

SUPREME COURT OF OKLAHOMA

S. H. Kress & Co. v. Maddox

201 Okla. 190 (1949) · Decided March 8, 1949

SUMMARY

The Oklahoma Supreme Court affirmed a jury verdict awarding Jennie Maddox damages for injuries sustained when she fell on an allegedly oily floor in S. H. Kress & Company’s store. The court held that evidence of the store’s floor condition shortly before the accident was admissible, that assumption of risk was not at issue because it had not been pleaded or supported by evidence of knowledge of the danger, and that the verdict against the corporation was not inconsistent with a verdict favoring its manager. The court also rejected a challenge based on alleged juror misconduct.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Gibson, J.
JURISDICTION	Oklahoma
DECIDED	March 8, 1949
DISPOSITION	affirmed
PROCEDURAL POSTURE	S. H. Kress & Co. appealed from a jury verdict awarding Jennie Maddox damages for personal injuries sustained in a fall on the floor of the company's store.
STANDARD OF REVIEW	The court reviewed evidentiary admissibility, jury instructions, the sufficiency of the evidence to withstand demurrer and support submission to the jury, the effect of inconsistent verdicts, and the denial of a mistrial for legal error and whether the challenged rulings constituted error under the circumstances.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion
PARTIES	S. H. Kress & Co. v. Jennie Maddox

TOPICS

- premises liability
- personal injury
- evidence
- contributory negligence
- assumption of risk

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether testimony concerning the heavily oiled condition of the store floor observed shortly before the accident was admissible to show the floor's condition at the time of the fall.
2. Whether the jury instruction on contributory negligence was reversible error because it placed the burden of proof on the defendant without expressly stating that the plaintiff's evidence could also be considered.
3. Whether the evidence raised assumption of risk so that the defendant was entitled to an instruction on that defense despite not pleading it.
4. Whether the evidence was sufficient to submit negligence to the jury and withstand the defendant's demurrer to the evidence and request for a directed verdict.
5. Whether the verdict for store manager M. Q. Davis required a verdict for the corporate defendant.
6. Whether the trial court erred in denying a mistrial based on alleged unauthorized inspection of the premises and advocacy by a juror.

HOLDINGS

1. Evidence of the condition of the place where an injury occurred, observed a reasonable time before the occurrence, is admissible when its character and timing fairly support an inference that the condition existed at the time of the accident; the weight of such evidence is for the jury.
2. An instruction on contributory negligence is not erroneous merely because the court did not on its own motion advise the jury that the plaintiff's evidence could be considered on that issue, when the defendant failed to make a proper and timely request or call the omission to the trial court's attention.
3. Assumption of risk requires knowledge and appreciation of the danger; where the defendant did not plead assumption of risk and the evidence does not show that the plaintiff knew or was chargeable with knowledge of the danger, the defendant is not entitled to an instruction on that defense.
4. Because competent evidence supported an issue of negligence, the trial court properly overruled the defendant's demurrer to the evidence and refused to direct a verdict for the defendant.
5. A verdict in favor of an employee does not necessarily require a verdict for the corporate employer when the employer's liability may arise from negligent acts of other employees who were not joined as defendants or from the corporation's own or vice-principal liability.
6. The trial court did not err in refusing a mistrial where the claim that a juror had made an unauthorized inspection of the premises was based only on speculation and was unsupported by evidence.

KEY QUOTATIONS

"The limitation on the admission of such evidence is that it must be such, in character and point of time, as to justify the inference that the place was in a bad condition at the time of the accident." (191)

“Knowledge and appreciation of the danger is an essential of the defense of assumption of risk and, hence, the doctrine does not apply unless the one alleged to have assumed the risk can be found to have known or to have been charged with knowledge of the danger.” (192)

“The plaintiff was an invitee upon the premises of the defendant. The defendant owed to her the duty to maintain the premises in a reasonably safe condition.” (192)

FACTUAL BACKGROUND

Jennie Maddox fell on the floor while shopping in S. H. Kress & Co.'s merchandise store in Ardmore, Oklahoma. Witnesses testified that, during the latter part of August and no more than an hour before learning of Maddox's fall, the store floor was heavily oiled, with puddles of oil, while a worker spread the oil. Maddox was an invitee, and the evidence also showed that other employees, rather than only the store manager M. Q. Davis, may have performed the allegedly negligent acts.

PROCEDURAL HISTORY

Maddox sued S. H. Kress & Co. and store manager M. Q. Davis for injuries from a fall in the store. The jury returned a verdict against the corporation and in favor of Davis. The corporation appealed, challenging evidentiary rulings, jury instructions, the denial of a directed verdict, the effect of the verdict in favor of Davis, and the denial of a mistrial based on alleged juror misconduct. The Supreme Court of Oklahoma affirmed.

DISPOSITION

affirmed

CASES CITED

- English v. Thomas, 48 Okla. 247, 149 P. 906
- Great Western Coal & Coke Co. v. Cunningham, 43 Okla. 417, 143 P. 26
- G. A. Nichols Co. v. Lockhart, 191 Okla. 296, 129 P.2d 599
- Cities Service Oil Co. v. Jamison, 189 Okla. 445, 117 P.2d 776
- S. S. Kresge Co. v. Holland, 158 F.2d 495
- Holmes v. Ginter Restaurant Co., 54 F.2d 876
- Chicago, R. I. & P. Ry. Co. v. Brooks, 57 Okla. 163, 156 P. 362
- Chicago, R. I. & P. Ry. Co. v. Pedigo, Adm'r, 123 Okla. 213, 252 P. 1095

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