RENDERED: MARCH 29, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000495-MR
AND
NO. 2018-CA-000725-MR

DON E. BALDRIDGE, JR., INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF ASIAH MELIEGH MARIE BALDRIDGE; AND EVA M. ADAMS — APPELLANTS

v.

APPEALS FROM PENDLETON CIRCUIT COURT
HONORABLE JAY DELANEY, JUDGE
ACTION NO. 13-CI-00058

JEFFREY DICKEN AND TALMADGE HOWARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, LAMBERT AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Don E. Baldridge, Jr., Individually and as Administrator of the Estate of Asiah Meliegh Marie Baldridge ("Appellant") appeals from an opinion and order of the Pendleton Circuit Court granting

summary judgment in favor of Jeffrey Dicken ("Appellee"). Appellant argues that the Circuit Court improperly failed to apply Kentucky Revised Statute ("KRS") 381.770 ("Abatement of Nuisance") to the facts, and erred in failing to conclude that Appellee did not have control over a parcel of real property where an accident resulting in death occurred. For the reasons addressed below, we find no error and AFFIRM the opinion and order on appeal.

Facts and Procedural History

Appellee owns a parcel of real property situated in Pendleton County, Kentucky. By way of an oral agreement, Appellee rented the property to Talmadge Howard for $300 per month. Howard used the property as a "hobby shop," and situated on it were a trailer, garage, machinery, fire wood, car parts and other items. On March 26, 2012, Howard's friend Don Baldridge went to the property to inquire about an automobile that he believed Howard was selling. Baldridge had previously visited the property approximately 10 to 15 times to purchase car parts from a prior tenant. Baldridge would later testify that he was aware of various hazards on the property including boards and steel propped up against the garage. Appellee lives near the property at issue, and knew how Howard was using the property, but had not visited the property for about two months prior to the date at issue.

When Appellant arrived at the property, he was accompanied by his three-year-old daughter, Asiah Baldridge ("Asiah"), and his friend, Mikey Wilhoit. According to the record, Appellant asked Wilhoit and Asiah to stay in the car while he got out to see if Howard was there. Appellant found Howard and began a conversation. Shortly thereafter, Wilhoit and Asiah exited the vehicle, and Asiah stood next to Appellant about 18 inches from the trailer. While standing there, a metal I-beam fell without warning from the top of the trailer and struck Appellant and Asiah. The falling I-beam seriously injured Asiah, and an ambulance was summoned. Asiah died of her injuries before the ambulance arrived.

Appellant, individually and as administrator of Asiah's estate, together with Asiah's mother, filed the instant action in Pendleton Circuit Court against Appellee and Howard alleging negligence, loss of consortium and failure to abate a nuisance pursuant to KRS 381.770. Discovery followed, after which Appellee filed a motion for summary judgment. In support of the Motion, Appellee argued that: 1) he had no liability as landlord because Howard was in complete control of the property; 2) the I-beam was an open and obvious danger; 3) Asiah was a licensee and not an invitee; and 4) Appellee could not be liable for negligence per se under KRS 381.770, because any violation of the statute was not a substantial factor in Asiah's death.

On March 6, 2018, the Pendleton Circuit Court rendered an Opinion and order granting summary judgment in favor of Appellee. In so doing, the Court cited the general rule in Kentucky that third-party injuries on rented premises create a cause of action, if any, as against the lessee and not the lessor. The Court was not persuaded that KRS 381.770 created liability on behalf of the Appellee, and ruled that any alleged violation of the statute was not the cause of Asiah's death.

On May 31, 2017, Howard filed a notice that he filed a bankruptcy petition in United States Bankruptcy Court. On April 4, 2018, the Pendleton Circuit Court rendered an order dismissing Howard from the action. This appeal followed.

Arguments and Analysis

Appellant argues that Pendleton Circuit Court improperly failed to conclude that the Abatement of Nuisance statute, KRS 381.770, was designed to prevent conditions that endanger safety and health exactly like the I-beam perched on a junked trailer frame which killed Asiah. He also contends that the trial court erred in holding that Appellee did not have control of the property. Appellant maintains that Howard used the property as a place to store junked vehicles, boats, motor homes, campers and other scrap metal and building materials, and to tinker with them. According to Appellant, Howard would either sell scrap material, give

it to others, and otherwise repair, sell or trade what he had accumulated. Appellant asserts that though Howard denied having a scrap business, he did indeed operate such a business. Accordingly, Appellant maintains that this type of business usage created the kind of dangerous conditions that KRS 381.770 was designed to prevent.

