Affirmed and Opinion Filed July 18, 2016

In The

Court of Appeals
Fifth District of Texas at Dallas

No. 05-14-01418-CV

ISAIAS GONZALEZ, Appellant
V.
NORTHFORK INVESTMENTS, LTD, JANET C. KENNEDY, AND MIKE HENN, Appellees

On Appeal from the County Court at Law No. 4
Dallas County, Texas
Trial Court Cause No. CC-13-05764-D

MEMORANDUM OPINION

Before Justices Bridges, Fillmore, and Stoddart
Opinion by Justice Bridges

Isaias Gonzalez appeals the trial court's order granting a directed verdict in favor of Northfork Investments, Ltd., Janet C. Kennedy, and Mike Henn and dismissing Gonzalez's premises liability and negligence causes of action. In two issues, Gonzalez argues the trial court erred in granting a directed verdict and excluding opinion testimony from Gonzalez's safety expert. We affirm the trial court's judgment.

In October 2013, Gonzalez sued Northfork, Kennedy, and Henn alleging he performed carpentry and repair work at an apartment complex owned by Northfork, which is owned by Henn and Kennedy. Gonzalez claimed he lost his left index finger and injured his left middle finger while using a table saw belonging to Northfork. Among other things, Gonzalez alleged

the table saw was unsafe because it had no blade guard in place. Gonzalez asserted premises liability and negligence causes of action.

On the first day of trial, the trial court sustained defense counsel's objection to allowing Gonzalez testify "as to whether the incident would have been more or less likely . . . depending on whether or not there had been a saw guard." Henn testified he bought the saw that injured Gonzalez, but Northfork owned it. The saw had the blade guard removed because it worked better without the guard. Henn knew another man had been injured by the saw before Gonzalez was injured, but he continued to use the saw.

Outside the presence of the jury, defense counsel re-urged his motion to exclude the testimony of Gonzalez's expert, T.L. Peters, because Peters's opinion was "based on speculation." Defense counsel argued Peters could only speculate as to what happened when Gonzalez was injured and whether a safety guard could have prevented the injury because Gonzalez, the only one present at the time of the injury, "couldn't say what happened" and did not know how his hand came into contact with the saw. Defense counsel noted Peters had previously conceded "there are ways that your hand can go under that guard" even when it was in place. That same day, the trial court entered an order excluding Peters's testimony.

Gonzalez's counsel stated he understood the trial court was "inclined to exclude anything [Peters] had on causation" but argued the jury should hear portions of Peters's deposition on "table saw safety issues." The trial court modified its order excluding Peters's testimony to allow Peters to testify "regarding generally wrongful conduct and/or table saw safety" but excluded "causation opinions." Defense counsel moved for a directed verdict "on the issue of causation" following the presentation of Gonzalez's evidence, and the trial court granted the motion. This appeal followed.

In his first issue, Gonzalez argues the trial court erred in granting the motion for directed verdict because the evidence reflected a genuine factual dispute as to whether appellees' breach of a duty caused Gonzalez's injuries.

When reviewing the grant of a directed verdict, we determine whether any probative evidence exists "to raise a fact issue on the material questions presented." *Sibai v. Wal-Mart Stores, Inc.*, 986 S.W.2d 702, 705 (Tex. App.—Dallas 1999, no pet.) (quoting *Collora v. Navarro*, 574 S.W.2d 65, 68 (Tex. 1978)). We consider all the evidence in the light most favorable to the party against whom the trial court directed a verdict and disregard all contrary evidence and inferences. *Id.* ; *Edlund v. Bounds*, 842 S.W.2d 719, 723 (Tex. App.—Dallas 1992, writ denied). The trial court properly directs a verdict if: (1) a specifically indicated defect in the opponent's pleading makes it insufficient to support a judgment; (2) the evidence conclusively proves facts that establish the movant's right, or negate the nonmovant's right, to judgment; or (3) the evidence raises no fact issue on any material fact that the nonmovant must establish to prevail. *Sibai*, 986 S.W.2d at 705 When no probative evidence exists on an ultimate fact issue, we affirm the directed verdict. *Id.* Under either a premises liability or negligence cause of action, recovery is foreclosed in the absence of evidence that Northfork, Henn, and/or Kennedy's actions proximately caused Gonzalez's injuries. *W. Invs., Inc. v. Urena*, 162 S.W.3d 547, 550-51 (Tex. 2005).

