IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-117

Filed: 1 December 2015

Craven County, No. 12 CVS 1426

DANIEL J. MANSFIELD, Plaintiff,

v.

REAL ESTATE PLUS, INC. DBA MANAGEMENT SERVICES and ALFRED KWASI FOLUKE AKA ALFRED L. HARKLEY, Defendants.

Appeal by defendant Alfred Kwasi Foluke a/k/a Alfred L. Harkley from judgment entered 14 April 2014 and order entered 13 June 2014 by Judge W. Allen Cobb in Superior Court, Craven County. Heard in the Court of Appeals 13 August 2015.

Ricci Law Firm, P.A., by Meredith S. Hinton, for plaintiff-appellee.

Stubbs & Perdue, P.A., by Matthew W. Buckmiller, for defendant-appellant.

STROUD, Judge.

Defendant appeals judgment entered upon jury verdict finding him liable for $200,000.00 and order denying his motion for judgment notwithstanding the verdict and motion for new trial. For the following reasons, we affirm.

I. Background

Plaintiff was a tenant of a residential property owned by Alfred Kwasi Foluke a/k/a Alfred L. Harkley ("defendant Alfred") and managed by defendant Real Estate Plus, Inc. d/b/a Management Services ("defendant Real Estate"). On 13 December 2009, the stair railing collapsed while plaintiff was on the stairs up to his residence; he fell and was seriously injured. On 28 September 2012, plaintiff filed a complaint against defendants for gross negligence requesting compensatory damages and punitive damages each in excess of $10,000.00 due to physical injuries caused when a stair railing "collapsed causing plaintiff to fall."

On 7 January 2013, defendant Alfred answered plaintiff's complaint and raised several defenses; defendant Alfred also moved to dismiss plaintiff's complaint. Also on 7 January 2013, defendant Real Estate answered plaintiff's complaint moving for dismissal of plaintiff's complaint, alleging numerous defenses, and making a cross-claim against defendant Alfred. On 1 February 2013, defendant Alfred answered defendant Real Estate's cross-claim moving for dismissal of the cross-claim and claiming numerous defenses.

After a jury trial on all claims, on 14 April 2014, the trial court entered judgment in accordance with the verdict determining defendant Real Estate was not negligent, defendant Alfred was negligent, plaintiff was not contributorily negligent, and plaintiff was entitled to recover $200,000.00 from defendant Alfred. On 24 April 2011, defendant Alfred filed a motion for judgment notwithstanding the verdict and

a motion for a new trial ("motion for JNOV"). On 13 June 2014, the trial court denied defendant Alfred's motion for JNOV. Defendant Alfred appeals both the judgment entered upon the jury verdict and the order denying his motion for JNOV.

II. Negligence

Defendant raises one argument on appeal with two sub-parts, but essentially he contends that the trial court erred in failing to grant his motion for a directed verdict[1] and motion for JNOV because there was not sufficient evidence of defendant's negligence and plaintiff was contributorily negligent.

> Since a motion for judgment notwithstanding the verdict is simply a renewal of a party's earlier motion for directed verdict, the standard of review is the same for both motions. Thus, we deal with them together. It has long been established that:
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> > On appeal the standard of review for a JNOV[,] judgment notwithstanding the verdict[,] is the same as that for a directed verdict, that is whether the evidence was sufficient to go to the jury. The hurdle is high for the moving party as the motion should be denied if there is more than a scintilla of evidence to support the plaintiff's prima facie case.
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> Furthermore, our Supreme Court has held that:
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> > In ruling on a motion for directed verdict pursuant to N.C.G.S. § 1A–1, Rule 50(a), the trial court must consider the evidence in the light most favorable to the plaintiff. The

[1] Defendant does not actually make his argument using the language "directed verdict" but contends that the trial court erred in entering the judgment because of plaintiff's lack of evidence of negligence. Because this case was decided by a jury, plaintiff is essentially arguing there was not enough evidence to support plaintiff's claim for the case to go to the jury, and therefore, defendant is contending his motion for a directed verdict should have been allowed due to insufficient evidence.

> evidence supporting the plaintiff's claims must be taken as true, and all contradictions, conflicts, and inconsistencies must be resolved in the plaintiff's favor, giving the plaintiff the benefit of every reasonable inference. *Additionally, a directed verdict is seldom appropriate in a negligence action.*

Kearns v. Horsley, 144 N.C. App. 200, 207, 552 S.E.2d 1, 6 (emphasis added) (citations, ellipses, and brackets omitted), *disc. review denied*, 354 N.C. 573, 559 S.E.2d 179 (2001).

