

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 150386-U

NO. 4-15-0386

FILED

December 14, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

SOUND SOURCE MUSIC,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Coles County
HOWARD'S DISPOSAL,)	No. 14SC1069
Defendant-Appellant.)	
)	Honorable
)	Mitchell K. Shick,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed, concluding the evidence was insufficient to demonstrate defendant acted negligently.

¶ 2 In August 2014, plaintiff, Sound Source Music, filed a small-claims complaint against defendant, Howard's Disposal, seeking \$950 for damages caused to its property by defendant's Dumpster. Following a February 2015 bench trial, the trial court entered judgment in favor of plaintiff. In March 2015, defendant filed a motion to reconsider, which the court later denied. Defendant appeals, arguing (1) it did not owe plaintiff a duty of care, (2) the circumstantial evidence was insufficient to find its conduct was negligent, (3) the circumstantial evidence was insufficient to find its negligent conduct proximately caused plaintiff's damages, and (4) plaintiff's contributory negligence bars it from recovery. We reverse.

¶ 3

I. BACKGROUND

¶ 4

In August 2014, plaintiff filed a small-claims complaint against defendant, seeking \$950 for damages caused by defendant's Dumpster to its air-conditioning lines and electrical box (air-conditioning equipment).

¶ 5

In February 2015, the trial court held a bench trial. The following is a summary of the evidence adduced at trial.

¶ 6

A. Disposal Services and Damages

¶ 7

For approximately 30 years, defendant had provided disposal services to Warner's Office Supply, which is located next to plaintiff (1609 Broadway Avenue, Mattoon, Coles County). As part of its services, defendant placed a Dumpster in an alcove behind, and in between, plaintiff and Warner's Office Supply. Defendant serviced the Dumpster three times a week. Plaintiff and defendant offered photos, which were admitted into evidence, depicting the Dumpster, the alcove, and the air-conditioning equipment located in the alcove.

¶ 8

The Dumpster was set on four wheels and weighed approximately 200 pounds. The back left wheel was locked into place, while the others wheels swiveled. The Dumpster slanted inward, creating an opening larger than the base.

¶ 9

The alcove was approximately six to seven feet in height and approximately six feet in width. A metal trap door ran along the ground of the alcove, causing it to be slightly inclined. A two-step gate originally blocked off the alcove, but the gate on the left side was missing. The gate on the right side was approximately three feet across. The gate was attached to the building only on its top hinge; the bottom hinge was disconnected.

¶ 10

Approximately eight feet off the ground and two to three feet back from the entry

of the alcove, an air-conditioning unit sat on top of a wooden plank. The unit had an exposed insulated hose and copper and electrical lines running down the right side of the alcove and into a metal casing on the ground, which went into the basement. The gate, when opened inward, did not quite reach the metal casing on the ground. Approximately four feet off the ground on the right side of the alcove, an electrical box was attached to the building's wall.

¶ 11 In June 2014, plaintiff's air conditioning stopped functioning. The electrical box was found unattached and hanging off the wall. Approximately six to eight inches off the ground, the insulated hose and copper and electrical lines were found severed. Plaintiff offered invoices, which were admitted into evidence, indicating repairs totaled \$982.50.

¶ 12 B. Plaintiff's Witnesses' Testimonies

¶ 13 1. *Kevin Howard*

¶ 14 Kevin Howard, the president of defendant, testified Dallas Parkhurst and Anthony Howard serviced the Dumpster between fall 2013 and June 2014. Kevin indicated additional employees possibly assisted in servicing this location during the winter months. Kevin testified emptying the Dumpster generally required only one individual; however, periodically it required two individuals during the winter months.

¶ 15 Kevin serviced the Dumpster for the initial 20 years of defendant's service. During that time, the Dumpster was placed on the left side of the alcove. Kevin testified the gate protected the air-conditioning equipment from being struck. Kevin indicated the individuals servicing the Dumpster would have had to go out of their way to store the Dumpster behind the gate. He did not believe it was possible for the Dumpster to hit the air-conditioning equipment in the area where damage was alleged. Kevin testified, 10 years prior, he observed individuals

sleeping in the alcove.

¶ 16

2. Michael Kallis

¶ 17 Michael Kallis, the owner of plaintiff, testified the air-conditioning unit was used throughout the summer of 2013. In June 2014, he noticed the unit no longer functioned.

