STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 0027

DOROTHY M. YOUNG

VERSUS

GUIDE ONE INSURANCE COMPANY AND
MCKOWEN BAPTIST CHURCH

Judgment Rendered: June 12, 2009

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Appealed from the
Twentieth Judicial District Court
In and for the Parish of West Feliciana
State of Louisiana
Suit Number 18560

Honorable William G. Carmichael, Presiding

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John W. Wilbert, III Plaquemine, LA	Counsel for Plaintiff/Appellant Dorothy M. Young
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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

GUIDRY, J.

In this premises liability action, appellant, Dorothy Young, appeals from the trial court's judgment denying her motion for judgment notwithstanding the verdict and motion for new trial. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On June 5, 2003, Dorothy Young traveled from Plaquemine to St. Francisville to attend the funeral of her brother-in-law at McKowen Baptist Church (McKowen). This was Mrs. Young's first occasion to attend this particular church. After entering the sanctuary, Mrs. Young and her young niece proceeded to the back of the church in search of the restroom. When Mrs. Young arrived at the back of the church, she opened a door that she presumed led to the restroom. Upon opening the door, however, Mrs. Young fell to the ground and suffered injuries when she failed to notice a semi-circular step down from the sanctuary into the next room, the reception room.

Thereafter, Mrs. Young filed a petition for damages, naming McKowen and its insurer as defendants. Following a jury trial, the jury returned a verdict in favor of McKowen, finding that the step down leading from the church to the reception area did not have a defect that created an unreasonable risk of harm. On May 5, 2008, the trial court signed a judgment in conformity with the jury's verdict and dismissed all claims against McKowen with prejudice. Thereafter, Mrs. Young filed a motion for judgment notwithstanding the verdict and a motion for new trial, which were denied on August 5, 2008. Mrs. Young now appeals from this judgment.

DISCUSSION

Appellate Jurisdiction

The denial of a motion for judgment notwithstanding the verdict or motion

for new trial is an interlocutory and non-appealable judgment.[1] Brister v. Continental Insurance Company, 30,429, p. (La. App. 2nd Cir. 4/8/98), 712 So. 2d 177, 180. The Louisiana Supreme Court, however, has instructed us to consider an appeal of the denial of a motion for new trial as an appeal of the judgment on the merits, when it is clear from appellant's brief that the appeal was intended to be one on the merits. See McKee v. Wal-Mart Stores, Inc., 06-1672, p. 8 (La. App. 1st Cir. 6/8/07), 964 So. 2d 1008, 1013, writ denied, 07-1655 (La. 10/26/07), 966 So. 2d 583.

From a reading of Mrs. Young's brief on appeal, it is clear that she is contesting the jury's finding that the step down was not defective and did not present an unreasonable risk of harm. As such, we will consider Mrs. Young's appeal as being an appeal from the May 5, 2008 judgment on the merits.

Premises Liability

Louisiana Civil Code articles 2317.1 and 2322 define the basis for delictual liability for defective things and buildings. Louisiana Civil Code article 2317.1 provides:

> The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitor in an appropriate case.

Louisiana Civil Code article 2322 provides:

> The owner or custodian of a building is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew, or in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he

[1] By 2005 La. Acts No. 205, effective January 1, 2006, La. C.C.P. art. 2083 was amended to remove the longstanding provision that interlocutory judgments that "may cause irreparable harm" are appealable. An interlocutory judgment is now appealable only when expressly provided by law. Accordingly, the denial of a judgment notwithstanding the verdict or motion for new trial is not generally appealable.

> failed to exercise such reasonable care. Nothing in this article shall preclude the court from the application of the doctrine of res ipsa loquitor in an appropriate case.

Thus, in order to establish liability based on ownership or custody of a thing, the plaintiff must show that (1) the defendant was the owner or custodian of a thing which caused the damage, (2) the thing had a ruin, vice, or defect that created an unreasonable risk of harm, (3) the ruin, vice, or defect of the thing caused the damage, (4) the defendant knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect, (5) the damage could have been prevented by the exercise of reasonable care, and (6) the defendant failed to exercise such reasonable care. Leonard v. Ryan's Family Steak Houses, Inc., 05-0775, p. 3 (La. App. 1st Cir. 6/21/06), 939 So. 2d 401, 404-405.

There was no dispute at trial that McKowen had custody of the doorway and step down at issue. As such, the first and determinative issue resolved by the jury was whether the step leading from the church to the reception room had a defect which presented an unreasonable risk of harm. Whether a condition is unreasonably dangerous requires consideration of: (1) the utility of the complained-of condition; (2) the likelihood and magnitude of harm, which includes the obviousness and apparentness of the condition; (3) the cost of preventing the harm; and (4) the nature of the plaintiff's activities in terms of its social utility or whether it is dangerous by nature. Leonard, 05-0775 at pp. 4-5, 939 So. 2d at 405.

The degree to which a potential victim may observe a danger is also a factor in the determination of whether the condition is unreasonably dangerous. Williams v. Leonard Chabert Medical Center, 98-1029, p. 8 (La. App. 1st Cir. 9/26/99), 744 So. 2d 206, 211, writ denied, 00-0011 (La. 2/18/00), 754 So. 2d 974. A landowner is not liable for an injury which results from a condition which should have been observed by the individual in the exercise of reasonable care. Williams, 98-1029 at p. 8, 744 So. 2d at 211.

