

SUPREME COURT OF TEXAS

Lee Lewis Construction, Inc. v. Harrison

70 S.W.3d 778 (Tex. 2001) · No. No. 99-0793 · Decided April 15, 2002

SUMMARY

The Supreme Court of Texas affirmed a judgment imposing negligence and gross-negligence liability on a general contractor after a subcontractor's employee died in a fall from a construction site. The court held that the contractor retained sufficient control over fall-protection systems to owe the employee a duty of care, and that legally sufficient evidence supported causation and gross negligence. The court also held that any error in the jury charge was harmless.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Hankinson; Chief Justice Phillips; Justice Enoch; Justice Baker; Justice O'Neill; Justice Rodriguez; Justice Hecht; Justice Owen; Justice Jefferson
JURISDICTION	Texas
DECIDED	April 15, 2002
DOCKET	No. 99-0793
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Harrison family brought wrongful-death and survival claims for negligence and gross negligence against the general contractor after Jimmy Harrison died in a construction-site fall. A jury found Lee Lewis Construction negligent and grossly negligent, apportioned ninety percent responsibility to it, and awarded compensatory and punitive damages. The trial court entered judgment, and the court of appeals affirmed after suggesting a remittitur. The Supreme Court of Texas granted review of the legal sufficiency of the negligence and gross-negligence findings and an alleged jury-charge error.
STANDARD OF REVIEW	For a legal-sufficiency or no-evidence challenge, the court reviews evidence in the light that tends to support the challenged finding and disregards contrary evidence and inferences. Evidence is legally sufficient if more than a scintilla exists, meaning it furnishes a reasonable basis for differing conclusions by reasonable minds about a vital fact. Gross-negligence sufficiency is likewise reviewed in the

	light most favorable to the verdict and is sufficient when reasonable and fair-minded people could differ.
PRECEDENTIAL VALUE	published
PARTIES	Lee Lewis Construction, Inc. v. Norma Harrison, individually and as next friend of Sumer Dawn Harrison and Jimmie Thor Harrison, minors, Sellie E. Harrison, May Harrison

TOPICS

construction law negligence duty of care appellate procedure

PRACTICE AREAS

torts construction law commercial litigation appellate procedure

QUESTIONS PRESENTED

1. Whether legally sufficient evidence supported the finding that Lee Lewis retained the right to control the subcontractor's fall-protection measures and therefore owed Harrison a duty of care.
2. Whether legally sufficient evidence supported the finding that Lee Lewis's failure to require adequate fall-protection measures was a proximate cause of Harrison's death.
3. Whether legally sufficient evidence supported the jury's gross-negligence finding.
4. Whether the jury question asking whether Lee Lewis retained the right to control safety on the construction project was legally erroneous and required a new trial.

HOLDINGS

1. A general contractor owes a duty of reasonable care to a subcontractor's employee when it retains the right to control an aspect of the subcontractor's work, including fall-protection systems. Lee Lewis retained sufficient control over the fall-protection measures at the jobsite and therefore owed Harrison a duty of care commensurate with that retained control.
2. Legally sufficient evidence supported the finding that Lee Lewis's failure to require KK Glass employees to use independent lifelines was a proximate cause of Harrison's death.
3. The evidence was legally sufficient to support the jury's finding that Lee Lewis was grossly negligent.
4. Any error in submitting the first jury question concerning Lee Lewis's retained right to control safety was harmless because the unobjected-to second question resubmitted the duty issue and the jury's affirmative answer to that question independently supported liability.