Gonzalez argues his own affidavit, entered into evidence by Northfork, was "sufficient evidence of proximate causation that the jury should have been permitted to consider." Gonzalez's affidavit stated the following:

> At the time of the incident, I was cutting a 2 X 4. I was holding the 2 X 4 in the manner depicted in the attached photos labeled Exhibits A.1 - A.10. After viewing the model 2703 table saw with the blade guard in place . . . I do not believe my finger would have touched the blade had the guard been in place. Based on the size of the guard and the placement of my hands, I believe my hand

> would have been outside of the guard, such that my finger would have simply hit the guard and bounced off.

Gonzalez further relies on his testimony at trial that he felt that the blade "pulled, and it cut my fingers because it didn't have that guard on it." Defense counsel objected to this testimony as being nonresponsive, and the trial court sustained the objection. Gonzalez later testified, "I think the problem is that it didn't have the protector on it. If it did, my fingers would have come into contact with the protector, and I would not have cut them." Again, the trial court sustained defense counsel's "nonresponsive" objection.

Gonzalez also testified that he "[didn't] know what happened." When asked why he could not "describe exactly how [his] fingers went into this blade," Gonzalez testified he could not "explain exactly how it happened because in a second, no one knows how to react to something like that." Gonzalez testified "It was too fast for me to react."

An expert may testify on scientific, technical, or other specialized subjects if the testimony would assist the fact finder in understanding the evidence or determining a fact issue. *See* TEX. R. EVID. 702. To establish causation in a personal-injury suit, a plaintiff must prove that the defendant's conduct caused an event and that this event caused the plaintiff to suffer compensable injuries. *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995); *Coastal Tankships, U.S.A., Inc. v. Anderson*, 87 S.W.3d 591, 603 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). When a lay person's general experience and common sense will not enable that person to determine causation, expert testimony is required. *Coastal Tankships*, 87 S.W.3d at 603. When expert testimony is required, lay evidence supporting liability is legally insufficient. *City of Keller v. Wilson*, 168 S.W.3d 802, 812 (Tex. 2005). And if an expert's opinion is based on certain assumptions about the facts, we cannot disregard evidence showing those assumptions were unfounded. *Id.*

Here, the trial court determined, and we agree, that it was "not within common layperson knowledge as to what all these safety devices are supposed to do when they operate properly, whether or not injury . . . would or would not occur in a particular situation unless they hear from somebody that actually is an expert on the operation of the device." Under these circumstances, Gonzalez's lay testimony that the guard would have prevented his injury was legally insufficient. *See id.* Gonzalez argues further that the portion of Peters's deposition testimony that was presented was sufficient to defeat the motion for directed verdict. Peters testified the lack of a blade guard or putting the saw on the floor "creates an unsafe condition." This testimony concerning general safety concerns does not establish that Gonzalez's injury was caused by the lack of a blade guard or by placing the saw on the floor. Thus, the trial court did not err in granting a directed verdict despite Gonzalez's testimony and Peters's deposition testimony. *See Sibai*, 986 S.W.2d at 705. We overrule Gonzalez's first issue.

In his second issue, Gonzalez argues the trial court erred in excluding Peters's testimony. We review a trial court's exclusion of evidence under the abuse of discretion standard. *Caffe Ribs, Inc. v. State*, 487 S.W.3d 137, 142 (Tex. 2016). A trial court abuses its discretion when it acts without regard for any guiding rules. *Id.* Peters did not testify at trial; instead, the evidence proffered was Peters's deposition testimony. As defense counsel argued, Peters admitted he was speculating as to causation because "Gonzalez, in his deposition, which is all Mr. Peters had to go by, couldn't say what happened." While Gonzalez testified at trial that the blade guard would have prevented his injuries, that testimony was legally insufficient and did not establish the lack of a blade guard caused Gonzalez's injuries. In fact, as the trial court correctly observed, even with a blade guard it would be possible to "go underneath the guard" or sustain injury if the "blade somehow pulls you in unexpectedly." Under these circumstances, we conclude the trial

court did not abuse its discretion in excluding the portions of Peters's testimony concerning causation. *See id.*; *City of Keller*, 168 S.W.3d at 812. We overrule Gonzalez's second issue.

We affirm the trial court's judgment.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ISAIAS GONZALEZ, Appellant

No. 05-14-01418-CV V.

NORTHFORK INVESTMENTS, LTD, JANET C. KENNEDY, MIKE HENN, Appellees

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Opinion delivered by Justice Bridges.
Justices Fillmore and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees NORTHFORK INVESTMENTS, LTD, JANET C. KENNEDY, MIKE HENN recover their costs of this appeal from appellant ISAIAS GONZALEZ.

Judgment entered July 18, 2016.