

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002326-MR

KRIS STOCKTON

APPELLANT

v. APPEAL FROM BALLARD CIRCUIT COURT
HONORABLE WILLIAM LEWIS SHADOAN, JUDGE
ACTION NO. 00-CI-00079

PAXTON MEDIA GROUP, INC.

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, JOHNSON AND KNOPF, JUDGES.

GUIDUGLI, JUDGE. Kris Stockton (Stockton) appeals from an order of the Ballard Circuit Court that granted summary judgment in favor of Paxton Media Group, Inc. (Paxton). Having thoroughly reviewed the record and applicable law, we believe there to be no genuine issue as to any material fact and that summary judgment was proper under the facts presented. Hence, we affirm.

On or about November 19, 1999, Stockton fell from a TV tower owned by Paxton located in Monkey's Eyebrow, Kentucky. Stockton suffered severe physical injuries as a result of the fall. Prior to the fall, Paxton had hired Kline Iron and Steel (Kline) to perform engineering and structural work on the TV tower. Kline, in turn, subcontracted with Coast to Coast Tower Service, Inc. (Coast to Coast) for much of this work. Stockton was employed by Coast to Coast.

Stockton had done similar tower work for approximately four and one-half years prior to the accident. In his deposition, Stockton stated that he had worked on the tower at issue for about two weeks prior to his accident. He alleged that Paxton was negligent in failing to have a safety device (called a safety-climb device) on the tower's ladder. Although there is no other proof in the record, Stockton claimed all towers of this type are mandated to have safety-climb protection, and that every other tower he had worked on has had some fall protection device. Despite this prior knowledge and experience, Stockton worked this tower without a safety-climb device for about two weeks prior to the fall. On the day of the accident, the weather was cold and rainy and as he descended the ladder, Stockton fell almost forty feet. Stockton does not remember much about what occurred immediately before the fall or the fall itself. Most of what he stated in his deposition was

based upon statements co-workers made to him after the accident at the hospital.

Stockton filed for and received workers' compensation benefits as a result of the accident. He also filed this civil action against Paxton alleging Paxton was negligent in failing to have a safety device on the tower ladder. Following preliminary pleadings and depositions, the Ballard Circuit Court entered a one page order on October 5, 2001, granting Paxton's motion for summary judgment. This appeal followed.

At trial and on appeal, Stockton argues that he was an invitee and that Paxton owed him the duty of reasonable care and prudence to insure that the premises were in a reasonably safe condition. Stockton contends that since he was on the property to work on the TV tower which benefited both parties (Paxton gets the tower repaired and Stockton gets paid) that his status is undeniably that of an invitee. Stockton cites Wallingford v. Kroger Co., Ky., 761 S.W.2d 621 (1988), Shaffner v. Pilkerton, Ky., 166 S.W.2d 870 (1942), and Madisonville v. Poole, Ky., 249 S.W.2d 133 (1952), to support his contention that Paxton was negligent in not exercising reasonable care to see that the premises, in this case the TV tower, was in a reasonable safe condition. We do not believe these cases are factually similar to the case before us or that the legal principles set forth therein are controlling in this matter.

First, none of the three cases dealt with the situation where the injured party was an employee of an independent contractor. In this case Stockton was employed by Coast to Coast, an independent contractor, hired specifically to do the TV tower repairs. Second, neither Shoffner nor Poole involve an employee of an independent contractor who sought to recover damages against a premises owner for injuries caused by a known defect. Finally, while Stockton relies heavily on the Wallingford case, recent court decisions have steered away from its holding. See PNC Bank, Kentucky, Inc. v. Green, Ky., 30 S.W.3d 185 (2000); Rogers v. Professional Golfers Ass'n., Ky., 28 S.W.3d 869 (2000). More directly in Gaff v. Johnson Oil Co., D/B/A Bigfoot Food Stores, 45 Fed. Appx. 499 (6th Cir.) (2002)¹, the Court stated:

Despite this duty to make the property reasonably safe for the invitee, see City of Madisonville v. Poole, 247 S.W.2d 133, 137 (Ky. 1952), Kentucky law is not generous to business invitees who suffer an injury as a result of a risk created by an obvious, outdoor natural condition such as ice. Where the natural outdoor hazard is obvious to the invitee, then the hazard is not an unreasonable risk that the owner has a duty to remedy or about which the invitee must be warned. Standard Oil Co. v. Manis, 433 S.W.2d 856, 858 (Ky. Ct. App. 1968). When an invitee knows that the weather conditions are inclement, visits during daytime hours such that she is able to see the condition of the parking lot, specifically notices

