

SUPREME COURT OF PENNSYLVANIA

Flagiello v. Crilly

409 Pa. 389 (Pa. 1963) · Decided January 8, 1963

SUMMARY

The Supreme Court of Pennsylvania affirmed a judgment of nonsuit in a negligence action arising from a vehicle striking a child in an alley. The court held that the plaintiffs failed to present evidence establishing the driver's negligence or proximate causation, and that any finding of negligence would have been based on speculation or conjecture.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Chief Justice Bell; Justice Musmanno; Justice Cohen; Justice Eagen; Justice O'Brien
JURISDICTION	Pennsylvania
DECIDED	January 8, 1963
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from a judgment of nonsuit entered in an automobile-pedestrian negligence action.
STANDARD OF REVIEW	A judgment of nonsuit may be entered only in a clear case. The evidence must be viewed in the light most favorable to the plaintiff, with the plaintiff receiving the benefit of all favorable evidence and reasonable inferences; conflicts in the evidence must be resolved in the plaintiff's favor.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania.
PARTIES	Flagiello v. Crilly

TOPICS

- negligence
- burden of proof
- evidence
- civil procedure

PRACTICE AREAS

- tort law
- civil procedure
- evidence

QUESTIONS PRESENTED

1. Whether the evidence, viewed in the light most favorable to the plaintiffs, established that Crilly was negligent and that her negligence proximately caused the accident.
2. Whether the mere occurrence of a vehicle-pedestrian collision supported an inference or presumption of negligence or permitted application of *res ipsa loquitur*.
3. Whether the plaintiffs' circumstantial evidence was sufficient to submit the negligence claim to the jury rather than sustain a nonsuit.

HOLDINGS

1. The plaintiffs failed to prove by a fair preponderance of the evidence that Crilly was negligent or that any negligence was the proximate cause of the accident.
2. The mere happening of an accident, including a moving vehicle's collision with a pedestrian, does not establish negligence, raise an inference or presumption of negligence, or make out a *prima facie* negligence case.
3. *Res ipsa loquitur* did not apply, and the jury could not find liability based merely on surmise, guess, speculation, or conjecture.

KEY QUOTATIONS

"We have said many times that the jury may not be permitted to reach its verdict merely on the basis of speculation or conjecture, but that there must be evidence upon which logically its conclusion may be based."
(409 Pa. at 391)

"Under these facts and circumstances it is clear that plaintiffs completely failed to prove that defendant was negligent, and any conclusion of negligence would be nothing but a guess." (409 Pa. at 392)

FACTUAL BACKGROUND

Joan Catherine Crilly was driving her father's Chevrolet south through a narrow alley behind the Flagiellos' homes on a clear, dry afternoon. Seven-year-old Ronald Flagiello was struck and found lying in the alley, but there were no eyewitnesses to the accident. The evidence did not establish the vehicle's speed, where Ronald was immediately before the accident, how long he was visible to a careful driver, or how much distance Crilly had to stop after Ronald's danger became apparent.

PROCEDURAL HISTORY

The trial court entered a nonsuit for the defendant after the plaintiffs presented their evidence. The plaintiffs appealed, arguing that the evidence and reasonable inferences supported submission of negligence to the jury. The Supreme Court of Pennsylvania affirmed because the evidence did not establish defendant's negligence or provide a non-speculative basis for finding proximate cause.

DISPOSITION

affirmed

CASES CITED

- Castelli v. Pittsburgh Railways Company, 402 Pa. 135, 165 A.2d 632
- Stimac v. Barkey, 405 Pa. 253, 174 A.2d 868
- Borzik v. Miller, 399 Pa. 293, 159 A.2d 741
- Schofield v. King, 388 Pa. 132, 130 A.2d 93
- Bohner v. Eastern Express, Inc., 405 Pa. 463, 175 A.2d 864
- Gatens v. Vrabel, 393 Pa. 155, 142 A.2d 287
- Ebersole v. Beistline, 368 Pa. 12, 82 A.2d 11
- Hulmes v. Keel, 335 Pa. 117, 6 A.2d 64
- Niziolek v. Wilkes-Barre Railway Corp., 322 Pa. 29, 185 A. 581
- Smith v. Bell Telephone Co., 397 Pa. 134, 153 A.2d 477
- Connor v. Hawk, 387 Pa. 480, 128 A.2d 566

OPINION

BELL, J.

409 Pa. 389 (1963) Flagiello, Appellant, v. Crilly. Supreme Court of Pennsylvania. Argued November 21, 1962. January 8, 1963. Before BELL, C.J., MUSMANNO, COHEN, EAGEN and O'BRIEN, JJ. *390 Martin J. Cunningham, Jr., with him Cunneen & Cunningham, for appellants. Robert W. Beatty, with him Ernest L. Green, Jr., and Butler, Beatty, Greer and Johnson, for appellees.

