONORABLE STEPHEN L. BATES, JUDGE  
ACTION NO. 94-CI-00122

BARRY MAXWELL; DOUG MANLEY;  
KEITH EICK; and PIERCEFIELD  
CORPORATION, INC.

APPELLEES

AND

NO. 1999-CA-001471-MR

FIRST FINANCIAL INSURANCE COMPANY

APPELLANT

V. APPEAL FROM CARROLL CIRCUIT COURT  
HONORABLE STEPHEN L. BATES, JUDGE  
ACTION NO. 94-CI-00122

BARRY MAXWELL; KENNETH TURNER;  
DOUG MANLEY; KEITH EICK; and  
PIERCEFIELD CORPORATION, INC.

APPELLEES

### OPINION AFFIRMING

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BEFORE: GUDGEL, Chief Judge; EMBERTON and SCHRODER, Judges.

GUDGEL, CHIEF JUDGE: These appeals stem from a judgment entered by the Carroll Circuit Court pursuant to a jury verdict in favor

of the defendants in a personal injury action. For the reasons stated hereafter, we affirm.

Appellee Piercefield Corporation, the framing contractor for a house under construction, subcontracted with appellee Barry Maxwell to provide labor for the job. Maxwell in turn hired appellees Keith Eick and Doug Manley to assist him. Shortly before the framing work was completed, either the homeowner or the general contractor, neither of whom is a party to this action, asked appellant's brother to perform some preliminary steps relating to his subcontract to install the heating and air conditioning systems in the home.

Although appellant was not employed by his brother, he agreed to accompany him to the job site. At his brother's request, appellant walked down the temporarily-installed stairway from the first floor to the basement, without incident, in order to check on the location of a gas line. The stairway collapsed as appellant reached the top step on his return to the first floor, causing him to fall to the basement floor and sustain multiple injuries. This personal injury action followed, and First Financial Insurance Company eventually filed an intervening complaint. The matter ended with the jury finding in favor of appellees. Hence, these appeals.

Appellant's sole contention in Appeal No. 1999-CA-001422-MR is that he "was entitled to a favorable ruling on the issue of liability as a matter of law." He describes his "three efforts to obtain the trial court's favorable ruling on the issue of the defendants' liability as a matter of law" as follows:

At the close of his evidence, he moved for a directed verdict. He submitted proposed jury instructions which were made part of the record that set forth his position of liability as a matter of law. Lastly he moved, timely, for a judgment notwithstanding [sic] the verdict. The two motions were overruled and the instruction not used by the court. (Citations omitted.)

CR 50.01 permits a motion for a directed verdict to be made "at the close of the evidence offered by an opponent." The Kentucky Supreme Court recently reaffirmed that a motion for a directed verdict, made at the close of a plaintiff's case, is insufficient to preserve any error unless that motion is renewed at the close of all the evidence. Baker v. Commonwealth, Ky., 973 S.W.2d 54, 55 (1998). Further, a party may move for a judgment notwithstanding the verdict only if that party "moved for a directed verdict at the close of all the evidence." CR 50.02. See Myers v. City of Louisville, Ky. App., 590 S.W.2d 348 (1979).

Here, although appellant made a motion for a directed verdict at the close of his own evidence, our review of the record shows that he did not renew the motion at the close of all the evidence. Hence, the issue as to the failure to grant a directed verdict was not preserved for review. Moreover, in the absence of a renewal of his motion for a directed verdict, appellant was not entitled to make a motion for a judgment notwithstanding the verdict. Further, contrary to appellant's suggestion, the issue as to the failure to direct a verdict was not preserved for review by his tendered jury instruction, which recited that the court found "as a matter of law" that appellees

knew, before the accident, of the condition of the stairs which collapsed with plaintiff, Kenneth Turner, and that they failed to exercise ordinary care for the safety of persons, including plaintiff, Kenneth Turner, and that such failure on their part was a substantial factor in causing the accident.

Indeed, as the court never made such a finding, there was no basis for giving such an instruction.

Finally, we also note that Appeal No. 1999-CA-001471-MR was filed by First Financial Insurance Company as a protective appeal in the event we found it appropriate to reverse the court's judgment in Appeal No. 1999-CA-001422-MR. Because we have affirmed that judgment, it is clearly unnecessary for us to address the issues raised in First Financial's protective appeal.

The court's judgment is affirmed.

ALL CONCUR.

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