

SUPREME COURT OF RHODE ISLAND

Marshall Contractors, Inc. v. Bennington Iron Works

811 A.2d 1208 (R.I. 2002) · Decided December 27, 2002

SUMMARY

The Rhode Island Supreme Court reviewed Marshall Contractors, Inc.'s claim for indemnity and contribution against Bennington Iron Works arising from a worker's fall through a floor opening at a construction project. The Court held that, viewing the evidence in Marshall's favor, a reasonable jury could find that Bennington was negligent and contributed to the injury, and it therefore vacated the judgment for Bennington and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Per Curiam; Flanders; Goldberg; Lederberg; Ret; Weisberger; Williams
JURISDICTION	Rhode Island
DECIDED	December 27, 2002
DISPOSITION	vacated
PROCEDURAL POSTURE	Marshall appealed from a Superior Court judgment as a matter of law in favor of Bennington on Marshall's cross-claim for indemnity and contribution arising from a personal-injury action.
STANDARD OF REVIEW	The Supreme Court applies the same standard as the Superior Court when reviewing a judgment as a matter of law: the evidence must be viewed in the light most favorable to the nonmoving party, without weighing evidence or assessing witness credibility, and all reasonable favorable inferences must be drawn. Judgment as a matter of law must be denied if factual issues remain on which reasonable persons could reach different conclusions.
PRECEDENTIAL VALUE	published opinion
PARTIES	Marshall Contractors, Inc., d/b/a Algonquin Builders v. Bennington Iron Works

TOPICS

construction law

negligence

standard of review

appellate procedure

personal injury

PRACTICE AREAS

construction law negligence contracts appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence, viewed in the light most favorable to Marshall, supported a reasonable jury finding that Bennington was negligent and that its negligence contributed to Ferguson's injury.
2. Whether the Superior Court properly entered judgment as a matter of law for Bennington on Marshall's cross-claim.

HOLDINGS

1. The evidence, viewed in the light most favorable to Marshall, was sufficient to support a reasonable jury finding that Bennington was negligent and that its negligence contributed to Ferguson's injury.

KEY QUOTATIONS

"If after such a review there remain factual issues upon which reasonable persons might draw different conclusions, the motion for judgment as a matter of law must be denied." (811 A.2d at 1211)

FACTUAL BACKGROUND

Marshall was the general contractor and construction manager for a manufacturing facility project and hired Bennington to erect the project's steel. The subcontract required Bennington to perform with construction-industry skill and care, comply with applicable laws and regulations, and abide by contractor-established safety rules. Evidence indicated that the area where Ferguson fell was under the control of Bennington and Ajax Construction at the time of the accident, while Marshall had no physical presence there.

PROCEDURAL HISTORY

Daniel A. Ferguson sued Marshall and Bennington after falling through a hole in the floor of a building under construction. Marshall's cross-claim against Bennington was severed, and after multiple prior appeals and remands, the cross-claim proceeded to trial. The Superior Court entered judgment as a matter of law for Bennington. The Supreme Court of Rhode Island held that the evidence, viewed in Marshall's favor, could support a reasonable jury finding that Bennington was negligent and that its negligence contributed to Ferguson's injury.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded to the Superior Court for further proceedings consistent with the opinion, including proceedings on the merits of Marshall's cross-claim against Bennington.

CASES CITED

- Ferguson v. Marshall Contractors, Inc., 644 A.2d 310 (R.I. 1994)
- Ferguson v. Marshall Contractors, Inc., 707 A.2d 660 (R.I. 1998)
- Ferguson v. Marshall Contractors, Inc., 745 A.2d 147 (R.I. 2000)
- Martino v. Leary, 739 A.2d 1181, 1182 (R.I. 1999)
- DeChristofaro v. Machala, 685 A.2d 258, 262 (R.I. 1996)
- Kelly v. Rhode Island Public Transit Authority, 740 A.2d 1243, 1247 (R.I. 1999)

OPINION

Marshall Contractors, Inc. v. Bennington Iron Works 811 A.2d 1208

PER CURIAM.

