

**GLORIA BUTLER,  
DEMETRIUS DOYLE AND  
DARLENE BUTLER,  
INDIVIDUALLY AND ON  
BEHALF OF HER MINOR  
CHILDREN, JOSHUA  
BUTLER, MELVIN BUTLER,  
GLORIA MERRILL AND  
LYNELL MERRILL**

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**NO. 2001-CA-1740  
COURT OF APPEAL  
FOURTH CIRCUIT  
STATE OF LOUISIANA**

**VERSUS**

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**JOSEPH PERKINS AND  
WINCHESTER GENERAL  
INSURANCE COMPANY**

**APPEAL FROM  
FIRST CITY COURT OF NEW ORLEANS  
NO. 99-59431, SECTION "C"  
Honorable Sonja M. Spears, Judge**

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**JOAN BERNARD ARMSTRONG**

**JUDGE**

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(Court composed of Judge Joan Bernard Armstrong, Judge Terri F. Love and Judge Max N. Tobias, Jr.)

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**AFFIRMED**

This is a premises liability personal injury action. The plaintiffs sued their landlord and his insurer for injuries suffered from a falling ceiling. The trial court found for the plaintiffs. The defendants appeal and argue that the trial court was clearly wrong/manifestly erroneous as to liability and as to the damages of three of the plaintiffs. Because, from the record as a whole, we find no clear error/manifest wrongness we will affirm.

Darlene Butler, her minor children, Joshua Butler, Melvin Butler, Gloria Merrill and Lynell Merrill, her mother, Gloria Butler, and her boyfriend, Demetrius Doyle, were in the kitchen of the house (half of a double) which she rented. The plaintiffs testified that the kitchen ceiling collapsed on them causing them injuries. They sued their landlord, Joseph Perkins, and his insurer, Terra Nova Insurance Company.

The defendants argue that the plaintiffs must be lying and that, what must have in fact happened is that the plaintiffs pulled the ceiling down to fake an accident. The defendants main argument is that Mr. Perkins had served the plaintiffs with a notice of eviction just days before the accident.

The also argue that, upon inspection, Mr. Perkins saw no apparent reason for the ceiling to collapse.

The plaintiffs respond that they had seen wet spots in the kitchen ceiling, termites in and around the house and rot in the kitchen cabinets. Also, of course, they rely upon their own eyewitness testimony to the ceiling falling.

The trial court found the plaintiffs credible. We cannot say that the trial court was clearly wrong/manifestly erroneous in finding that the ceiling did fall.

The defendants argue that the plaintiffs did not prove that there was a defect in the premises. They rely upon the testimony of Mr. Perkins that he saw no reason that the ceiling would collapse. They also rely upon photographs and a videotape of the premises taken after the accident.

However, the plaintiffs testified as to the wet spots in the ceiling of the kitchen, termites in and around the house and rot in the kitchen cabinets. Also, the videotape showed light shining through the roof which indicates a hole through which rainwater could have entered onto the ceiling below.

The trial court was not clearly wrong/manifestly erroneous in finding that

there was a defect in the premises.

The defendants argue that the landlord did not have notice of the defect. However, both Darlene Butler and Gloria Butler testified that the landlord was told on numerous occasions of the wet spots on the kitchen ceiling, the termites in and around the home, and the rot in the kitchen cabinets, but that nothing was done to effect repairs. Also, it can be easily inferred that an investigation of the wet spots in the kitchen ceiling should have led to the attic and the discovery of the hole in the roof that was large enough that daylight shined through it. The trial court was not clearly wrong/manifestly erroneous.

The trial court awarded Darlene Butler \$308 in medical expenses and \$1,500 in general damages; Joshua Butler \$225 in medical expenses and \$1,455 in general damages; Gloria Butler \$259 in medical expenses and \$1,459 in general damages; and Melvin Butler, Gloria Murrell and Lynell Murrell \$500 each in general damages. The plaintiffs testified as to their symptoms and duration and introduced their medical records into evidence. The appellants challenge only the award for \$500 each in general damages to Melvin Butler, Gloria Merrill and Lynette Merrill on the ground that they

did not receive any medical treatment. However, the plaintiffs did testify that those three children did suffer minor injuries. The trial court was not clearly wrong/manifestly erroneous in making these modest awards for general damages.

For the foregoing reasons, the judgment of the trial court is affirmed.

**AFFIRMED**