

APPELLATE COURT OF ILLINOIS

Ferrari v. Brannock

133 Ill. App. 2d 26 (Ill. App. Ct. 1971) · Decided March 9, 1971

SUMMARY

The Illinois Appellate Court considered negligence claims arising from injuries caused by an explosion in a building boiler. It affirmed a \$10,500 judgment against the janitor, held that the evidence supported a duty to warn and did not establish contributory negligence as a matter of law, and reversed directed verdicts for the building owners, remanding for a new trial.

CASE DETAILS

COURT	Appellate Court of Illinois
WRITING FOR THE COURT	Stamos; Leighton; McCormick
JURISDICTION	Illinois
DECIDED	March 9, 1971
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ferrari appealed directed verdicts entered for the Brannocks; Bom separately appealed the judgment entered against him and in favor of Ferrari.
STANDARD OF REVIEW	Directed verdicts are proper only when all the evidence, viewed in the aspect most favorable to the opposing party, so overwhelmingly favors the movant that no contrary verdict based on the evidence could stand.
PRECEDENTIAL VALUE	Published Illinois Appellate Court opinion; precedential.
PARTIES	Albert Ferrari, Joseph Bom v. Kennis Brannock, Mary Brannock, Albert Ferrari

TOPICS

- negligence
- duty of care
- contributory negligence
- premises liability
- appellate procedure

PRACTICE AREAS

- negligence
- premises liability
- landlord-tenant law
- appellate procedure

QUESTIONS PRESENTED

1. Whether Bom owed Ferrari a duty of ordinary care to warn him about the proper use and latent danger of using the boiler during the summer months.
2. Whether Ferrari was contributorily negligent as a matter of law by returning to the boiler area after the explosion.
3. Whether Bom's alleged negligence was within the scope of his employment and therefore imputable to the Brannocks.
4. Whether the trial court properly directed verdicts for the Brannocks under the applicable directed-verdict standard.

HOLDINGS

1. Bom, as the Brannocks' agent, owed Ferrari a duty of ordinary care to warn him about the proper use of the boiler and its latent danger during the summer months.
2. Ferrari was not contributorily negligent as a matter of law because the evidence supported a finding that he lacked knowledge of, and had no reasonable basis to anticipate, the scalding water in the boiler pit when he returned.
3. The trial court erred in directing verdicts for the Brannocks because the evidence did not so overwhelmingly favor them that no contrary verdict could stand, and the evidence supported a finding that Bom's negligent omission occurred within the scope of his employment.

KEY QUOTATIONS

“One cannot knowingly expose himself to danger and subsequently recover damages for an injury which, by the employment of reasonable precaution and circumspection, he might have entirely avoided.” (284)

“In our judgment verdicts ought to be directed and judgments n.o.v. entered only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand.” (510)

FACTUAL BACKGROUND

Ferrari leased a storefront in a building owned by the Brannocks and paid their janitor, Joseph Bom, to dispose of accumulated boxes by burning them. After Bom stopped performing the task, Ferrari began burning the boxes himself and sometimes used the building's boiler, which was operating in a summer setting that prevented pressure from escaping into the heating system. On August 2, 1961, Ferrari placed wet boxes in the boiler, which exploded and filled the boiler pit with scalding water. Ferrari returned to the area after calling the fire department, stepped into the pit, and suffered severe burns.

PROCEDURAL HISTORY

Ferrari sued Bom and the Brannocks for negligence after he was burned by scalding water following an explosion in the building's boiler. At the close of all the evidence, the trial court directed verdicts for the Brannocks. The jury returned a \$10,500 verdict against Bom, and judgment was entered on that verdict. Ferrari appealed the directed verdicts, and Bom appealed the judgment against him.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment in favor of the Brannocks was reversed, and the cause was remanded for a new trial. The \$10,500 judgment against Bom and in favor of Ferrari was affirmed.

CASES CITED

- Saffer v. Molter, 124 Ill. App. 21 (1905)
- Hansen v. Gromoll, 232 Ill. App. 485 (1924)
- Culver v. Kingsley, 78 Ill. App. 540 (1898)
- Saunders v. Smith Realty Co., 84 N.J.L. 276 (1913)
- Consolidation Coal Co. v. Zarvis, 222 Ky. 238 (1927)
- Cameron v. Feely, 208 Ill. App. 521 (1917)
- Carter v. Winter, 32 Ill. 2d 275 (1965)
- Withey v. Illinois Power Co., 32 Ill. App. 2d 163 (1961)
- Cronin v. Brownlie, 348 Ill. App. 448 (1952)
- Pegram v. Seaboard Airline Ry. Co., 139 N.C. 303 (1905)
- Pike v. Grand Trunk Ry. Co. of Canada, 39 F. 255 (1889)
- Logan v. Wabash Ry. Co., 96 Mo. App. 461 (1902)
- Berg v. Great Northern Ry. Co., 70 Minn. 272 (1897)
- Pedrick v. Peoria & Eastern R.R. Co., 37 Ill. 2d 494 (1967)
- Palmer v. Miller, 380 Ill. 256 (1942)
- Johanson v. Johnston Printing Co., 263 Ill. 236 (1914)