¶ 18 Kallis testified the Dumpster was typically positioned sideways along the right side of the alcove. The gate was usually opened inward along the right wall of the alcove. Kallis indicated the lines were exposed and could be struck by moving the Dumpster. Kallis observed the bottom corner of the Dumpster was approximately the same height, six to eight inches off the ground, as where the copper line and insulated hose were severed.

¶ 19 Kallis testified he occasionally found an individual staying in the alcove. Kallis acknowledged he did not see who caused the damage.

¶ 20

3. John Clarkson

¶ 21 John Clarkson, an employee of plaintiff, testified the exposed insulated hose and copper lines could be struck by moving the Dumpster. Clarkson recalled one occasion, 15 years prior, when individuals were living in the alcove.

¶ 22

C. Defendant's Witnesses' testimonies

¶ 23

1. Anthony Howard

¶ 24 Anthony Howard, an employee of defendant, testified, between July 2013 and July 2014, he serviced the Dumpster at Warner's Office Supply approximately six to eight times. When servicing the Dumpster, Anthony pulled the Dumpster out of the alcove, moved it behind the truck, emptied it, and then returned it to the alcove. Anthony testified, as the gate prevented the Dumpster from touching the right wall, he placed it along the left side of the alcove.

¶ 25 Anthony was aware of the pipes and conduit on the right-hand side of the alcove. He testified he stopped pushing the Dumpster as soon as it hit a metal door on the floor of the alcove, which was farther out than the pipes. Anthony testified he did not strike the pipes or conduit with the Dumpster.

¶ 26 Anthony testified Dallas Parkhurst was the other driver servicing this particular Dumpster. Anthony testified, approximately three times a year, he would tell individuals staying in the alcove to leave. In the last six to eight times he was on the route, he saw individuals in the alcove two to three times.

¶ 27 *2. Dallas Parkhurst*

¶ 28 Dallas Parkhurst, an employee of defendant, testified, between 2013 and 2014, he serviced the Dumpster at Warner's Office Supply. After emptying the Dumpster, Parkhurst would place it on the left side of the alcove. The gate would usually be pulled out, and he never needed to move it. Parkhurst was aware of pipes in the alcove and never struck them with the Dumpster. Parkhurst indicated he knew the Dumpster was in the alcove when the wheels hit the steel door.

¶ 29 Parkhurst testified the winter weather made it more difficult to push and pull the Dumpsters. Extra effort was required to move the Dumpsters, making them slightly harder to control; the wheels did not roll as well in the snow. Parkhurst testified the snow did not make it more difficult to maneuver the Dumpster into the alcove because the alcove was covered.

¶ 30 Parkhurst testified Anthony was the only other person servicing the Dumpster between 2013 and 2014. Approximately two to three times between July 1, 2013, and June 30, 2014, Parkhurst observed individuals staying in the alcove.

¶ 31

D. Trial Court's Decision

¶ 32

The trial court made an oral pronouncement of its decision. The court noted this was "a case of circumstantial evidence." The court agreed with defendant, "a business person *** is not an insurer of all damage done or caused by any of their property." The court found, although it could not determine the exact day the damage was caused, it was more probably true than not true sometime between July 2013 and July 2014, defendant's Dumpster came into contact with and caused damage to plaintiff's air-conditioning lines and electric box.

¶ 33

Having concluded the injuries were caused by defendant's Dumpster, the trial court next determined whether defendant's negligence resulted in the damages. The court noted it had to decide whether defendant's agents, in pushing and pulling the unit inside the small alcove, came into contact with the air-conditioning equipment or some other negligence on the part of the plaintiff caused or contributed to plaintiff's injuries. The court found the following facts clear: (1) the alcove was a small space and defendant's employees would have to be very careful not to have the Dumpster come into contact with the air-conditioning equipment; (2) on a regular basis, defendant's employees would push and pull a 200-pound disposal unit to and from the alcove; and (3) when it snowed, it was more difficult to move the disposal unit, requiring additional effort. As to defendant's suggestion homeless persons may have caused the damage, the court noted it was "reasonably foreseeable to any business owner that has a unit on wheels that can be pushed and pulled that if they place it somewhere where they are aware that there is [a] public gathering, homeless people, that the unit will be moved, and that damage may be done." For the reasons just listed, the court indicated it was entering judgment in favor of plaintiff for \$982.50 plus costs.

¶ 34

F. Posttrial Motion

¶ 35

In March 2015, defendant filed a motion to reconsider, arguing, in relevant part, (1) the trial court misapplied the concept of circumstantial evidence, (2) no evidence demonstrated any negligent act or omission by defendant, and (3) no evidence demonstrated any negligent act or omission by defendant was the proximate cause of the injury caused to plaintiff.

