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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002642-MR

CLELL RAY WALTERS — APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS NICHOLLS, JUDGE
ACTION NO. 02-CI-00465

VALSPAR CORPORATION — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE AND LAMBERT, JUDGES; ROSENBLUM,[1] SENIOR JUDGE.

LAMBERT, JUDGE: Clell Ray Walters appeals from a summary judgment ruling in favor of Valspar Corporation in this suit involving a skin reaction following the use of a Valspar product. For the reasons set forth herein, we affirm.

In 2001, Walters was providing care and maintenance on various rental properties owned by Mr. Willard Saunders. On the evening of September 5, 2001,

[1] Senior Judge Paul W. Rosenblum, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

Saunders directed Walters to go the following day to clean the exterior siding of one of the rental properties. The following morning, Walters picked up containers of Valspar's Severe Weather Vinyl and Wood Siding House Wash and the other necessary equipment to complete the task.

Prior to using Valspar's product, Walters read the warning label, which stated:

> **Before you start**: Read all label precautions and instructions.
> **Think Safety**: Wear protection, including eye protection, rubber gloves, old clothing, and shoes when working with this product.
> **Warning: harmful if swallowed or inhaled**. Causes eye and skin irritation. Do not get in eyes, on skin, or on clothing.
> **If in eyes**, flush areas with large quantities of water for at least 15 minutes...
> **If on skin**, immediately wash with large quantities of water and soap...
> Added precautions may be needed on windy days.

Walters did not wear eye protection or rubber gloves as recommended. Furthermore, he used the House Wash in windy conditions and allowed his body to become saturated with the product in direct contravention of the warnings. Despite the warnings he admittedly read, he did not immediately wash the product off his body when it became wet but instead worked for an additional three hours.

By the following day, Walters had developed a rash on his head, eyebrow area, cheeks, and ears. Over the next several days, the burns spread downward covering 100% of his body. Three weeks after using the House Wash, Walters sought treatment with Dr. Jack Ditty, a dermatologist. Ditty's initial diagnosis was exfoliative erythoderma

secondary to contact dermatitis, an inflammation of the skin typically occurring following contact with a chemical. When the rash failed to improve, however, Ditty biopsied it and diagnosed Walters rash as Pityriasis Rubra Pilaris or PRP, an extremely rare genetic skin condition with an unknown cause. It was further the opinion of Ditty that the PRP was "triggered" by the "trauma" of the skin irritation.

Walters was thereafter referred to Dr. Jeffrey Callen at the University of Louisville for examination. Callen, a world-renowned expert in dermatology, confirmed Ditty's diagnosis of PRP. Callen reiterated Ditty's opinion that the PRP was "triggered by the chemical irritancy" but went on to explain that Walters "probably [had] some genetic predisposition to develop the disease" and "would perhaps...had [developed the] disease at some point in his life anyway."

On September 4, 2002, Walters initiated the present action against Valspar asserting several claims based upon theories of products liability and negligence. On October 16, 2006, Valspar moved the trial court for summary judgment, arguing that Walters' injuries are the result of a rare and idiosyncratic genetic condition that was not foreseeable by Valspar, and as such Kentucky law bars any recovery by Walters. Walters timely responded, and the court entered an order granting summary judgment in favor of Valspar. This appeal followed.

The standard of review on appeal when a trial court grants a motion for summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a

matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996); CR 56.03. "The trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor." *Lewis v. B & R Corp*., 56 S.W.3d 432, 436 (Ky.App. 2001), *citing Steelvest v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480-82 (Ky. 1991). Furthermore, we "need not defer to the trial court's decision on summary judgment and will review the issue *de novo* because only legal questions and no factual findings are involved." *Hallahan v. The Courier Journal*, 138 S.W.3d 699, 705 (Ky.App. 2004).

Walters argues that the trial court erred by applying the "idionsyncratic response bar" to recovery in this "failure to warn" case. He specifically contends that the court improperly ignored his "burn injuries" and in determining that the "idiosyncratic response bar" is the law of Kentucky. We disagree.

Walters contends that he sustained chemical burns following the use of the House Wash and that the trial court should have addressed those injuries separately from the PRP. However, the expert testimony offered suggests otherwise. Dr. Callen testified that the symptoms Walters manifested from the initial presentation of his rash (i.e. the movement of the rash from head downward) were symptomatic of PRP and not chemical burns. Furthermore, Dr. Ditty, who treated Walters for over four years, testified that Walters had a "sudden onset of a severe shock to the system in terms of an *irritant chemical effect*...[which] produced...[PRP]." (emphasis added). He admits that the

symptoms of an irritant effect and a chemical burn are similar, but he states that in his opinion, due to the duration of the skin condition and its reaction to treatment, Walters' reaction was a chemical irritant effect triggering the skin condition of PRP. Therefore, in light of the lack of evidence in support of the existence of "chemical burns," we find no error.

We now turn to Walters' second argument. To recover on a negligence claim in Kentucky, there must be a duty on the defendant's part, a breach of that duty, and consequent injury. *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245 (Ky. 1992). The scope of duty includes a foreseeability component involving whether the risk of injury was reasonably foreseeable. *See, e.g., Lewis and B & R Corporation*, 56 S.W.3d 432 (Ky.App. 2001); *Fryman v. Harrison,* 896 S.W.2d 908 (Ky. 1995); *Standard Oil Co. v. Manis,* 433 S.W.2d 856 (Ky. 1968); *Commonwealth, Dept. of Highways v. Widner,* 388 S.W.2d 583 (Ky. 1965). Furthermore, under either Walters' negligence or strict liability theories of recovery, the court is required to engage in a foreseeability analysis. *See Ulrich v. Kasco Abrasives Co.*, 532 S.W.2d 197, 200 (Ky. 1976). We find that the trial court did not determine that the idiosyncrasy of Walters' injury was a complete bar to recovery but that it properly considered it as a *factor* in its analysis of the foreseeability of the risk of that particular injury. As both experts testified as to the fact that there are no scientific studies or literature linking bleach to the development of PRP, Walters' development of PRP following his use of the House Wash was unforeseeable to Valspar, therefore barring recovery.

Accordingly, we affirm the judgment of the Greenup Circuit Court.

ACREE, JUDGE, CONCURS.

ROSENBLUM, SENIOR JUDGE, CONCURS IN RESULT ONLY.

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