

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2012-CP-23-02379

Frankie Orr,.....Respondent,

v.

Greenville Hospital System,.....Appellant.

INITIAL BRIEF OF RESPONDENT

Randall L. Chambers, S.C. Bar # 63502

THE CHAMBERS LAW FIRM
804 Laurens Road
Greenville, South Carolina, 29607
(864) 298-0001

Attorney for the Respondent
Frankie Orr

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STATEMENT OF ISSUE ON APPEAL

The only issue appellant raises on appeal is whether the trial court erred in denying Defendant Greenville Hospital System's (GHS) motions for directed verdict and judgment notwithstanding the verdict (JNOV).

STATEMENT OF THE CASE

The appellee, Frankie Orr, filed suit after she suffered injuries from a large picture falling on her at Hillcrest Hospital, a hospital owned and operated by appellant GHS. On April 5, 2010, while visiting her mother in the hospital, Ms. Orr sat down in a chair. As she sat down, the framed picture came crashing down on Ms. Orr, striking her in the head. Ms. Orr suffered numerous injuries and was treated in the Hillcrest emergency room. Ms. Orr received follow up treatment with her chiropractor and neurologist.

Throughout the process, from Ms. Orr's initial claim through trial, GHS has denied liability. GHS sought summary judgment on March 22, 2013. The Court ruled in Ms. Orr's favor. The case proceeded to trial before the Honorable D. Garrison Hill, on November 18, 2013. At the conclusion of Plaintiff's case, GHS moved for a directed verdict. Judge Hill denied GHS' motion.

Judge Hill specifically rejected GHS' assertion that the Plaintiff, Ms. Orr, was relying on res ipsa loquitur, which is not recognized in South Carolina. (Transcript p. 139, l. 15-16). Judge Hill ruled there was sufficient circumstantial evidence to send the case to the jury. (Transcript p. 139, l. 16).

GHS then chose not to present any evidence. The parties proceeded to arguments, the Court instructed the jury on the law, and the jury returned in short order with a very reasonable verdict of \$40,000.

Following the verdict, GHS brought a JNOV, which the trial judge promptly denied. (Transcript at p. 182, l. 8-13). GHS did not make a motion for new trial nor did GHS bring a motion challenging the amount of damages.

STATEMENT OF FACTS

The evidence regarding the events of April 5, 2010 is unrefuted. Frankie Orr went to Hillcrest Hospital to visit her mother. (Transcript p. 52, l. 5-9). When Frankie entered the room, she walked to her mother's bed and bent down giving her mother a kiss. (Transcript p. 53, l. 15-21). Frankie then sat down in a chair that was positioned near the foot of her mother's bed. (Transcript p. 53, l. 15-21). As soon as Frankie sat down in the chair, a large framed picture crashed down upon her head. (Transcript p. 53, l. 21-23.) The weight of the framed picture hit Frankie with such force that glass shattered everywhere and it knocked her onto the floor where she ended up on her hands and knees. (Transcript p. 53, l. 23-25). A nurse helped pick her up off the floor. (Transcript p. 53, l. 23-25).

Hospital personnel then put Ms. Orr in a wheelchair and took her to the emergency room. (Transcript p. 54, l. 24-25). Following the blow to her head, Ms. Orr testified that she was very disoriented and that everything "went kind of black." (Transcript p. 55, l. 24-25). Ms. Orr suffered intense pain, testifying "it felt like a truck hit me in the head." (Transcript p. 55, l. 17).

While in the emergency room, a doctor examined Ms. Orr and ordered up a variety of x-rays. (Transcript p. 56-58). After being discharged and returning home, Ms. Orr continued to suffer myriad symptoms and her condition worsened over time. (Transcript p. 58-61). Ms. Orr received follow up treatment from her chiropractor and from a neurologist. (Transcript p. 61-64).

ARGUMENT

As the trial court correctly ruled in denying GHS' directed verdict motion, Frankie Orr presented sufficient circumstantial evidence to send the case to the jury. (Transcript p. 139, l. 15-16).

The standard of review on directed verdict requires the court to view the evidence in the light most favorable to the plaintiff. Directed verdict is therefore appropriate only when a plaintiff fails to present any evidence from which the trier of fact could infer liability. Owens v. SC State Highway Dept., 121 S.E. 2d 240, 247 (1961).

In a premises liability action, the property owner, while not the insurer of the public's safety, is required to exercise ordinary care to keep the premises in a reasonably safe condition. Denton v. Winn-Dixie Greenville, Inc., 439 S.E. 2d 292 (Ct. App. 1993).

To prove negligence in cases such as the instant case, "the plaintiff must show *either* that the defendant or defendant's employees created the condition, *or* the defendant had notice of it. Cook v. Food Lion, 491 S.E. 2d 690, 691 (Ct. App. 1997).

In the instant case, the only reasonable inference that could be reached from the evidence as discussed above is that GHS either hung the picture or contracted for the picture to be hung. By hanging the picture, GHS created the condition that led to appellee's injuries. In Cook, the Court held a Food Lion employee created the dangerous condition by placing a mat by the exit doors. Cook at 692. As such, it wasn't necessary for Cook to show that Food Lion had notice that the floor mats were wrinkled or were otherwise unsafe. Cook at 692. Evidence that Food Lion created the hazard by placing the mat by the exit door was sufficient to establish liability. Cook at 692. As stated above, the property owner must maintain the premises in a reasonably safe

condition. If a property owner chooses to place a floor mat by an exit door or, as in this case to hang a picture, it must take to steps to ensure it is maintained in reasonably safe manner.

From the outset all the way through final arguments, appellant has taken the inane position that Ms. Orr could not prove that GHS was responsible for hanging the picture, let alone responsible for it falling on her head. Counsel for GHS even championed this position in his closing argument. (Transcript p. 155, l. 10-24).

A jury, however, is free to draw any reasonable inference from the evidence presented. Given the unrefuted evidence that there was a large framed picture hanging on the wall in a patient room at Hillcrest Hospital and that this picture fell off the wall injuring Ms. Orr, it was certainly reasonable for the jury to infer that GHS created the hazard, failed to properly maintain the premises, and is liable for Ms. Orr's injuries.


Appellant's challenge to the trial court's denial of its motion for directed verdict is merely a backdoor attempt to invade the province of the jury. The fact is that, after having been properly charged on the law, the jury found by a preponderance of the evidence that GHS breached its duty, was negligent and was thus liable for Ms. Orr's injuries.

Appellee respectfully posits that a finding for appellant in this appeal would only serve to subvert the role of jury in this case.

CONCLUSION

For all the reasons set forth above, appellee request the Court affirm the finding of the trial court.

Respectfully submitted,


Randall L. Chambers (Bar #77859)
Chambers Law Firm, L.L.C.

804 Laurens Road
Greenville, SC 29607
Phone: (864)298-0001
Fax: (864)335-2393

Attorney for Appellee

May 4, 2014

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PROOF OF SERVICE

The undersigned hereby certifies that, on the date indicated below, he served counsel for the Appellant with a copy of Respondent's Initial Brief by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Kenneth N. Shaw
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200

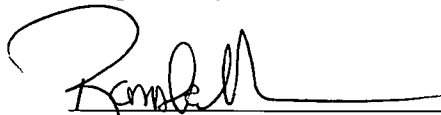
J. Ben Alexander
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200

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SC Court of Appeals

Respectfully submitted,



Randall L. Chambers, S.C. Bar # 65302
THE CHAMBERS LAW FIRM
804 Laurens Road
Greenville, South Carolina 29607
(864) 298-0001

Attorney for Respondent
Frankie Orr

Dated: 5/4/14
Greenville, SC