¶ 36

That same month, plaintiff filed a response to defendant's motion to reconsider, arguing, in relevant part (1) defendant failed to cite any case authority to explain the manner in which the trial court erred in applying the concept of circumstantial evidence; (2) the court heard sufficient evidence to conclude either (a) defendant's employees negligently emptied the Dumpster, or (b) defendant failed to adequately secure the Dumpster after being placed on notice individuals were living in the alcove who may move the Dumpster and cause contact with the exposed air-conditioning equipment; and (3) the court heard sufficient evidence to conclude defendant's breach was the proximate cause of plaintiff's injuries.

¶ 37

Following an April 20, 2015, hearing, the trial court denied defendant's motion to reconsider. A docket entry indicates the motion to reconsider was "denied for the reasons set forth on the record." The record contains no transcript, bystander's report, or agreed statement of facts for the April 20, 2015, hearing.

¶ 38

This appeal followed.

¶ 39

II. ANALYSIS

¶ 40

On appeal, defendant argues (1) it did not owe plaintiff a duty of care, (2) the circumstantial evidence was insufficient to find its behavior was negligent, (3) the circumstantial evidence was insufficient to find its negligent behavior was the proximate cause of plaintiff's

injuries, and (4) plaintiff should be barred from recovery as its negligent behavior was at least 50% of the proximate cause of its injuries.

¶ 41 In a negligence action, the plaintiff must prove the defendant owed a duty of care to the plaintiff, the defendant breached that duty, and the defendant's breach proximately caused plaintiff's injuries. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 340, 798 N.E.2d 724, 728 (2003).

¶ 42 Assuming, *arguendo*, defendant owed plaintiff a duty of care, we ask whether the trial court's judgment is supported by sufficient evidence, thereby necessitating the manifest weight of the evidence standard with its attendant deference. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 13, 965 N.E.2d 393. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 245 (2006).

¶ 43 Although the trial court found defendant's Dumpster caused plaintiff's injuries, its ruling is void of any finding of how defendant acted negligently. "Negligence may be established by using either direct or circumstantial evidence [citations] and *** the use of circumstantial evidence is not limited to those instances in which the circumstances support only one logical conclusion. Instead, circumstantial evidence will suffice whenever an inference may reasonably be drawn therefrom [citations]." *Mort v. Walter*, 98 Ill. 2d 391, 396-97, 457 N.E.2d 18, 21 (1983). The record fails to contain any direct evidence as to how the accident occurred, and the only circumstantial evidence that would support plaintiff's theory of the incident is the fact the accident occurred. That fact, in and of itself, is generally insufficient to raise an

inference of negligence. *Mort*, 98 Ill. 2d at 397, 457 N.E.2d at 22. Defendant's employees testified they did not strike the air-conditioning equipment with the Dumpster. Plaintiff's employees did not see how the air-conditioning equipment was damaged. The mere happening of plaintiff's injury sometime between July 2013 and July 2014, and the proximity of defendant's Dumpster to the damage, does not make defendant negligent. Our review of the evidence fails to indicate a negligent act on the part of defendant.

¶ 44 We note, plaintiff requests we adopt the trial court's suggestion that a duty to secure the Dumpster may be imposed where defendant knew individuals were, on occasion, present in the alcove. We agree with defendant that imposing a duty on disposal companies to secure outside Dumpsters anytime individuals are seen gathering near the Dumpster would be an undue burden and impose substantial consequences on disposal companies. Even if, *arguendo*, we found a duty existed and defendant breached that duty and furnished a condition by which plaintiff's injury was made possible, defendant's negligence will not be considered a proximate cause of the injury where a third party, acting independently, later causes the injury. *Young v. Bryco Arms*, 213 Ill. 2d 433, 449, 821 N.E.2d 1078, 1087 (2004). Plaintiff asserts liability should nevertheless be imposed here as defendant should have reasonably anticipated the third party's act as a natural and probable result of leaving the Dumpster unsecure. However, no evidence suggested the individuals who occasionally gathered in the alcove had moved, or would be inclined to move, the Dumpster. No evidence demonstrates a negligent act or omission on the part of defendant. We reverse the trial court's judgment.

¶ 45

III. CONCLUSION

¶ 46 We reverse the trial court's judgment.

¶ 47

Reversed.