SUPERIOR COURT
of the
STATE OF DELAWARE

Susan C. Del Pesco
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Submitted: November 29, 2004
Decided: January 7, 2005

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Re: *Victoria Pesta v. Gale Warren and Gary Warren* –
Civil Action No. 03C-04-294 SCD

Upon Plaintiff's Motion for a New Trial—**DENIED**

Dear Counsel:

This case was tried to a jury, commencing with jury selection on November 1, 2004, and trial on November 3-4, 2004. The jury returned a verdict that Defendants were negligent, but that their negligence was not a proximate cause of injury to the Plaintiff.

The case arises from an incident that occurred on June 26, 2001. Plaintiff testified that she went to visit an acquaintance, Regina Sheets, at the apartment building owned by Defendants. She was accompanied by another person, Deborah Colburne.

Plaintiff said that she ascended the outside wooden staircase with a box in her hands. She delivered the box to its destination—Ms. Sheets' apartment—and then headed back down the stairs to get a second box. She says that as she descended the second time, the second step from the top pivoted when she stepped on it, causing her to fall down the stairs. She recognized that she had injured herself, particularly her left foot. After unsuccessfully shouting for help, Plaintiff worked her way back up the steps, resting on her buttocks at each step, although she testified that she skipped the step which had caused the fall. When she got to the top, she went back into the apartment she had been visiting and noted that the air conditioner was running, thus masking her attempts to call for help. In order to get to medical care, she worked her way down the stairs again, going from one step to another on her buttocks, skipping the step in question.

About six weeks after the fall, Plaintiff returned to the property to take photos of the staircase. It is clear from the photographs that the staircase was in some degree of disrepair. It certainly needed paint, as did the portions of the building shown in the photographs. The photos also show an upright on the handrail in severe disrepair. One photograph was taken from above the step, which means that Plaintiff climbed the steps to the top in order to take the shot. Plaintiff testified that she did not touch the step in question, nor did she take a photograph that clearly demonstrates that the second step was loose. When questioned as to why she did not take a close-up photograph of the step in question, she responded that she was not sure that it was appropriate for her to be there and she did not want to touch anything. Plaintiff did not call Regina Sheets or Deborah Colburne to testify at trial to support her testimony.

Defendant Gary Warren testified that he was at the property in May 2001 on two occasions, and that he had ascended and descended the stairway in question without difficulty. He said that the apartment occupied by Ms. Sheets did not have an air conditioner. He and his wife also testified that they did not receive any report of a broken step.

Plaintiff seeks a new trial, arguing that the verdict is against the weight of the uncontroverted evidence, and that the jury's finding on proximate cause "is either outside the bounds of reason or shows a misunderstanding of the law."[1] Plaintiff's claim was that a defective step caused the plaintiff to fall. Plaintiff notes in her motion that neither she nor Defendants presented any other theory as to the fall. Plaintiff further notes that Defendants admitted that a fall occurred, and that some of Plaintiff's alleged injuries were caused by the fall. Plaintiff also argues that "by finding the Defendants negligent, the jury had to have found that the step was defective and that defendants should have discovered the defect."[2]

Defendants counter that the jury found that Defendants were negligent for failing to inspect their property, but could find that the failure to inspect was not the reason for Plaintiff's fall. There was no doubt that a fall had occurred and that Plaintiff had sustained injuries; the issue was proximate cause. The jury did not accept Plaintiff's story; the jury found that Plaintiff merely fell down the steps, not due to any defect that would have been found by reasonable inspection.

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1 Plaintiff's Motion for a New Trial, D.I. 54, ¶ 2.

2 *Id.* at ¶ 8.

A jury's verdict will be upheld unless it is against the "great weight of the evidence."3 Great deference must be given to the jury verdict in deciding a motion for a new trial that is based upon insufficient evidence.4 The factual findings of a jury should not to be disturbed if there is "any competent evidence upon which the verdict could reasonably be based.5 The jury's verdict should not be set aside unless " a reasonable jury could not have reached the result."6

It appears that the jury found Defendants to have been negligent in failing to maintain their property. Photographs show the stairway and the adjacent area to be in need of maintenance. The jury was instructed that the landlord has a duty to inspect and to discover defective conditions. A portion of the **handrail** appears in a photograph to be in poor repair. There is no photograph clearly showing a defect in the **step**.

The jury apparently concluded that the defective condition they observed was not the cause of Plaintiff's fall. The evidence supports that conclusion. Plaintiff's testimony about the condition of the step was contradicted by Defendants. There was no photograph or corroborative evidence to support Plaintiff, which is curious because she went back to the scene and photographed the area in general. Human nature in the case of a fall is to look at what caused the fall. Yet Plaintiff says she did not look at the step, nor is there evidence that the other two adults at the scene conducted such an inspection. Plaintiff's credibility was repeatedly challenged throughout the course of her

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3 *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979).

4 *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

5 *Mercedes Benz of N. Am., Inc. v. Normal Gersham's Things to Wear, Inc.*, 596 A.2d 1358, 1362 (Del. 1991)(citations omitted).

testimony on issues of liability and damages. The jury may have rejected her testimony as to the cause of the fall, and simply concluded that she fell on her own.

The verdict is not against the weight of the evidence. Plaintiff's Motion for a New Trial is DENIED.

IT IS SO ORDERED.

Very truly yours,

/s/ *Susan C. Del Pesco*

Susan C. Del Pesco

Original to Prothonotary

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6 *Storey*, 401 A.2d at 465.