

1953

Lawrence Morris v. The Farnsworth Motel et al : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

LAWRENCE MORRIS,

Appellant,

—vs—

THE FARNSWORTH MOTEL, and
DEWEY F. FARNSWORTH, FRANK
M. FARNSWORTH, and J. L. CAR-
DON d.b.a. THE FARNSWORTH
MOTEL,

Respondents.

Case No.
7947

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENTS

PRELIMINARY STATEMENT

This appeal is from an order granting defendants' motion for summary judgment. The record on appeal includes the deposition of plaintiff as well as the complaint and affidavits of defendants. During the nighttime

plaintiff stubbed and broke his toe on a chair in defendants' motel as he proceeded to the bathroom adjoining the bedroom which he occupied. It is undisputed that plaintiff did not turn on any of the lights which were provided in the room. The complaint alleges that one of the defendants in the course of preparing the room for occupancy, wilfully, recklessly or negligently placed and left a chair in the passageway leading to the bathroom doorway. The defendants' made their motion for summary judgment in accordance with the provisions of Rule 56 (b) and (c) of the Utah Rules of Civil Procedure and in support thereof filed the affidavits of the individual defendants, the motel owners, and also the plaintiff's deposition. The motion was based on the grounds that as a matter of law defendants were not negligent and that plaintiff's failure to turn on a light in the bedroom constituted contributory negligence as a matter of law. The issue on appeal is the correctness of the trial court's decision which granted defendants' motion for summary judgment and ordered that plaintiff's complaint be dismissed.

STATEMENT OF FACTS

There is no genuine issue as to any material fact in this case. The undisputed facts upon which defendants' motion for summary judgment was granted, are as follows. In May, 1952, plaintiff and his wife drove from Salt Lake City to El Paso, Texas to visit their son Larry who was in the Army and to visit the defendants. Plaintiff is a brother-in-law of the individual defendants.

Mrs. Morris, plaintiff's wife, is a sister of Dewey and Frank M. Farnsworth and of Mrs. J. L. Cardon (R. 6, 7). On May 23, 1952, Mr. and Mrs. Morris drove from Cortez, Colorado to El Paso, Texas, arriving at their brothers-in-law's motel sometime between 4:00 and 6:00 p.m. (Dep. 9).

The motel is a single story structure containing 28 rooms forming a three-sided square (R. 6, Dep. 11). Over the porch there is a neon light which runs around most of the motel (R. 7). After registering at the office plaintiff carried his luggage to his room and bathed. (Dep. 11). That evening plaintiff and his wife and their son and possibly some of the defendants had dinner together at a downtown restaurant (Dep. 14). After dinner Larry returned to his army post and Mr. and Mrs. Morris visited with the defendants in the motel office (Dep. 15). Plaintiff could not recall whether or not he returned to his room after dinner and prior to the time he visited in the motel office (Dep. 16). Mrs. Morris went to bed about 9:30 p.m. (Dep. 15). Plaintiff continued to discuss affairs in the motel office until sometime between 10:00 and 11:00 p.m. when he went to his room and prepared to go to bed (Dep. 16). Plaintiff did not turn on the overhead light nor the bed lamp on the night stand which were provided in the room but undressed in the dim light which came through the venetian shades from the neon light outside the room (Dep. 16). Mrs. Morris was not awake. She had taken his pajamas out of the suitcase and had placed them on the bed for him (Dep. 29). After undressing plaintiff proceeded towards the bathroom where he struck his little toe on the left foot against

the chair which partially blocked the passageway (Dep. 19). Both the chair and the passageway were in a shadow which was created by the diffused light which came through the venetian shades into the bedroom (paragraph 2, complaint). The bedroom which plaintiff and his wife occupied was 12 by 14 feet. (R. 9). The furniture in the room consisted of twin beds, two chairs, a luggage rack, a vanity and a night stand with a bed lamp on it (R. 6, 7). The passageway referred to in plaintiff's complaint was formed by the position of one of the twin beds in the room.

