NOT DESIGNATED FOR PUBLICATION

GEORGE GILLMORE	*	**NO. 2000-CA-0628**
VERSUS	*	**COURT OF APPEAL**
BARONNE DEVELOPMENT, LLC AND ST. PAUL FIRE AND MARINE INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 98-18749, DIVISION "L-15"
Honorable Max N. Tobias, Judge
* * * * * *
Chief Judge William H. Byrnes III
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones,
Judge Dennis R. Bagneris Sr.)

George Gillmore
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IN PROPER PERSON, PLAINTIFF/APPELLANT

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COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

Plaintiff-appellant, George Gilmore, appeals a judgment dismissing his personal injury claim against the defendants-appellees, Baronne Development, LLC and St. Paul Fire and Marine Insurance Company. We affirm.

This is a straightforward manifest error case. Plaintiff alleges that the defendants are liable for injuries he allegedly sustained as a result of slipping and falling while walking in the FNBC Bank Building located at 210 Baronne Street. It had been raining for several hours. Defendants' negligence consists of allegedly permitting the premises to be wet and slippery. Plaintiff contends he slipped in a puddle on the floor. His wife, Ethel, and daughter Karen entered the building shortly after plaintiff's fall. They did not see the accident, but testified that when they entered the building they found plaintiff lying in a puddle of water.

Plaintiff testified that when he entered the building he noticed off to his left a "little short gentleman" who was mopping. He also testified that although he had seen mats and caution signs near the entrance to the building on previous rainy days when he had had occasion to go there, on

the day he fell “they didn’t have any.” He confirmed the fact that it had been raining hard that day. In fact, plaintiff waited for a while in his car outside the building in hopes that the rain would let up. There was so much rain that day that he had decided not to work as a cab driver. Plaintiff testified that when Mr. William Baxter, the operator of the concession stand in the building who came to plaintiff’s assistance when he saw plaintiff fall, knelt down to help plaintiff, Mr. Baxter’s “pants legs got all wet up. He was kneeling in water.” Mr. Baxter gave contrary testimony as discussed hereafter.

Plaintiff’s wife, Ethel Gilmore, testified that they parked illegally with the idea that her husband would run in very briefly to pay a bill and then return promptly to the car. When summoned from the car to her husband’s side following the fall she noticed no rainy day procedures in place. Although she saw a man with a mop, she said he was not actually mopping. She did not see any black females with a mop. This testimony was contradicted by that of Ms. Pamela Smith, a black female, who testified that she was on duty with a mop in that area. Mrs. Gilmore said that the floor was wet and that she found her husband lying in a puddle of water. She acknowledged that the man from the concession stand (Mr. Baxter) was on the floor cradling her husband’s head.

Plaintiff's daughter Karen's testimony was consistent with that of her mother.

The defendants showed that the building management had written rainy day procedures in effect on the day of the fall, consisting of: 1) placing two large rugs on the floor, one after each set of doors, 2) placing an umbrella rack on the rug located inside the initial set of doors, 3) placing "wet floor" signs on the windows of the doors, as well as a pyramid-shaped "wet floor" sign on the floor located just inside the second set of doors to the right of entering customers, and 4) ensuring the presence of someone with a dry-string mop designed to absorb water that may fall upon various umbrellas and/or rain coats. The wet floor signs were in bright, eye-catching colors, and the word "caution" thereon was printed in both Spanish and English. The person mopping the entrance was issued a supply of extra mops and a bucket for ringing out the water from the mops.

Lt. Richard Graham, as head of security in the building, was responsible for the implementation of rainy day procedures. He testified that he was familiar with the written rainy day procedures and that he implemented those procedures on the day Mr. Gilmore fell. He described how, when he realized it was raining, he put out the two rugs, one following each set of doors at the entry to the building, plastic umbrella bags, signs

that fit onto the glass panes in the entrance doors and floor sings, all in full compliance with the written procedures. He further testified that he called Ms. Pamela Smith away from her normal duties so that she could assume the role of continuously mopping the Baronne Street entrance.

Ms. Smith corroborated Lt. Graham's testimony. She testified that her sole responsibility at the time of the accident was to attend to the Baronne Street entrance.