OPINION

PER CURIAM. This case came before the Court on December 9, 2002, pursuant to an order which had directed the parties to this appeal to appear in order to show cause why the issues raised by this appeal should not be summarily decided. After hearing the arguments of counsel and examining the memoranda filed by the parties, we are of the opinion that cause has not been shown and that the appeal should be decided at this time. The parties to this appeal are Marshall Contractors, Inc., d/b/a Algonquin Builders (Marshall), and Bennington Iron Works (Bennington). The litigation has a long and complex history. Initially, Daniel A. Ferguson brought an action for personal injuries against Marshall and Bennington. The personal injuries arose out of Ferguson's falling through a hole in the floor of a building that was under construction. Marshall filed a cross-claim against Bennington for indemnity and contribution, but this claim was severed from the action brought by Ferguson at the outset of the trial. At the conclusion of Ferguson's evidence, Bennington moved for a directed verdict; the motion was granted. Ultimately, a jury rendered a verdict for more than one million dollars in favor of Ferguson and his family against Marshall. Marshall appealed. This Court affirmed the judgment in *Ferguson v. Marshall Contractors, Inc.*, 644 A.2d 310 (R.I.1994) (Ferguson I). The case was remanded to the Superior Court for further proceedings, in respect to Marshall's claim against Bennington. On remand, Marshall proceeded against Bennington on its cross-claim and, in addition, filed a third-party complaint against Ajax Construction Co. (Ferguson's employer or Ajax). Bennington and Ajax moved for summary judgment. The motion by Ajax was granted. Bennington's motion was denied. Marshall appealed from the summary judgment which had been entered in favor of Ajax. This Court affirmed the judgment in favor of Ajax in *Ferguson v. Marshall Contractors, Inc.*, 707 A.2d 660 (R.I.1998) (Ferguson II). Marshall's cross-claim against Bennington then proceeded to trial in the Superior Court. However, prior to the introduction of evidence, Bennington filed a motion in limine which sought to exclude all evidence of any duty on the part of Bennington toward Ferguson. The trial justice granted the motion which rendered Marshall's claim impossible to prove. Therefore, the Court treated the motion as one for summary judgment and rendered judgment in favor of

Bennington. Marshall *1210appealed, and this Court reversed the judgment in *Ferguson v. Marshall Contractors, Inc.*, 745 A.2d 147 (R.I.2000) (Ferguson III), on the ground that there were issues of fact to be determined, and that a motion in limine was an inappropriate remedy under the circumstances. The case was remanded to the Superior Court for trial on the merits. The trial began on May 3, 2001 on Marshall's cross-claim against Bennington. In the course of that trial, evidence was introduced through testimony and documentary evidence that Bennington was hired by Marshall (who was the general contractor and construction manager) to perform the erection of steel on the project, which was a manufacturing facility for the Titleist Golf Division of Acushnet Company. Evidence was also presented that pursuant to the subject contract, Bennington agreed to be responsible for safety in respect to areas involved in Bennington's activities. Section 2.1 of the agreement between Bennington and Marshall was introduced into evidence and reads as follows: "The Subcontractor agrees to perform the Subcontract Work in accordance with the Contract Documents, the Schedule of Documents and with all the skill and care consistent with the performance of such Work in the construction industry and according to usual construction industry practice. The Subcontractor agrees that it assumes in regard to the Subcontract Work all the responsibility and obligations which the Contractor assumed and agreed to perform for the Owner under the Construction Agreement. The Subcontractor agrees that its performance of the Subcontract Work will be conducted in accordance with all applicable governmental laws, regulations and requirements and shall be subject to the approval of the Contractor and, to the extent provided in the Contract Documents." A project manager for Marshall testified that Bennington had agreed to abide by safety rules and regulations established by the contractor. He made reference to section 6.1 of the contract which provides: "The Subcontractor agrees that in performance of the Subcontract Work it will: a. provide and supply a sufficiency of properly skilled and other workmen and equipment and an adequacy of materials of the proper quality required to complete the Subcontract Work in accordance with this Agreement; b. abide by the safety rules and regulations established by the Contractor or promulgated by any Federal, State, or local governmental body or agency with appropriate jurisdiction." The project manager testified that the portion of the floor where Ferguson fell was under the control of Ajax and Bennington at the time of the accident, and that Marshall and its representatives had no physical presence in that area at the time of Ferguson's fall. Other witnesses testified to the same effect, including a corporate safety director for the Gilbane Company, who was an expert in the subject of safety and Occupational Safety and Health Administration (OSHA) standards. This witness, John O'Donovan, testified that at the time of the accident, the steel erection was almost completed and that the steel subcontractors were wholly in control of the area in which the accident occurred. When the trial justice considered the motion for judgment as a matter of law that had been filed by Bennington, he was required to view the evidence in the light most favorable to Marshall without weighing the evidence or evaluating the credibility of witnesses. He was also required to draw from the evidence all reasonable favorable inferences that would support Marshall's position.

If after such a review there remain factual issues upon which reasonable persons might draw different conclusions, the motion for judgment as a matter of law must be denied. *Martino v. Leary*, 739 A.2d 1181, 1182 (R.I.1999) (per curiam); *DeChristofaro v. Machala*, 685 A.2d 258, 262 (R.I.1996). This Court must apply the same standards as the Superior Court when reviewing the granting of a judgment as a matter of law by the Superior Court. *Kelly v. Rhode Island Public Transit Authority* 740 A.2d 1243, 1247 (R.I.1999). Considering the evidence that was presented by Marshall, we are of the opinion that if it is viewed in the most favorable light required by the foregoing cases, there is evidence which would support a finding by a reasonable jury that Bennington was negligent and that its negligence contributed to the injury suffered by Ferguson. Consequently, we sustain Marshall's appeal, vacate the judgment entered in the Superior Court, and remand the case to that court for further proceedings consistent with this opinion.