Mr. Dewey Farnsworth had rearranged the furniture in the room during plaintiff's absence so as to provide more room and had placed the chair in the corner of the bedroom by the bathroom door (R. 7). The accident did not awaken Mrs. Morris. She first learned of it the next morning (Dep. 21).

A day or two after the accident defendant, Dewey Farnsworth, told the plaintiff not to worry: "I have insurance and the insurance will take care of this accident" (Dep. 5). Plaintiff only paid for two of the seven or more nights occupancy at the motel (Dep. 10). The defendants told him "You won't pay any more until we find out how this thing comes out and the settlement comes out" (Dep. 11). Most of plaintiff's medical expenses were also paid by the defendants (Dep. 23).

On August 26, 1952, summons was served on Dewey Farnsworth while he visited in Utah. He notified the plaintiff in advance of his intended visit and plaintiff relayed the information to his attorney (Dep. 6). Prepara-

tion of the summons for the proposed visit of Mr. Farnsworth was left up to plaintiff's counsel (Dep. 6). Thus jurisdiction was acquired in Utah although the accident happened in Texas. After the insurance company asked defendants for the records of plaintiff's registration, this information was telephoned to plaintiff, by one of the defendants. This occurred within two weeks prior to the time that plaintiff's deposition was taken (Dep. 7). At this latter time plaintiff stated that the accident occurred on May 23rd instead of the 30th as he alleged in his complaint (Dep. 9).

ARGUMENT

POINT 1. THE DEFENDANTS WERE NOT NEGLIGENT IN FAILING TO FORESEE THAT PLAINTIFF WOULD STUB HIS TOE IN THE MOTEL BEDROOM WHEN HE FAILED TO TURN ON THE LIGHT.

Counsel for both parties have searched the digests for cases dealing with accidents occurring because of the placement of furniture in a hotel bedroom. None have been found either imposing or denying liability. This absence of cases indicates this is the first occasion in which a plaintiff's attorney has urged that the placement of furniture in a hotel room be considered a basis for liability.

The room in question was perfectly safe and suitable for occupancy. No defects of any kind existed. The chair was a plain, ordinary chair. The room was provided with

an overhead light, a bed lamp on the night stand and also a bathroom light.

Plaintiff contends in his brief that “common sense dictates that they (defendants) must regard an obstruction (the chair) *so placed as to be partially in the shadows* to be a potential source of danger to their patrons.” The fact is that the chair was not placed so as to be in any shadow. The chair was placed in the corner of the bedroom next to the bathroom door sometime in the late afternoon on May 23rd (R. 7). No shadows dark enough to obscure the chair were cast upon it at that time of day, nor at any time of night if the simple act of turning on the lights had been performed. If plaintiff had switched on the ceiling light or the night stand lamp, the chair would have been plainly evident. The plaintiff had no right to rely on the outside light which “dimly lit” the room. This failure to turn on either of the lights provided was the cause of plaintiff’s not seeing the chair and was the reason orally assigned by the trial court why plaintiff was not entitled to take his case to a jury.

Plaintiff’s brief states:

“It must have been obvious to the defendants that their patrons would not normally *turn on all of the lights* in the motel at a late hour . . .” (Italics added).

The evidence shows that plaintiff did not turn on any light whatsoever!

Counsel for plaintiff attempted to excuse the failure to turn on the light by setting forth the facts in the complaint that when plaintiff first entered the room he be-

came acquainted with the plan of said apartment, that when he prepared to go to bed the room was illuminated through its windows but the passageway was in the shadow and that because of said shadow plaintiff ran into the chair.

Plaintiff's argument concerning his reasonableness in proceeding to the bathroom in the dimly lit room and relying on his memory to guide him is defective in three ways.