> Negligence has been defined as the failure to exercise proper care in the performance of a legal duty which the defendant owed the plaintiff under the circumstances surrounding them. The traditional elements of actionable negligence are the existence of a legal duty or obligation, breach of that duty, proximate cause and actual loss or damage.

McMurray v. Surety Federal Sav. & Loan Assoc., 82 N.C. App. 729, 731, 348 S.E.2d 162, 164 (citations omitted), *cert. denied*, 318 N.C. 695, 351 S.E.2d 748 (1987).

Defendant Alfred first argues there was no evidence that he knew or should have known of the defect with the stair railing so there was no breach of duty. In *Lenz v. Ridgewood Associates*, we addressed a landlord's duty to a tenant:

> Since plaintiff was defendants' tenant, defendants were under a duty to keep the common area of their premises in a safe condition. Since *the duty to keep the common areas in a safe condition implies the duty to make reasonable inspection and correct an unsafe condition which a reasonable inspection might reveal*, such a breach of duty would constitute actionable negligence on defendants' part and would support a verdict for plaintiff.

55 N.C. App. 115, 121, 284 S.E.2d 702, 706 (1981) (emphasis added), *disc. review denied*, 305 N.C. 300, 290 S.E.2d 702 (1982).

The main problem with defendant's argument is that the evidence showed that he never inspected the property at all for a period of over 20 years prior to the stairway collapse. Defendant cannot avoid his duty to keep the common areas in a safe condition by failing to inspect them and discover "an unsafe condition which a reasonable inspection might reveal." *See id.* Defendant admitted that he had never actually had a general inspection of the property performed and that he had no contract for termite inspections.

Furthermore, plaintiff presented evidence from an expert witness in engineering and as a contractor that the defect in the railing was likely caused by termite damage and fungal decay. Defendant counters that "destructi[ve] testing" such as cutting through the railing would have been needed to discover the defect, and the law does not require destructive testing, but plaintiff's evidence was that this defect would be easily discovered. Plaintiff's expert testified that "stick[ing a] probe in at places that are likely" to be damaged and acts "as simple as hitting the post with your hand" would have been reasonable ways to find the damage. In addition, the case upon which defendant relies for his argument regarding "destructive testing" deals with a defect in a chimney which was not readily accessible and which would have required damage to the house even to check the area. *See Bradley v. Wachovia*

Bank & Trust Co., 90 N.C. App. 581, 369 S.E.2d 86 (1988). This case deals with a wooden stairway on the outside of a building which was readily visible and accessible. There was far "more than a scintilla of evidence" of defendant's negligent failure to do a reasonable inspection and correct unsafe conditions so the trial court properly denied defendant's JNOV motion. *See Kearns*, 144 N.C. App. at 207, 552 S.E.2d at 6.

Defendant next contends that even if he was negligent, then plaintiff was contributorily negligent by "failing to notify Defendant of any alleged defects in the stairway." But unlike defendant, plaintiff had no legal obligation to inspect common areas of the property such as the stairway. *See Lenz,* 55 N.C. App. at 121, 284 S.E.2d at 706. Defendant fails to direct us to any evidence indicating that plaintiff knew about the defect with the stair rail, and plaintiff's expert also testified that the defect would not necessarily have been discovered by the ordinary use of the stairs. Contributory negligence was clearly an issue for the jury to decide on the evidence presented, so the trial court again did not err in not directing a verdict on contributory negligence in favor of defendant and in denying the motion for JNOV.

Lastly, defendant contends there was no evidence that plaintiff's fall on the stairs caused his injury and related medical costs, particularly because plaintiff had suffered from lower back pain even before the fall. But Dr. Mark Held, plaintiff's neurosurgeon, testified that "within a reasonable degree of medical certainty, you can say that the fall probably exacerbated his previous degenerative problems[;]" this

evidence is sufficient for the jury to determine that plaintiff's injury was caused by the fall. Accordingly, the trial court properly denied defendant's motion for a directed verdict and motion for JNOV regarding the element of injury. *See Kearns*, 144 N.C. App. at 207, 552 S.E.2d at 6.

III. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).