

COURT OF APPEALS OF KENTUCKY

Seale v. Coca-Cola Bottling Works, Etc.

297 Ky. 450 (1944) (Ky. Ct. App.) · Decided March 21, 1944

SUMMARY

The Kentucky appellate court reversed a directed verdict for Coca-Cola Bottling Works in a negligence action alleging that the plaintiff was injured after consuming Coca-Cola containing glass slivers. The court held that evidence concerning the bottle’s sealed condition, carbonation, storage, and handling was sufficient to allow a jury to determine whether the bottle’s contents remained intact from bottling through consumption. The court further explained that, if the jury found the bottle left the bottling plant containing the glass, the defendant would bear the burden of offering an intervening-cause explanation under *res ipsa loquitur*.

CASE DETAILS

COURT	Court of Appeals of Kentucky
WRITING FOR THE COURT	Van Sant
JURISDICTION	Kentucky
DECIDED	March 21, 1944
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from a judgment entered after the trial court sustained the bottler's motion for a directed verdict in an action for injuries allegedly caused by drinking Coca-Cola containing slivers of glass.
STANDARD OF REVIEW	Review of the trial court's directed-verdict ruling, considering whether the evidence was sufficient to permit the jury to find that the bottle's contents remained intact from the time of bottling until consumption.
PRECEDENTIAL VALUE	Published Kentucky appellate decision
PARTIES	Clyde Seale v. Coca-Cola Bottling Works of Lexington, Kentucky

TOPICS

- products liability
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish, for purposes of submitting the case to the jury, that the bottle's contents remained intact and untampered with from the time it left the bottler's plant until it was consumed.
2. Whether the trial court erred in directing a verdict for the bottler rather than allowing the jury to determine whether the bottle contained the glass when it left the bottling plant.
3. Whether, if the jury found that the glass was present when the bottle left the bottling plant, the doctrine of *res ipsa loquitur* would permit an inference of negligence against the bottler absent an intervening-cause explanation.

HOLDINGS

1. Evidence that the bottle was whole, sound, and unbroken and that it emitted the original-opening sound while retaining active carbonation was sufficient for the jury to infer that the bottle had not been tampered with after leaving the bottling plant.
2. The trial court erred in sustaining the bottler's motion for a peremptory instruction because the evidence supported a jury finding that the bottle contained the glass when it left the bottling plant.
3. If the jury found that the bottle contained the slivers of glass when it left the bottler's plant, the foreign substance would support an inference of negligence under *res ipsa loquitur*, subject to the bottler's opportunity to rebut the inference by showing an intervening agency.

KEY QUOTATIONS

"There are times when the law must be content with the proof of reasonable probabilities, and not exact the requirement that evidence in support of a cause be of such character as to preclude the possibility of a finding to the contrary." (453)

"If a plaintiff introduces the best evidence of which the case is susceptible at the time of the trial, and it is reasonable to infer the ultimate fact to be proven from the evidence introduced, such showing, in the exigency of the situation, will be deemed sufficient to sustain a finding that the ultimate fact has been established." (453)

"Where the thing which caused the injury complained of is shown to be under the management of defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have its management or control use proper care, it affords reasonable evidence, in the absence of explanation of defendant, that the accident arose from want of care (of the defendant)." (454)

FACTUAL BACKGROUND

Clyde Seale drank Coca-Cola purchased at a Booneville, Kentucky, restaurant and allegedly consumed slivers of glass in the beverage, causing injury. The restaurant obtained its Coca-Cola exclusively from the defendant, stored the bottles together, replenished its stock twice weekly, and sold the beverages as needed. The bottle

served to Seale was whole, sound, and unbroken; when opened, it emitted the sizzling or hissing sound associated with an original uncapping, and the beverage remained charged with carbonated gas. A second person with access to the storage room could not be located to testify.

PROCEDURAL HISTORY

Seale sued Coca-Cola Bottling Works for injuries sustained after consuming part of a bottle of Coca-Cola containing slivers of glass. At the close of the evidence, the trial court directed a verdict for the bottler and dismissed the petition. The Court of Appeals reversed and directed that Seale receive a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Grant Seale a new trial and conduct further proceedings not inconsistent with the opinion.

CASES CITED

- Nehi Beverage Co. v. Hall, 295 Ky. 353, 174 S.W.2d 509, 510
- Lewis v. Ocean Accident Guarantee Corp., 224 N.Y. 18, 120 N.E. 56, 7 A.L.R. 1129
- Quillen v. Skaggs, 233 Ky. 171, 25 S.W.2d 33, 34
- Nehi Bottling Co. v. Thomas, 236 Ky. 684, 33 S.W.2d 701, 702