¹ This opinion was not recommended for full text publication.

that a given parking lot is icy, and is forced to walk carefully to avoid falling, then the risk created by an icy parking lot is "open and obvious" and the owner has met its duty of reasonable care owed to the invitee and owes no additional duty to remedy or warn. PNC Bank of Ky., Inc. v. Green, 30 S.W.3d 185, 187 (Ky. 2000). No exception to this rule exists where the plaintiff is forced to make multiple crossings over an icy ramp or parking lot. Id. At 186 (implicitly rejecting the rule in Wallingford v. Kroger Co., 761 S.W.2d 621, 622 (Ct. App. Ky 1988), that offered a broader duty to an owner of land for obvious dangers where the owner has reason to expect that the invitee will proceed to encounter the danger). Where the owners meets this duty of reasonable care and has no additional duty to remedy or warn, then there can be no breach and thus no actionable negligence. See Ashcraft v. Peoples Liberty Bank & Trust Co., 724 S.W.2d 228, 229 (Ky. Ct. App. 1987). (Emphasis added).

Paxton, on the other hand, relies on Owens v. Clary, Ky., 75 S.W.2d 536 (1934) and Ralston Purina Co. v. Farley, Ky., 759 S.W.2d 588 (1988). We agree that these cases, which involve claims by employees of independent contractors against premises owners, are controlling legal authority based upon the facts set forth below. In Owens v. Clary citing Wells v. W. G. Duncan Coal Co., 157 Ky. 196, 162 S.W. 821(1914), the Court held:

We there said: "But the owner of the premises may be liable under the particular circumstances where a duty devolving upon him is not fulfilled. He should exercise a reasonable care to protect an independent contractor and his servants from dangers arising from the condition of the premises,

concerning which he is aware, and concerning which they have neither actual nor constructive notice."

In 44 A. L. R. 894, it is said: "If the circumstances under which the stipulated work is performed are such as to place the contractor in the position of an invitee in respect of the premises or plant of the contractee, the latter becomes answerable for such injuries as the former may sustain by reason of any act which constitutes a breach of one of the duties which the law imposes upon him as an invitor. The rule applicable to this situation has been thus stated: "The owner of premises is not responsible to an independent contractor for injury from defects or dangers which the contractor knows of, or ought to know of. But if the defect or danger is hidden and known to the owner, and neither known to the contractor, nor such as he ought to know, it is the duty of the owner to warn the contractor, and if he does not do this he is liable for resultant injury. The same rule applies to the servants of the contractor, and to the subcontractor and his servants."

Owens v. Clary at 537.

Later, in the Ralston Purina Co. v. Farley case, our Kentucky Supreme Court reaffirmed the rule set out in Owens v. Clary that "the owner of premises is not responsible to an independent contractor for injury from defects or dangers which the contractor knows of, or ought to know of." Id. At 589. The Court went on to explain the importance of the rule.

Public policy favors the rule we adopt here. It encourages the employment of contractors and subcontractors to do work requiring special skills. If the employment of an independent contractor with expertise

in a particular field results in the imposition of liability upon the owner, the temptation will exist for the owner to accomplish the work with his own employees, even though they may lack the particular skills needed; because, in such case, workers' compensation would be the only remedy of the employee.

The undisputed facts of this case indicate that Stockton had over four years experience of working on towers, that he believed the safety-climb device was a mandated safety requirement, that he worked on this particular tower for two weeks and that he was aware of its lack of any safety or fall protection device. It is clear that if the tower in question had a defect, it was open and obvious. It is also clear that he knew of any alleged defect or lack of safety device. It is further clear that he was an employee of an independent contractor. Under these facts, the rule of law set forth in Owens v. Clary and Ralston Purina Co. v. Farley is controlling and Paxton could not be held liable for the injuries suffered by Stockton from open and obvious defects or dangers of which he was aware. In that there were no genuine issues as to any material facts and Paxton was entitled to judgment as a matter of law, the lower court acted properly in granting summary judgment in this matter. See CR 56.03; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991).

For the foregoing reasons, the order of the Ballard Circuit Court granting summary judgment to Paxton is affirmed.

ALL CONCUR.

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