

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018CA1594

SYLVIA COLE

VERSUS

NICHOLLS PLAZA AND UNITED FIRE AND  
CASUALTY COMPANY

Judgment Rendered: May 31, 2019

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Appealed from the 17<sup>th</sup> Judicial District Court  
In and for the Parish of Lafourche  
State of Louisiana  
Docket No. 128444, Div. B

The Honorable Judge Steven M. Miller Presiding

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BEFORE: WELCH, CHUTZ, AND LANIER, JJ

*Welch J. concurs without reasons,*

## **LANIER, J.**

The plaintiff/appellant, Sylvia Cole, appeals a judgment of the Seventeenth Judicial District Court rendered in favor of the defendants/appellees, United Fire & Indemnity Company (“United Fire”) and Gretchen K. Sternfels d/b/a Nicholls Plaza (collectively “Nicholls Plaza”), which dismissed Ms. Cole’s petition for damages. For the following reasons, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On March 20, 2015, Ms. Cole went to the Union National Insurance Company office located at Nicholls Plaza in Thibodaux to pay her insurance premium, as she had done several times before. It was Ms. Cole’s routine to park right in front of the office, but since there were no available parking spaces near the office on that day, Ms. Cole had to park her car some distance away from the office. While walking on the concrete walkway toward the office, Ms. Cole allegedly tripped on an uneven portion of the concrete walkway, falling on her hands and knees. (R. 9, 461) Ms. Cole claimed to be in “excruciating” pain immediately after her fall, but drove herself to the Thibodaux Regional Medical Center Emergency Room where she was treated for injuries to her right knee and hands.

Ms. Cole filed a petition for damages on October 14, 2015, naming Nicholls Plaza and its insurer United Fire as defendants. Ms. Cole claimed in her petition that the defendants were liable for her injuries, medical expenses, pain and suffering, lost wages, disability, loss of lifestyle, and other related damages since Nicholls Plaza failed to maintain the walkway in a safe condition and/or failed to warn of any hazardous condition of the walkway.

A bench trial on the merits was held on May 29, 30, and June 19, 2018. On June 19, 2018, the trial court rendered an oral ruling with detailed reasons. On

July 25, 2018, the trial court signed a judgment in favor of the defendants dismissing the matter. In that judgment, the trial court briefly explained that it had found that the walkway in question was not unreasonably dangerous and did not present a hazard. It is from that judgment that Ms. Cole has taken the instant appeal.

### **ASSIGNMENTS OF ERROR**

Ms. Cole makes two assignments of error:

1. The trial court erred by finding that the unmarked three-fourths inch abrupt vertical concrete edge located in the Nicholls Plaza walkway was not the cause of Ms. Cole's fall.
2. The trial court erred by finding the unmarked three-fourths inch abrupt vertical concrete edge located in the Nicholls Plaza walkway was not a trip hazard and thus not unreasonably dangerous.

### **STANDARD OF REVIEW**

In all civil cases, the appropriate standard for appellate review of factual determinations is the manifest error-clearly wrong standard, which precludes the setting aside of a trial court's finding of fact unless that finding is clearly wrong in light of the record reviewed in its entirety. Thus, a reviewing court may not merely decide if it would have found the facts of the case differently. *Hayes Fund for First United Methodist Church of Welsh, LLC v. Kerr-McGee Rocky Mountain, LLC*, 2014-2592 (La. 12/8/15), 193 So.3d 1110, 1115. Rather, in reversing a trial court's factual conclusions with regard to causation, the appellate court must satisfy a two-step process based on the record as a whole: there must be no reasonable factual basis for the trial court's conclusion, and the finding must be clearly wrong. *Stobart v. State through Dept. of Transp. and Development*, 617 So.2d 880, 882 (La. 1993).

This test requires a reviewing court to do more than simply review the record for some evidence, which supports or controverts the trial court's findings. The court must review the entire record to determine whether the trial court's finding was clearly wrong or manifestly erroneous. *Hayes Fund for First United Methodist Church of Welsh, LLC*, 193 So.3d at 1116. The issue to be resolved on review is not whether the judge or jury was right or wrong, but whether the judge's or jury's factfinding conclusion was a reasonable one. *Stobart*, 617 So.2d at 882.

## DISCUSSION

Louisiana Civil Code article 2317.1 states, in pertinent part:

The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care.

