

RENDERED: October 10, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001426-MR
AND
CROSS-APPEAL NO. 2002-CA-001474-MR

MICHAEL WILSON

APPELLANT/CROSS-APPELLEE

APPEALS FROM PENDLETON CIRCUIT COURT
v. HONORABLE ROBERT MCGINNIS, JUDGE
ACTION NO. 00-CI-00073

KEITH RUSSELL

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING

** **

BEFORE: EMBERTON, CHIEF JUDGE; JOHNSON AND KNOPF, JUDGES.

KNOPF, JUDGE: In May 1999, Keith Russell fell several feet when a scaffold upon which he was standing to do carpentry work for Michael Wilson collapsed. Russell suffered a broken heel, and in May 2000 he sued Wilson for damages arising from that injury. He alleged that Wilson had negligently used an unsound wooden ladder as one of the supports for the scaffold and that the

ladder's failure had caused his injury. At trial in February 2002, the jury returned a defense verdict, but by order entered June 4, 2002, the Pendleton Circuit Court granted Russell's motion for judgment notwithstanding that verdict. In retrospect the court believed it should have granted Russell's motion for a directed verdict on the issue of Wilson's liability. On appeal, Wilson contends that the trial court abused its discretion by overturning the jury's verdict. We disagree.

As our Supreme Court has explained,

[t]he purpose of a motion for judgment N.O.V. is the same as that of a motion for directed verdict. . . . When either motion is made the trial court must consider the evidence in its strongest light in favor of the party against whom the motion was made and must give him the advantage of every fair and reasonable intendment that the evidence can justify. On appeal the appellate court considers the evidence in the same light.¹

The accident occurred while the parties were working on an addition to Wilson's house. As the possessor of the premises, Wilson owed his invitee a duty to have his premises in a reasonably safe condition.² Wilson was thus subject to liability for physical harm caused to Russell by a condition of the land if he either knew or should have known that the

¹ Lovins v. Napier, Ky., 814 S.W.2d 921, 922 (1991) (citations and internal quotation marks omitted).

² Edwards v. Johnson, Ky., 306 S.W.2d 845 (1957).

condition involved an unreasonable risk of harm to Russell, if it was reasonable to foresee that Russell would not protect himself against the risk, and if Wilson failed to exercise reasonable care to protect Russell from the danger.³

The evidence introduced at trial showed that Russell and Wilson are friends and that for several years Wilson had worked for Russell's home construction and remodeling company. Both men have extensive experience in the sort of remodeling work in which they were engaged at Wilson's house. Presumably both men are familiar with the risks inherent in scaffolds and with the need to ensure the soundness of scaffolding supports. Nevertheless, the scaffold Wilson assembled the day of the accident included as one of its primary supports a wooden ladder several years old that had cracked with age or wear and had begun to loosen in some of its joints. Almost as soon as Russell had climbed onto the scaffold this ladder broke. Russell fell and broke his heel, an injury that required three surgeries and left him with reduced flexibility.

As the trial court noted, a jury could certainly find Russell negligent for agreeing to use such a scaffold, but we agree with the trial court that no reasonable juror could fail to find Wilson liable in these circumstances: he possessed the

³ Creech v. Heaven Hill Distilleries, Inc., Ky., 497 S.W.2d 934 (1973) (citing *Restatement of the Law, Torts* 2nd § 343, 343A); Lloyd v. Lloyd, Ky., 479 S.W.2d 623 (1972).

premises, supplied the unsound ladder, and assembled the hazardous scaffold. As part of his duty to protect Russell from unreasonable risks on the premises, it was his duty to discover the risk posed by the old ladder. He could have done so easily. A cursory visual inspection would have told him that the ladder was not fit for this task. He breached that duty by using the ladder. The ladder's failure caused Russell's injury. We agree with the trial court that it should have granted Russell's directed-verdict motion and therefore conclude that its grant of his motion for judgment N.O.V. was appropriate. This result renders Russell's cross-appeal moot. Accordingly, we decline to address the cross-appeal and affirm the June 4, 2002, order of the Pendleton Circuit Court.

ALL CONCUR.

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