

SUPREME COURT OF OHIO

Texler v. D.O. Summers Cleaners & Shirt Laundry Co.

81 Ohio St. 3d 677 (Ohio 1998) · Decided May 13, 1998

SUMMARY

The Ohio Supreme Court considered whether the trial court should have granted judgment notwithstanding the verdict on the ground that the appellant was more than fifty percent negligent. The court held that reasonable minds could differ regarding the allocation of negligence between the pedestrian and the cleaner, reversed the court of appeals, and remanded for consideration of the remaining assignments of error.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Alice Robie Resnick, J.; Moyer, C.J.; Cook, J.; Pfeifer, J.; Resnick, J.; Stratton, J.; Sweeney, J.; Douglas, J.
JURISDICTION	Ohio
DECIDED	May 13, 1998
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a judgment of the Ohio Court of Appeals concerning whether judgment notwithstanding the verdict should have been entered on the ground that the appellant was more than fifty percent negligent.
STANDARD OF REVIEW	A motion for judgment notwithstanding the verdict under Civ.R. 50(B) is reviewed under the same standard as a directed-verdict motion under Civ.R. 50(A). The evidence must be construed most strongly in favor of the nonmoving party; the court may not weigh the evidence or assess witness credibility; and the motion must be denied if substantial competent evidence supports that party and reasonable minds could reach different conclusions.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential.
PARTIES	Texler v. D.O. Summers Cleaners & Shirt Laundry Co.

TOPICS

contributory negligence

comparative fault

negligence

standard of care

motion for directed verdict

PRACTICE AREAS

torts

civil procedure

QUESTIONS PRESENTED

1. Whether reasonable minds could reach only the conclusion that the appellant contributed more than fifty percent of the negligence under Ohio's comparative-negligence law.
2. Whether the appellant was required as a matter of law to look constantly downward while walking on the sidewalk.
3. Whether judgment notwithstanding the verdict was proper when evidence supported the jury's allocation of negligence.

HOLDINGS

1. Judgment notwithstanding the verdict was improper because reasonable minds could differ as to the allocation of negligence between the appellant and the appellee.
2. A pedestrian using a public sidewalk must use care reasonably proportioned to the danger likely to be encountered, but is not required as a matter of law to look constantly downward or keep the eyes on the sidewalk at all times.
3. To establish actionable negligence, a plaintiff must show a duty, a breach of that duty, and an injury proximately resulting from the breach.

KEY QUOTATIONS

“The law in Ohio regarding directed verdicts is well formulated. In addition to Civ.R. 50(A), it is well established that the court must neither consider the weight of the evidence nor the credibility of the witnesses in disposing of a directed verdict motion.” (at 679-680)

“A pedestrian using a public sidewalk is under a duty to use care reasonably proportioned to the danger likely to be encountered but is not, as a matter of law, required to look constantly downward.” (at 681)

FACTUAL BACKGROUND

A service door at a dry-cleaning business was propped open with a bucket containing protruding concrete blocks. The bucket obstructed at least half the width of a public sidewalk. The appellant testified that she was walking at a normal or slower-than-normal pace, exercising due care, and looking straight ahead rather than constantly downward when she encountered the obstruction and was injured.

PROCEDURAL HISTORY

After a jury found in favor of the appellant on the allocation of negligence, the court of appeals held as a matter of law that the appellant's negligence exceeded fifty percent and that she was therefore not entitled to judgment. The Supreme Court of Ohio reversed that judgment and remanded for consideration of the remaining assignments of error that the court of appeals had deemed moot.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Ohio Court of Appeals to review the remaining assignments of error raised by both parties that had been found moot and not addressed.

CASES CITED

- Wagner v. Roche Laboratories, 77 Ohio St. 3d 116, 671 N.E.2d 252 (1996)
- Gladon v. Greater Cleveland Regional Transit Auth., 75 Ohio St. 3d 312, 662 N.E.2d 287 (1996)
- Posin v. A.B.C. Motor Court Hotel, Inc., 45 Ohio St. 2d 271, 344 N.E.2d 334 (1976)
- Strother v. Hutchinson, 67 Ohio St. 2d 282, 423 N.E.2d 467 (1981)
- Kellerman v. J.S. Durig Co., 176 Ohio St. 320, 199 N.E.2d 562 (1964)
- Hawkins v. Ivy, 50 Ohio St. 2d 114, 363 N.E.2d 367 (1977)
- Ruta v. Breckenridge-Remy Co., 69 Ohio St. 2d 66, 430 N.E.2d 935 (1982)
- Fed. Steel & Wire Corp. v. Ruhlin Constr. Co., 45 Ohio St. 3d 171, 543 N.E.2d 769 (1989)
- Menifee v. Ohio Welding Products, Inc., 15 Ohio St. 3d 75, 472 N.E.2d 707 (1984)
- Di Gildo v. Caponi, 18 Ohio St. 2d 125, 247 N.E.2d 732 (1969)
- Feldman v. Howard, 10 Ohio St. 2d 189, 226 N.E.2d 564 (1967)
- Ford Motor Co. v. Tomlinson, 229 F.2d 873 (6th Cir. 1956)
- Gedeon v. E. Ohio Gas Co., 128 Ohio St. 335, 190 N.E. 924 (1934)
- Hill v. Sonitrol of Southwestern Ohio, Inc., 36 Ohio St. 3d 36, 521 N.E.2d 780 (1988)
- Freeman v. United States, 509 F.2d 626 (6th Cir. 1975)
- Thompson v. Ohio Fuel Gas Co., 9 Ohio St. 2d 116, 224 N.E.2d 131 (1967)
- Mudrich v. Standard Oil Co., 153 Ohio St. 31, 90 N.E.2d 859 (1950)
- Grossnickle v. Germantown, 3 Ohio St. 2d 96, 209 N.E.2d 442 (1965)
- Griffin v. Cincinnati, 162 Ohio St. 232, 123 N.E.2d 11 (1954)
- Cash v. Cincinnati, 66 Ohio St. 2d 319, 421 N.E.2d 1275 (1981)
- Burge v. Pepsi-Cola Bottling Co. of Cincinnati, 26 Ohio St. 2d 237, 271 N.E.2d 273 (1971)
- Junge v. Brothers, 16 Ohio St. 3d 1, 475 N.E.2d 477 (1985)

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