

SUPREME COURT OF ALABAMA

Simmie James Slay, Jr., and Virginia Slay v. Keller Industries, Inc.,
and Watters Distributing Company, Inc., d/b/a Cash and Carry
Building Supply

823 So. 2d 623 (Ala. 2001) · No. 1001091 · Decided December 7, 2001

SUMMARY

The Alabama Supreme Court affirmed summary judgment for Keller Industries in an Alabama Extended Manufacturer's Liability Doctrine action arising from a plaintiff's fall from an aluminum ladder. The court held that the plaintiffs' expert testimony, including the unsupported assertion that the ladder was possibly underdesigned, did not create a genuine issue of material fact and was properly excluded or insufficient even if considered. The court declined to adopt the Daubert standard for civil cases and applied Alabama's general-acceptance standard for scientific expert testimony.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Per curiam; Moore, Chief Justice; Brown, Justice; Harwood, Justice; Stuart, Justice
JURISDICTION	Alabama
DECIDED	December 7, 2001
DOCKET	1001091
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed from a summary judgment entered for Keller Industries in an Alabama Extended Manufacturer's Liability Doctrine action involving an aluminum ladder. The appeal also concerned the treatment of the plaintiffs' expert's deposition testimony in connection with a motion in limine.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, applying the same standard as the trial court to determine whether the evidence presents a genuine issue of material fact. The admission or exclusion of expert testimony is reviewed for clear abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Simmie James Slay, Jr., Virginia Slay v. Keller Industries, Inc., Watters Distributing Company, Inc., d/b/a Cash and Carry Building Supply

TOPICS

products liability

summary judgment

expert testimony

evidence

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Slays presented substantial evidence of a defective or negligently designed or manufactured ladder and proximate causation sufficient to defeat summary judgment under the Alabama Extended Manufacturer's Liability Doctrine.
2. Whether the trial court erred by excluding or, alternatively, by considering and rejecting the plaintiffs' expert's deposition testimony.
3. Whether Alabama should adopt the Daubert scientifically reliable standard for expert testimony in civil cases.

HOLDINGS

1. Summary judgment for Keller was proper because the Slays failed to present substantial evidence that the ladder was defective or negligently designed or manufactured, or that any such defect or negligence proximately caused Slay's injury.
2. The judgment was proper under either possible rationale: the trial court acted within its discretion if it excluded Dr. Stephens's testimony, and summary judgment was proper if the court considered the testimony because it was insufficient to create a genuine issue of material fact.
3. The court declined to decide whether to adopt Daubert's scientifically reliable standard in civil cases because Dr. Stephens's testimony would not satisfy either the existing Frye general-acceptance standard or the Daubert standard.

KEY QUOTATIONS

"Mere assertions of belief, without any supporting research, testing, or experiments, cannot qualify as proper expert scientific testimony under either the 'general-acceptance' standard enunciated in Frye or the 'scientifically reliable' standard of Daubert." (626)

"His bald assertion in testimony that the ladder was 'possibly underdesigned,' even if asserted by a mechanical engineer generally qualified to speak expertly on such matters, does not have the proper generally accepted scientific support necessary to create a material issue of fact and is not sufficient to carry the nonmovants' burden on a motion for a summary judgment." (626)

FACTUAL BACKGROUND

In 1994, Simmie James Slay fell from an aluminum ladder manufactured by Keller Industries in 1974 and suffered multiple broken bones and kidney damage. The Slays' expert, Dr. B.J. Stephens, had not tested the ladder or exemplar ladders, measured the aluminum gauge, or reconstructed the accident, and he could not identify a defect or causation with reasonable certainty. He stated only that the ladder was possibly underdesigned and suggested that thicker-gauge aluminum could make it stronger.

PROCEDURAL HISTORY

The Slays sued Keller and Watters for negligent and wanton design, manufacture, distribution, and failure to warn after Slay fell from a ladder and was injured. Keller filed for bankruptcy, and the case was stayed; after the case returned to the active docket with Keller as the only defendant, Keller moved in limine to exclude the plaintiffs' expert testimony and moved for summary judgment. The trial court granted summary judgment for Keller, and the Supreme Court of Alabama affirmed. The plaintiffs did not challenge the summary judgment entered for Watters.

DISPOSITION

affirmed

CASES CITED

- Alabama Insurance Guaranty Association v. Southern Alloy Corp., 782 So. 2d 203 (Ala. 2000)
- Jefferson County Commission v. ECO Preservation Services, L.L.C., 788 So. 2d 121 (Ala. 2000)
- Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988)
- Northwest Florida Truss, Inc. v. Baldwin County Commission, 782 So. 2d 274, 276 (Ala. 2000)
- Ex parte General Motors Corp., 769 So. 2d 903 (Ala. 1999)
- Lawson State Community College v. First Continental Leasing Corp., 529 So. 2d 926 (Ala. 1988)
- Cobb v. State, 50 Ala. App. 707, 710, 282 So. 2d 327, 329 (1973)
- King v. State, 266 Ala. 232, 95 So. 2d 816 (1957)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993)
- Courtaulds Fibers, Inc. v. Long, 779 So. 2d 198, 202 (Ala. 2000)
- Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923)
- Southern Energy Homes, Inc. v. Washington, 774 So. 2d 505 (Ala. 2000)
- Davis v. Ford Motor Credit Co., 599 So. 2d 1123, 1125 (Ala. 1992)

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