First his testimony in the deposition shows that he did not inspect the room so as to familiarize himself with its contents. In this regard plaintiff testified that at the time he undressed just before the accident occurred he laid his clothes on a straight-back chair that was in the corner by his bed, but he could not recall whether it was the same chair that had been there at the time he first "familiarized" himself with the room. Although plaintiff occupied this room for over a week (Dep. 10) and in discussing the accident with Mr. Dewey Farnsworth was told that the insurance would take care of it (Dep. 5) he could not remember how many lights were in the room (Dep. 17), whether or not there was a bed lamp on the night stand by his bed (Dep. 17) nor how many chairs were in the room when he first entered. ("There was the one chair only that was in the room that I noticed") (Dep. 20). He could not remember whether or not the chair upon which he stubbed his toe was left in the room for the remaining time of his occupancy, (Dep. 26), nor could he recall the low wooden luggage rack which was in the room (Dep. 12). Although Mr. Morris states that he only noticed the one chair by his bed, he carefully

qualified his answer to say that there was not a chair in front of the bathroom door when he first entered the room. He did not state that there was not a chair in that corner at the time he inspected the premises. The affidavits of Dewey and F. M. Farnsworth both state that there were two chairs, a luggage rack and a bed lamp in the room (R. 6, 7). The alleged conclusion that plaintiff became acquainted with the plan of said apartment or that he familiarized himself with the room is entirely contradicted by his own testimony in the record.

Second, for a person to resort to a method of guiding himself in a dimly lit room by memory when the obvious reasonable thing to do is to switch on the bed lamp is clearly negligence. Third, his scheme was entirely unforeseeable to the defendants. In regard to the second and third points the decision in *St. Paul Hotel Co. v. Lohm* (1952) 196 F. 2d 233, is particularly apt. In that case a hotel guest while in the shower attempted in haste and without drying himself to seat himself sideways upon the seat of a toilet. The wooden seat which was hinged to the brittle part of the porcelain bowl broke causing the injuries complained of. In reversing a jury verdict for the plaintiff, the Eighth Circuit Court of Appeals stated:

“But it is equally common knowledge that such seats hinged on the brittle porcelain parts are not meant to resist the pressure of weights thrust against them from the side as plaintiff admits he did in this instance.”

The court stated that the following instruction correctly states the law of Minnesota:

“ . . . When a hotel furnishes a facility such as a

toilet facility, to a guest, the law intends that the guest shall use such facility in a proper and authorized manner and the hotel cannot be expected to foresee and therefore the hotel would not be negligent if the guest uses such toilet facility in a manner not intended.”

This fundamental principle directly applies to plaintiff's reliance on the neon light which came from outside the motel and dimly lit the room. Plaintiff did not exercise due care in relying on the light which came from outside the room nor were such lights intended or installed for that purpose. Defendants had every reason to believe that plaintiff would turn on one of the lights provided and thus be able to see objects in the room. Plaintiff cannot excuse his omission to turn on the light by the alleged inference that he familiarized himself with the location of all objects and corners in the room and at the same time place defendants under a legal obligation to have foreseen such an attempted use of memory. Nor could defendants reasonably be expected to foresee what shadows would be present in the room when plaintiff chose to rely on the outside light instead of the lights provided. In exercising his duty of reasonable care, an innkeeper need not anticipate that when a guest goes to his room at night that his pajamas will be laid out on the bed for him; that his wife will be asleep; that he will not turn on the light so as not to awaken her; that a chair which partially blocks the passageway will be in the shadow of a neon light running around the eaves of the motel because the inside light is not turned on and that the guest relying on his powers of memory will walk in the darkness and there stub his toe.

POINT II. THIS IS NOT A CASE CONCERNING HIDDEN DEFECTS NOR HAZARDOUS CONDITIONS.