The testimony of those employed for the benefit of the building is borne out by the testimony of the disinterested Good Samaritan witness, Mr. Baxter, who rushed to Mr. Gilmore's assistance when he fell. He attested to the presence of rugs, plastic umbrella bags, caution signs and Ms. Smith armed with her mop. Mr. Baxter operated a snack bar just inside the entrance to the building for over nine years. During that time he sometimes volunteered to assist with rainy day procedures to help protect the buildings patrons. Mr. Baxter went on to note that he had observed that as a matter of practice on rainy days Ms. Smith does not pursue her normal duties; instead, she, or someone else, would be in the hallway with a dry mop to immediately address any water on the floor. He did not actually see Mr. Gilmore fall, but he heard him.

Mr. Baxter, as the first to rush to Mr. Gilmore's side after the fall,

heard plaintiff say: "These shoes are slippery." Plaintiff's initial reaction was not to indicate injuries, but to show Mr. Baxter the bottom of his shoes, which Mr. Baxter observed as being made of leather. From this a reasonable fact finder could infer that the slippery nature of plaintiff's shoe soles could have been a cause of his fall. During the ten minutes that Mr. Baxter stayed with Mr. Gilmore awaiting the arrival of paramedics, he noticed no water or dampness, even when he sat down on the floor next to the plaintiff. Mr. Baxter specifically noted the absence of water and dampness where he sat and in the area immediately around him. He explained that with the two sets of rugs or mats inside the two sets of doors at the entrance and the continuous mopping the floor could be kept dry even on a rainy day.

The trial court made the following findings of fact:

> The evidence preponderates as follows: (1) that Mr. Gilmore was rushing into the building; (2) that two sets of mats were out; (3) that plastic bags were available for use of patrons of the building to put their umbrellas in; (4) that adequate personnel were available to mop the entranceway floors during rainy weather and were actually performing that duty; (5) that there were three entrance ways that the janitors were assigned to clean up and that a janitor was doing that job; (6) that Mr. Gilmore slipped as a result of either having damp shoes on while stepping onto a marble type floor, having slipped in an area of marble floor which had recently been mopped reasonably dry or having slipped on a wet spot that had accumulated water within one minute of the last mopping by the janitor on duty; (7) that Mr. Gilmore saw the

> janitor mopping to his left upon entering the premises; and (8) that Mr. Gilmore was wearing leather sole shoes.

This is a manifest error case based on credibility calls by the trial court – a swearing contest where the trial court is, in effect, the umpire or referee. We do not feel that it is necessary to belabor the hornbook law concerning the deference this Court owes to the credibility calls and findings of fact made by the trial judge in such cases. It is sufficient to note that our review of the record as a whole as set forth above reveals a fundamental conflict between the plaintiff's witnesses and those of the defendants on the two critical issues in the case – was the floor wet and were reasonable rainy day procedures in effect at the time Mr. Gilmore fell. The testimony of the defendant's witnesses is not so inconsistent or contradicted by documentary evidence as to render it unbelievable. Under the manifest error standard of review, we find no basis upon which this Court might reverse the reasonable fact finding and credibility calls made by the trial court in favor of the defendants. In fact, were this a *de novo* review of the record we would have to say based on the trial transcript that the most disinterested and most

persuasive witness was the Good Samaritan, Mr. Baxter, who testified so articulately for the defense.

Additionally, we note that the trial court found that as a matter of law:

> "A building owner is not the absolute insurer for every accident. A building owner is only responsible to take reasonable efforts to make his premises safe."

We find that this is a reasonable expression of the law in this matter. *Montesino v. P.A. Menard, Inc.*, 588 So.2d 704, 707 (La. App. 4th Cir.1991), *writ den.* 592 So.2d 1337 (La.1992). To require a store owner to keep a floor completely dry during a time of rain or hold him responsible for every slick place due to tracked in rain water would impose an impossible and unreasonable

standard of care. *Id.* As the defendant has shown no legal or factual basis on which the trial court should be reversed, we hereby affirm the judgment of the trial court.

AFFIRMED