Similarly, La. C.C. art. 2322 states, in pertinent part:

The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice or defect in its original construction. However, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known of the vice or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care.

Using the precepts of the aforementioned articles and the evidence submitted at trial, the trial court gave detailed oral reasons for its judgment. Ms. Sternfels testified that she was not aware or made aware of the vertical edge in the concrete walkway on which Ms. Cole allegedly tripped. Ms. Sternfels's son, Leo Sternfels, has managed Nicholls Plaza since about 1986 and is authorized by Ms. Sternfels to make repairs to the property as he deems necessary. (R. 553) Mr. Sternfels testified he was not sure if the crack in the concrete where the edge was located had existed

since Nicholls Plaza was built in 1965. However, Mr. Sternfels also testified he was familiar with the area where Ms. Cole allegedly tripped. The trial court found Ms. Sternfels and her son to be credible in their testimony.

From its examination of the evidence introduced by the plaintiff and the defendants, the trial court determined the height of the edge to be between five-eighths and three-fourths inches. The court found that a vertical edge of this height is not a “defect” as contemplated by Louisiana law, noting that neither party presented jurisprudence indicating that an edge of that height could be considered an unreasonably dangerous vice or defect. The trial court further noted that no evidence was introduced to show that there were prior incidents of people tripping over the edge in the past, so as to put the defendants on notice of the potential hazard.

Furthermore, the trial court stated that Ms. Cole failed to prove how the edge made her trip and fall. In cross-examination, Ms. Cole testified that she assumed the edge was the cause of her fall. The trial court noted there was a garbage can that was out of place near the edge, and that Ms. Cole was wearing Croc shoes with rubber soles. The trial court additionally found that Ms. Cole possibly “clipped” the garbage can. After considering the evidence and testimony, the trial court found that the exact cause of Ms. Cole’s trip and fall could not be determined, stating, “I really couldn’t figure out how exactly this edge made her fall.” The trial court thus concluded that Ms. Cole failed to meet her burden of proving that the vertical edge in the concrete walkway was the sole cause of her trip and fall.

In order to reverse the trial court, we must find from the record that no reasonable factual basis exists for the findings and that the record establishes the findings as clearly wrong or manifestly erroneous. See *Washington v. OneBeacon America Insurance Company*, 2018-0248 (La. App. 1 Cir. 11/2/18), 265 So.3d 8,

12, writ denied, 2018-1967 (La. 1/28/19), 262 So.3d 887. From our review of the record, we find that the record establishes a reasonable factual basis for the trial court's finding that Ms. Cole failed to prove that the edge was the cause of her injuries, and such finding was not manifestly erroneous.

Additionally, we find the circumstances of this case to be strikingly similar to those in *Reed v. Wal-Mart Stores, Inc.*, 97-1174 (La. 3/4/98), 708 So.2d 362. In that case, the plaintiff tripped and fell on the crack between two concrete blocks which made up part of the Wal-Mart parking lot. The height variance between the blocks was from one-fourth to one-half of an inch. *Id.* at 365. The trial court found for the plaintiff, and the court of appeal affirmed. The supreme court reversed, finding that the defect did not present an unreasonable risk of harm because the size of the defect was negligible, there were no previous accidents, and the utility of the parking lot expansion joints where the crack was located far outweighed the minimal hazard they created. *Id.* at 366.

Following *Reed*, we find no error in the trial court's finding that the edge in the instant case did not present an unreasonable risk of harm. The variance in height of the edge was also less than one inch. There was no evidence of previous accidents occurring at that location. Furthermore, the utility of the concrete walkway outweighed the minimal hazard, as the walkway was necessary for customers to walk to the offices and stores located at Nicholls Plaza. Our review of the testimony and the evidence leads us to the conclusion that the trial court was not manifestly erroneous in its determination that the condition of the walkway did not constitute an unreasonable risk of harm. Cf. *Johnson v. Brookshire Grocery Co., Inc.*, 32,770 (La. App. 2 Cir. 3/1/00), 754 So.2d 346, 351, writ denied, 2000-0938 (La. 5/26/00), 762 So.2d 1107.

## **DECREE**

The judgment of the Seventeenth Judicial District Court in favor of the defendants/appellees, United Fire & Indemnity Company and Gretchen K. Sternfels d/b/a Nicholls Plaza, is affirmed. All costs of this appeal are assessed to the plaintiff/appellant, Sylvia Cole.

**AFFIRMED.**