Plaintiff in paragraph 1a of his argument terms the placing of the chair in the motel bedroom a *hidden defect*, a *hazard* and a *dangerous condition*. Plaintiff would have this court hold that the placement of furniture in a motel bedroom which "obstructs free movement and access between rooms" is comparable to permitting the lights at a Bryce Canyon lodge to go out three or four times a day and just as plaintiff attempted to go downstairs, *Carpenter v. Syrett* 99 Utah 208, 104 P. 2d 617; to the collapse of the frame of a folding wall bed which fell on plaintiff as she was lying therein, *Shattuck v. St. Francis Hotel*, 7 Cal. 2d 358, 60 P. 2d 855; to the splintering of a porcelain faucet when plaintiff attempted to turn off the hot water, *Adams v. Dow Hotel Co.*, 25 Cal. App. 2d 51, 76 P. 2d 210; to the risk involved in placing three wooden blocks underneath one corner of a bathtub to support it, *Topley v. Zeeman*, 216 Cal. 182, 13 P. 2d 666 or to the maintenance of an air shaft which was next to the staircase and was protected by a hand railing with a spring catch insufficient to prevent the gate from swinging open upon pressure applied by decedent, *Robertson v. Weingart*, 91 Cal. App. 715, 267 P. 741.

The distinction between these cases and the instant one is plain. Here the position of the chair did not constitute a defect or hazard of either an obvious or obscure nature, the presence of which a reasonable, prudent motel owner should search out and warn a guest. In *Lindquist v. S. S. Kresge & Co.*, 345 Mo. 849, 136 S.W. 2d 303,

the plaintiff slipped on worn marble stairs in the defendant's store. A judgment of nonsuit was affirmed. The court stated:

“Nor is there any presumption of negligence on the part of an owner or occupier merely upon a showing that an injury has been sustained by one while rightfully on the premises. The true ground of liability is the proprietor's superior knowledge of the perilous instrumentality and the danger therefrom to persons going upon the property. It is when the perilous instrumentality is known to the owner or occupant and not to the person injured that a recovery is permitted.”

It should be remembered that the accident here complained of, happened in Texas and the case is not controlled by Utah decisions. Plaintiff's right to recover damages in this case is to be determined according to the law of Texas.

“The law of the place of wrong determines whether a person has sustained a legal (compensable) injury.” Restatement of the Law of Conflict of Laws, Section 378 et seq.

Counsel for respondent have been unable to find any Texas cases which concern the placement of furniture in a hotel room. In *Texas Hotel Co. of Longview v. Cosby*, Tex. Civ. App. 131 S.W. 2d 261, the court stated the general rules of an innkeeper's duty in regard to the safety of its guests as follows:

“Relative to the duty of the Texas Hotel Company, the innkeeper to the safety of its guest, in 32 Cor. Jr. Sec. 68, page 561, it is stated:

“While an innkeeper is not an insurer of the

safety of his guests, it is his duty to take at least reasonable care of the persons of his guests so that they may not be injured while in the inn by want of such care on his part.'

"Or as stated in *Baugh v. McClesky*, Tex. Civ. App. 292 S.W. 950, 952:

"'. . . In order to charge the innkeeper with liability for injury to the person . . . negligence on the part of the innkeeper must be shown in connection with the very circumstances which produced the injury.' "

In *Kopelson v. New York Hotel Statler Company*, 131 Misc. 525, 227 N.Y.S. 281, plaintiff cut her foot on a cuspidor which was under the table around which she and other guests of defendant's hotel were sitting. A judgment for plaintiff was reversed and the complaint dismissed on the merits. The court said: "We do not understand how it can be validly claimed that the placing of one or more cuspidors in one of the public rooms of a hotel is negligence."

POINT III. PLAINTIFF WAS CONTRIBUTORILY NEGLIGENT.

Plaintiff cites no authority for his contention that he was entitled to rely on the position of the chair being unchanged. This proposition is legally unsound. This is not a situation of a person becoming familiar over a long period of time with objects of furniture in his own home. Plaintiff after driving from Cortez, Colorado to El Paso checked in at the motel about 4:00 p.m., took a bath, went out to dinner and then returned late in the even-

