

LOUISIANA COURT OF APPEAL, SECOND CIRCUIT

Anderson v. McCarty

519 So. 2d 324 (La. Ct. App. 1988) · Decided January 20, 1988

SUMMARY

The court held that plaintiffs proved by a preponderance of the evidence that W.A. McCarty owned the cow that caused the automobile collision. It found that the trial court improperly disregarded corroborated testimony concerning McCarty's admission of ownership and held that the owner was presumed negligent under Louisiana's closed-range law. The court reversed and rendered judgment awarding Marshall Anderson \$2,000 for personal injury and Louise Anderson \$2,045.77 for vehicle damage.

CASE DETAILS

COURT	Louisiana Court of Appeal, Second Circuit
WRITING FOR THE COURT	Fred W. Jones, Jr.; Sexton
JURISDICTION	Louisiana
DECIDED	January 20, 1988
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from a second trial-court judgment in favor of the defendant after remand from the Louisiana Supreme Court.
STANDARD OF REVIEW	The appellate court will not disturb factual findings absent manifest error, but must determine whether the factfinder was justified in its conclusions and need not ratify a refusal to accept greatly preponderant, objectively corroborated testimony when no sound reason for rejection appears and applicable legal principles were overlooked.
PRECEDENTIAL VALUE	Published Louisiana Court of Appeal opinion
PARTIES	Marshall Anderson, Louise Anderson v. W.A. McCarty

TOPICS

- negligence
- standard of care
- personal injury
- evidence
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court committed manifest error by rejecting, without explanation, objectively corroborated testimony that McCarty admitted ownership of the cow.
2. Whether the Andersons proved by a preponderance of the evidence that McCarty owned the cow involved in the collision.
3. Whether ownership of livestock that causes an automobile collision establishes a presumption of negligence that the owner must rebut by proving reasonable precautions against escape.
4. Whether Louise Anderson could recover loss-of-consortium damages when that claim was not specially pleaded.

HOLDINGS

1. The trial court committed manifest error by rejecting without explanation the objectively corroborated testimony that McCarty admitted owning the cow.
2. The Andersons proved by a preponderance of the evidence that McCarty owned the cow involved in the accident.
3. When livestock causes damage in a collision with an automobile, the livestock owner is presumed negligent and may avoid liability only by proving that he took every precaution reasonably expected of a prudent person to prevent the livestock from escaping and roaming at large.
4. Louise Anderson could not recover loss-of-consortium damages because the claim was not specially pleaded.

KEY QUOTATIONS

“It is axiomatic that we are not to disturb the factual findings of the trial court in the absence of manifest error.” (327)

“Where a cow causes damages in a collision with an automobile courts will presume negligence of the owner of the livestock.” (327)

FACTUAL BACKGROUND

In November 1981, Marshall and Louise Anderson were traveling on U.S. Highway 84 in Winn Parish when their car struck a cow. The cow bore a brand matching a mark recorded in the parish brand book on behalf of W.A. McCarty, and testimony showed that McCarty had previously claimed cattle bearing the same mark and had admitted to a stock patrolman that the cow belonged to him. McCarty denied ownership, but offered no evidence that he had taken all precautions reasonably expected to prevent his livestock from roaming onto the highway. Marshall suffered an acute lumbosacral strain superimposed on disc disease, and the vehicle sustained property damage.

PROCEDURAL HISTORY

The Andersons sued W.A. McCarty for damages after their automobile struck a cow allegedly owned by McCarty. The trial court initially directed a verdict for McCarty, and the court of appeal affirmed. The Louisiana Supreme Court reversed and remanded, holding that the accident report should have been admitted as a recorded recollection. After a second trial, the trial court again ruled for McCarty, and the Andersons appealed. The court of appeal reversed and rendered judgment for the Andersons.

DISPOSITION

reversed

CASES CITED

- Anderson v. McCarty, 445 So. 2d 113
- Anderson v. McCarty, 462 So. 2d 630
- Mart v. Hill, 505 So. 2d 1120 (La. 1987)
- Young v. Sentry Ins. Co., 315 So. 2d 93 (La. App. 3d Cir. 1975)
- Primeaux v. Kinney, 256 So. 2d 140 (La. App. 3d Cir. 1971)
- Fortenberry v. McCoy, 233 So. 2d 320 (La. App. 3d Cir. 1970), writ denied, 256 La. 252, 236 So. 2d 31 (1970)