KEY QUOTATIONS

“A duty does arise, however, if the general contractor retains some control over the manner in which the independent contractor performs its work.” (783)

“Although our law makes clear that a general contractor is not an insurer of safety on the jobsite, see Elliott-Williams, 9 S.W.3d at 803, we agree with the Harrisons that the testimony highlighted above constitutes more than a scintilla of evidence that LLC retained the right to control fall-protection systems on the jobsite.” (784)

“As the Harrisons correctly point out, the question here is whether an act by LLC was “a” proximate cause, not “the” proximate cause, of Harrison’s death.” (785)

“This evidence shows that LLC was subjectively aware of the extreme risk of serious injury to KK Glass employees, but consciously chose to do nothing.” (786)

“Any error in the first question would therefore be harmless, because the same verdict would have been reached based on an affirmative response to the second question.” (787)

FACTUAL BACKGROUND

Lee Lewis Construction, Inc. was the general contractor for a hospital-tower construction project and subcontracted glass-glazing work to KK Glass. Jimmy Harrison, a KK Glass employee, was working on the tenth floor when he fell to his death; the evidence showed he was not secured by an independent lifeline that would have stopped the fall. Lee Lewis's superintendent was responsible for inspecting fall-protection equipment, observed KK Glass employees using ineffective systems, and did not correct the use of a bosun's chair without an independent lifeline. The jury found that Lee Lewis retained control over jobsite safety, negligently and grossly negligently failed to require adequate fall protection, and proximately caused Harrison's death.

PROCEDURAL HISTORY

The trial court rendered judgment on the jury's verdict for the Harrisons, awarding \$7.9 million in compensatory damages, prejudgment interest, and \$5 million in punitive damages. The court of appeals affirmed after the Harrisons remitted \$450,000 awarded for unproven pain and suffering. The Supreme Court of Texas affirmed the court of appeals' judgment.

DISPOSITION

affirmed

CASES CITED

- Praesel v. Johnson, 967 S.W.2d 391, 394 (Tex. 1998)
- Bradford v. Vento, 48 S.W.3d 749, 754 (Tex. 2001)
- Lozano v. Lozano, 52 S.W.3d 141, 166 (Tex. 2001)
- Elliott-Williams Co. v. Diaz, 9 S.W.3d 801, 803 (Tex. 1999)
- Hoechst-Celanese Corp. v. Mendez, 967 S.W.2d 354, 355-358 (Tex. 1998)
- Redinger v. Living, Inc., 689 S.W.2d 415, 418 (Tex. 1985)
- Koch Ref. Co. v. Chapa, 11 S.W.3d 153, 155-156 (Tex. 1999)
- Coastal Marine Serv. of Tex., Inc. v. Lawrence, 988 S.W.2d 223, 226 (Tex. 1999)

- Travis v. City of Mesquite, 830 S.W.2d 94, 98 (Tex. 1992)
- Brookshire Bros., Inc. v. Lewis, 911 S.W.2d 791, 793 (Tex. App.—Tyler 1995, writ denied)
- Doe v. Boys Clubs of Greater Dallas, Inc., 907 S.W.2d 472, 477 (Tex. 1995)
- Brown v. Edwards Transfer Co., 764 S.W.2d 220, 223-224 (Tex. 1988)
- Transportation Insurance Co. v. Moriel, 879 S.W.2d 10, 22-23 (Tex. 1994)
- Mobil Oil Corp. v. Ellender, 968 S.W.2d 917, 921, 925 (Tex. 1998)
- Universal Servs. Co. v. Ung, 904 S.W.2d 638, 641 (Tex. 1995)
- Wal-Mart Stores, Inc. v. Alexander, 868 S.W.2d 322, 326 (Tex. 1993)
- General Motors Corp. v. Sanchez, 997 S.W.2d 584, 595 (Tex. 1999)
- Clayton W. Williams, Jr., Inc. v. Olivo, 952 S.W.2d 523, 528-529 (Tex. 1997)
- Exxon Corp. v. Tidwell, 867 S.W.2d 19, 23 (Tex. 1993)
- Tovar v. Amarillo Oil Co., 692 S.W.2d 469, 470 (Tex. 1985) (per curiam)
- Privette v. Superior Court, 5 Cal. 4th 689, 21 Cal. Rptr. 2d 72, 854 P.2d 721 (1993)
- Monk v. Virgin Islands Water & Power Authority, 53 F.3d 1381, 1391-1393 (3d Cir. 1995)
- Toland v. Sunland Housing Group, Inc., 18 Cal. 4th 253, 74 Cal. Rptr. 2d 878, 955 P.2d 504, 513 (1998)