Whether a thing contains an unreasonably dangerous condition is a mixed question of fact and law or policy that is subject to the manifest error standard of review on appeal. Reed v. Wal-Mart Stores, Inc., 97-1174, pp. 3-4 (La. 3/4/98), 708 So. 2d 362, 364. To reverse the factual findings of the trier of fact, an appellate court must find (1) a reasonable factual basis does not exist in the record for the finding and (2) the record establishes that the finding is clearly wrong or manifestly erroneous. The issue to be resolved by a reviewing court is not whether the fact finder's conclusion is right or wrong, but whether the conclusion is a reasonable one. Stobart v. State through Department of Transportation and Development, 617 So. 2d 880, 882 (La. 1993). Further, where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review even though the appellate court may feel that its own evaluations and inferences are as reasonable. Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989).

In the instant case, Mrs. Young presented the unrebutted expert testimony of David Brenson, an architect. Mr. Brenson testified that he reviewed the 2000 or 2003 Life Safety Code and determined that the code required that the floor be level on each side of the doorway, and in addition, a landing on the reception room side of the door needed to be at least the width of the door (i.e. rectangular). However, Mr. Brenson admitted that he did not attempt to determine the age of the church building or of the reception room, and that older buildings are given a grace period to comply with code requirements. Further, Mr. Brenson repeatedly qualified his opinions regarding code violations with the phrase "if the code applies." Mr. Brenson conceded that an official with the National Fire Protection Association, the agency promulgating the Life Safety Code, issued a ruling in 2005 stating that the code was never intended to apply to religious facilities. Accordingly, he was unsure as to whether the code applied to this particular situation.

It is well settled that the trier of fact is not bound by the testimony of an expert, but such testimony is to be weighed the same as any other evidence. The trier of fact may accept or reject, in whole or in part, the uncontradicted opinions expressed by an expert. See Harris v. State ex rel. Department of Transportation and Development, 07-1566, p. 25 (La. App. 1st Cir. 11/10/08), 997 So. 2d 849, 866, writ denied, 08-2886 (La. 2/6/09), 999 So. 2d 785.

Further, the record indicates that the jury was presented with conflicting testimony as to the condition of the area at the time of Mrs. Young's fall. Mrs. Young testified that it was cloudy on the day of her accident and that the reception room was dark when she opened the door. Ronicka Molden, Mrs. Young's niece, indicated that the only light on in the reception room was the light on the far end of the room in the kitchen, and that the lighting in the area where Mrs. Young fell was dim. However, Catherine King, a member of McKowen, testified that the area where Mrs. Young fell was well lit, both sets of overhead lights were on in the room, and there were five windows in the room providing additional natural light. Additionally, Robert King, also a member of McKowen, testified that both sets of overhead lights were on at the time of Mrs. Young's accident. Mr. King also noted that there are about five windows in the reception room and that there was sunshine with a mixture of clouds that particular day.

When presented with this conflicting evidence as to the lighting in the area where Mrs. Young fell, the jury reasonably could have made a credibility determination and could have chosen to credit the testimony of the witnesses for McKowen over the testimony of Mrs. Young and her niece. As we stated previously, when findings are based on determinations regarding the credibility of witnesses, the manifest error—clearly wrong standard demands great deference to the trier of fact's findings. Rosell, 549 So. 2d at 844.

Finally, the testimony revealed that the floor in the church sanctuary was bright crimson red carpet, whereas the floor in the reception room was grey tile, with a grey carpet landing at the door. Further, Mrs. Young admitted that she did not look where she was stepping when she opened the door to the recreation room and that had she looked, she would have noticed the step.

From our review of the record, we find that the jury was presented with expert testimony that, although uncontradicted, was far from clear as to which code, if any, applied to this particular case. As such, the jury could have reasonably decided not to afford Mr. Brenson's testimony much weight, or could have decided to reject his testimony in its entirety. Additionally, although Mrs. Young contends insufficient lighting was a major component in her inability to see the step down, we recognize that the jury was presented with conflicting evidence regarding the lighting conditions in the room at the time of the accident. Finally, Mrs. Young clearly admitted that she was not looking where she was stepping at the time of her fall. Although she contends that a sign was necessary to make her look down to see the step down, the jury could have determined that a sign was not necessary to warn Mrs. Young, since there was a clear contrast between the flooring in the sanctuary and the flooring in the reception room, and as such, an individual exercising reasonable care should have noticed the step down upon opening the door to the reception room. Therefore, though had we been sitting as the trier of fact we may have evaluated the facts differently, we cannot say that the jury was manifestly erroneous or clearly wrong in finding that the step down in question was not a defect that presented an unreasonable risk of harm.[2]

[2] Because we find no error in the jury's finding as to whether the step down in question was a defect that presented an unreasonable risk of harm, we further find that the trial court did not err in denying Mrs. Young's motion for judgment notwithstanding the verdict and her motion for new trial.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court finding in favor of McKowen Baptist Church and dismissing Mrs. Young's claims with prejudice. All costs of this appeal are assessed to Dorothy Young.

AFFIRMED.