OPINION BY MR. CHIEF JUSTICE BELL, January 8, 1963: Plaintiffs appeal from a judgment of nonsuit. It is hornbook law that a judgment of nonsuit can be entered only in clear cases and plaintiff must be given the benefit of all evidence favorable to him, together with all reasonable inferences of fact arising therefrom, and any conflict in the evidence must be resolved in his favor: Castelli v. Pittsburgh Railways Company, 402 Pa. 135, 165 A. 2d 632; Stimac v. Barkey, 405 Pa. 253, 174 A. 2d 868; Borzik v. Miller, 399 Pa. 293, 159 A. 2d 741.

The law is likewise clear that the plaintiff has the burden of proving by a fair preponderance of the evidence that defendant was negligent and that his negligence was the proximate cause of the accident: Stimac v. Barkey, 405 Pa., supra; Schofield v. King, 388 Pa. 132, 130 A. 2d 93.

The mere happening of an accident or the mere fact that a moving vehicle collides with a pedestrian or with another vehicle does not establish negligence nor raise an inference or a presumption of negligence nor make out a prima facie case of negligence: Bohner v. Eastern Express, Inc., 405 Pa. 463, 175 A. 2d 864; Stimac v. Barkey, 405 Pa., supra; Gatens v. Vrabel, 393

Pa. 155, 142 A. 2d 287; Schofield v. King, 388 Pa., supra; Ebersole v. Beistline, 368 Pa. 12, 82 A. 2d 11; Hulmes v. Keel, 335 Pa. 117, 6 A. 2d 64; Niziolek v. Wilkes-Barre Railway Corp., 322 Pa. 29, 185 A. 581. *391 It is also well settled that the doctrine of res ipsa loquitur does not apply and a jury is not permitted to find a verdict based on surmise or guess: Schofield v. King, 388 Pa., supra; Smith v. Bell Telephone Co., 397 Pa. 134, 153 A. 2d 477.

In Smith v. Bell Telephone Co., 397 Pa., supra, the Court said (pages 138, 139): "We have said many times that the jury may not be permitted to reach its verdict merely on the basis of speculation or conjecture, but that there must be evidence upon which logically its conclusion may be based. Schofield v. King, 388 Pa. 132, 136, 130 A. 2d 93 (1957); Connor v. Hawk, 387 Pa. 480, 482, 128 A. 2d 566 (1957); Ebersole v. Beistline, 368 Pa. 12, 16, 82 A. 2d 11 (1951). "... when a party who has the burden of proof relies upon circumstantial evidence and inferences reasonably deducible therefrom, such evidence, in order to prevail, must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion as to outweigh in the mind of the fact-finder any other evidence and reasonable inferences therefrom which are inconsistent therewith."

Applying these authorities to the instant case and considering the evidence, together with all reasonable inferences therefrom in the light most favorable to plaintiffs, the facts may be thus summarized: The Flagiellos reside at 823 Cypress Avenue, Yeadon, Pa. Behind the houses on the east side of Cypress Avenue is a driveway or alley[*] which runs parallel to Cypress Avenue and is approximately 10 feet 10 inches wide.

From the alley there is an entrance or driveway to a garage situate on each property abutting the alley. Between these entrances or driveways there are stone walls approximately 3 1/2 feet high. *392 On May 16, 1959, on a clear dry day, between 1:30 and 2:30 p.m., appellee Joan Catherine Crilly was driving her father's Chevrolet in a southerly direction in the alley.

There were no eyewitnesses to the accident. The mother of Ronald Flagiello, who was 7 years of age, was washing clothes in the laundry of her home. When she turned from her wash and looked toward the alley, she testified that "all I could see was Ronald, going up in the air". She heard him screaming, went out and found him lying flat on the ground in the alleyway.

Ronald's father was working on the front porch of the house and when he heard his child scream, he rushed to the rear of the house and found Ronald lying in the alleyway and the Crilly automobile stopped 8 feet away. There was no evidence (1) as to the speed of the Crilly car prior to or at the time of the accident; (2) as to where Ronald was or came from just prior to the accident; (3) as to whether, and if so, for how long before the accident Ronald was visible to a careful driver; or (4) as to the distance Joan Crilly had in which to stop in order to avoid hitting Ronald after Ronald's danger became apparent.

Under these facts and circumstances it is clear that plaintiffs completely failed to prove that defendant was negligent, and any conclusion of negligence would be nothing but a guess. Judgment of nonsuit affirmed. NOTES [*] Sometimes referred to by a witness as a driveway, other times called an alley.

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