Appellant acknowledges that KRS Chapter 381 does not define a public nuisance. Citing KRS 241.010(46)[1], however, Appellant asserts that a public nuisance is a "condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by a community or neighborhood or by any considerable number of persons[.]" Appellant seeks to apply common law principles of negligence *per se* to the public nuisance statutes to hold Appellee culpable for Asiah's death, arguing that for negligence *per se* to apply, the violation must be a substantial factor in causing the injury and the violation must be one intended to prevent the specific type of occurrence.[2] While acknowledging that it was Howard who maintained the scrap yard and dealt in the selling and trading of scrap material, Appellant argues that Appellee is culpable because he "knew that this property was used to store junk." In sum, Appellant maintains that

[1] This provision went into effect some six years after the accident at issue.
[2] In support of his negligence *per se* argument, Appellant cites *Lewis v. B&R Corp.*, 56 S.W.3d 432, 438 (Ky. App. 2001).

the circuit court improperly failed to conclude that Appellee is subject to liability through the application of negligence *per se* to KRS 381.770.

The General Assembly repealed KRS 381.770 effective January 1, 2017. The statute was in effect at the time of Asiah's death in 2012, however, and stated in pertinent part that,

> Except as provided in subsection (3) of this section, it shall be unlawful for the owner, occupant or person having control or management of any land within a city, county, consolidated local government, urban county, or unincorporated area to permit a public nuisance, health hazard, or source of filth to develop through the accumulation of:
>
> (a) Junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials, excluding inoperative farm equipment;
>
> (b) One (1) or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or nonoperative and which are not inhabited;
>
> (c) Rubbish; or
>
> (d) The excessive growth of weeds or grass.

The question for our consideration is whether the Pendleton Circuit Court properly determined that KRS 381.770 cannot be applied to Appellee to support a finding of negligence *per se*. As noted by the trial court, we must first recognize the "long line of cases in this Commonwealth hold[ing] that when a third person is injured on rented premises his cause of action, except for certain

situations, lies against the tenant rather than the landlord." *Rogers v. Redmond*, 727 S.W.2d 874, 875 (Ky. App. 1987). A landlord who puts a tenant in full possession and control of the premises without knowledge of latent defects will not, in the absence of a statute, be liable for personal injuries sustained by reason of a defect on the premises. *Starns v. Lancaster*, 553 S.W.2d 696, 697 (Ky. App. 1977).

In the matter at bar, the record reveals that the I-beam which fell on Asiah had only been situated at the spot from which it fell for at most a few hours. It cannot, therefore, reasonably be characterized as a latent defect on the premises of which Appellee had knowledge or control. Further, we do not find persuasive Appellant's argument that liability for negligence *per se* may be imposed on the Appellee under KRS 381.770. As noted by the trial court, a panel of this Court has held that, "[n]ot all statutory violations result in liability for that violation. The violation must be a substantial factor in causing the injury and the violation must be one intended to prevent the specific type of occurrence before liability can attach." *Lewis*, 56 S.W.3d at 438. The Pendleton Circuit Court determined that the alleged violations of KRS 381.770 were not the cause of Asiah's death, and we find no error in this conclusion. The precarious placement of the I-beam occurred at most within hours before the tragic accident, and was not a general condition of

the property. As such, Appellee's alleged violation of KRS 381.770, if any, was not the cause of Asiah's death.

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Kentucky Rule of Civil Procedure (CR) 56.03. "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Id*. "Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact." *Id.* Finally, "[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996).

Conclusion

When viewing the record in a light most favorable to Appellant and resolving all doubts in his favor, we conclude that there are no genuine issues of material fact and that the Appellee is entitled to a judgment as a matter of law. Appellant's negligence *per se* argument fails because the alleged violation of KRS 381.770 was not the cause of Asiah's death. Accordingly, we find no error and AFFIRM the opinion and order of the Pendleton Circuit Court.

ALL CONCUR.

BRIEFS FOR ALL APPELLANTS:

Christopher D. Roach
Covington, Kentucky

BRIEF FOR APPELLEE JEFFREY DICKEN:

Scott Guenther
Covington, Kentucky