

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 2050

BILLY DROZE

VS.

GARDERE MOBILE HOME PARK, INC.

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JUDGMENT RENDERED: MAY 2, 2008

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ON APPEAL FROM THE  
NINETEENTH JUDICIAL DISTRICT COURT  
DOCKET NUMBER 526,458, DIVISION N(27)  
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

THE HONORABLE A. J. KLING, JUDGE

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BERNARD HAMPTON  
BATON ROUGE, LOUISIANA

ATTORNEY FOR PLAINTIFF/  
APPELLANT  
BILLY DROZE

CRAIG D. GREMILLION  
BATON ROUGE, LOUISIANA

ATTORNEY FOR DEFENDANT/  
APPELLEE  
DAVID DIVINCENTI

DONALD A. BAZER, JR.  
BATON ROUGE, LOUISIANA

ATTORNEY FOR PLAINTIFF  
IN RECONVENTION  
DAVID DIVINCENTI

BEFORE: GAIDRY, McDONALD AND McCLENDON, JJ

*JMS McClendon, J. concurs and Assigns Reasons.*

**McDONALD, J.**

This is an appeal from a slip and fall case wherein a decision was rendered in the Nineteenth Judicial District Court finding that the plaintiff failed to prove that his fall was caused by a defect in the premises, and dismissing plaintiff's claim with prejudice. For the following reasons, we affirm the judgment of the trial court.

On the evening, of July 21, 2004, plaintiff, Billy D. Droze, fell down a set of stairs and was injured after exiting his apartment. A petition for damages was subsequently filed alleging that the cause of Mr. Droze's fall was a defect in the stairs, making defendant liable for the damages sustained as a result of the fall. The suit named Gardere Mobile Home Park, Inc., the alleged owner of the premises, as a defendant, and was amended to name David DiVincenti as a defendant when it was learned that he was in fact the owner. Mr. DiVincenti filed a reconventional demand alleging that Mr. Droze owed him money for unpaid rent and late fees.

The matter was heard at a bench trial on April 11, 2007, at the conclusion of which the trial court ruled in favor of Mr. DiVincenti, finding that Mr. Droze's fall was not caused by a defect in the stairs, and that Mr. Droze was indebted to Mr. DiVincenti for \$3,275.00, plus 25% attorney fees and court costs. Mr. Droze's petition was dismissed with prejudice at his cost. Mr. Droze did not appeal the award based on the reconventional demand, and therefore that portion of the judgment is final.

Mr. Droze appeals the judgment of the trial court dismissing his petition for damages as a result of the fall alleging that: (1) the trial court made a faulty and inaccurate factual determination in failing to rule that the photographs introduced by plaintiff showed that the stairs contained a vice or defect for which defendant was liable at the time of plaintiff's fall; (2) the

trial court failed to address plaintiff's claims that defendant's negligence in failing to maintain and inspect the stairs on which plaintiff fell was a cause of plaintiff's damages; and (3) the trial court did not correctly apply the law concerning plaintiff's burden of proof in establishing a vice or defect in the stairs, as a cause of his damages.

Louisiana Civil Code article 2695, in effect in July 2004, provided:

The lessor guarantees the lessee against all the vices and defects of the thing, which may prevent its being used even in case it should appear he knew nothing of the existence of such vices and defects, at the time the lease was made, and even if they have arisen since, provided they do not arise from the fault of the lessee; and if any loss should result to the lessee from the vices and defects, the lessor shall be bound to indemnify him for the same.

Appellant argues that since knowledge of the defect was not required to establish strict liability at the time of Mr. Droze's fall, the court erred in requiring proof of fault on the part of the landlord.

The law applicable to this matter in 2004 provided that to recover under strict liability, the plaintiff must prove that: (1) the thing which caused the damage was in the custody of the defendant; (2) the thing was defective because it had a condition that created an unreasonable risk of harm to the plaintiff; and (3) the defective condition of the thing caused plaintiff's injuries. *Lee v. Magnolia Garden Apartments*, 96-1328 (La. App. 1<sup>st</sup> Cir. 5/9/97), 694 So.2d 1142,1150, writ denied, 97-1544 (La. 9//26/97), 701 So.2d 990.

The trial court judgment stated that the court found that the plaintiff "failed to carry his burden of proving by a preponderance of the evidence that the injuries and damages he claims in this lawsuit were caused by any vice or defect which existed on David DiVincenti's property on July 20, 2004." While it was not necessary for Mr. Droze to prove that Mr.

DiVincenti had knowledge of a defect on his property, it was necessary that he prove that there was a defect and that it caused his damage. Our review of the record reveals that the trial court found that the stairs on which Mr. Droze fell did not contain a defect that created an unreasonable risk of harm. More importantly, the judgment itself recites that Mr. Droze did not prove that his fall was caused by a defect in the stairs, even had a defect existed.

In order to reverse a fact finder's determination of fact, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, and (2) further determine that the record established that the fact finder is clearly wrong or manifestly erroneous. *Stobart v. State through Dept. of Trans. and Dev.*, 617 So.2d 880, 882 (La. 1993).

After careful review of the record in this matter, we find a reasonable basis for the trial court's findings and that the trial court was not clearly wrong or manifestly erroneous. Further, we find no legal error on the part of the trial court. Therefore, the judgment is affirmed and this memorandum opinion is issued in conformance with URCA Rule 2-16.1.B. Costs of this appeal are assessed to Billy D. Droze.

**AFFIRMED.**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2007 CA 2050**

**BILLY DROZE**

**VERSUS**

**GARDERE MOBILE HOME PARK, INC.**

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**McCLENDON, J., concurs, and assigns reasons.**

Although the pictures submitted into evidence by all parties appear to show that the steps were defective and in disrepair, a review of the entire record does not support a finding that the trial court was manifestly erroneous in its credibility determinations. Rather than specifically finding that no defects existed, the trial court found that the plaintiff failed to prove that any existing defects caused the accident and injury. For these reasons, I respectfully concur.