ing for the first night's occupancy of the motel bedroom. To rearrange the beds, chairs or luggage rack during plaintiff's absence was not an unusual nor a negligent thing to do. The cleaning staffs of hotels and office buildings oft-times move objects of furniture in cleaning the room. To say that a guest may rely on pieces of furniture being unchanged ignores common every-day experience to the contrary. A person occupying a motel bedroom should anticipate that his wife or children, or his own guests who are invited into the room may and often do move chairs from one position to another. Plaintiff's argument in this vein would have the court submit the case to a jury if he had attempted to sit where a chair previously had been, relying on its presence by memory rather than by sight. He states that he wasn't groping about blindly; that there was adequate light to see to go to bed but the chair was in a shadow. The fact that the chair was in the shadow of an outside light is not the fault of defendants. This shadow would have disappeared had plaintiff turned on a light. It is a permissible inference to argue that the original chair which was in the corner by the bathroom door at the time of plaintiff's first visit and alleged familiarization therewith would likewise have been in the shadow when nighttime occurred. It is this fact which prompted plaintiff to plead that not only was the chair, upon which he stubbed his toe in a different position, but it was also in the shadow. His contention is that he was relying partly upon memory and partly upon what the dim light revealed, which in the shadow was nothing; ergo he could have relied entirely on memory and in the absence of defendants' change of position of the chair walked partly into the shadow and still missed the chair.

On the other hand he could have avoided the shadow and still missed the chair. But these tenuous suppositions would all be dispelled if plaintiff had increased his visual capacity by a flick of the light switch.

Mrs. Morris had already gone to bed and presumably used the bathroom. If the position of the chair constituted a foreseeable hazard, she would undoubtedly have moved it. Yet the objects of furniture in a room never seem in the way when viewed in sufficient light to apprise a person of their presence. Thus, Mrs. Morris probably paid no attention to it—simply walked by and into the bathroom. How different are objects of furniture in a dark room whose location cannot be definitely fixed! The hazard itself is created by not turning on the light, not giving the eyes a chance to see. The comparison of a person of normal vision and a blind man in encountering downtown traffic and crowds is an illustration of what hazards are in store for people of different visual capabilities. This situation of danger was not created by defendants. It was caused by plaintiff's negligent decision not to turn on the lights. The entire problem boils down to the principle that one man cannot take pains to prevent injury to another who does not exercise a reasonable degree of care on his own behalf. If a person will walk in the semidarkness where shadows obscure his vision, no one else can prevent him from stubbing his toe.

The assigned reason for his conduct, that he did not want to awaken his wife, does not legally excuse his omission. The stage of action on which this accident took place did not assume a negligent character until plaintiff proceeded without turning on the light.

Baker v. Decker et al (Utah 1949) 212 P. 2d 679 cited by appellant is distinguishable in several material aspects. In that case the accident happened in a hallway provided for the common use of many tenants living on the third floor of the Roosevelt apartments. *The suit was dismissed against the owner of the apartments.* A jury verdict against the paperhanger who spread the canvas on the floor over which plaintiff tripped was affirmed by this court. The omission to turn on a light in a private room was not involved. In the Baker case the court held it was a jury question to determine whether the placement of the rumpled canvas on the floor or the plaintiff's misjudgment in stepping over it was the cause of the accident. Mr. Morris' failure to turn on the light is a much more flagrant act of negligence than was Mrs. Baker's error in stepping over the canvas. Plaintiff's contentions that he is not bound to turn on the light to apprise himself of "danger" can be determined as a matter of law. The position of the chair is "dangerous" only when it cannot be seen because of the dark. There was ample room to walk past the chair and into the bathroom, if the plaintiff had availed himself of sufficient light to be able to see. Mrs. Morris' experience is proof of this. Premonition of danger over the position of a chair in one of twenty-eight motel rooms is much less than setting up a paperhanger's table in a narrow hallway with tool box, paste bucket and drop cloth.

In *Fort Dodge Hotel Co. v. Bartelt*, 119 F 2d 253 cited and relied upon by appellant, a woman 54 years of age, wearing bi-focal glasses and weighing over 200 pounds, together with her husband, followed a bellboy who was

carrying their luggage to select one of defendant's hotel rooms. The bellboy placed the luggage in a dimly lit hallway and opened Room 214 for plaintiff and her husband to inspect. They stated they wanted to see another room and followed the bellboy into the hall. The bellboy did not pick up the luggage but proceeded down the hall to unlock Room 208. Plaintiff was the last person to leave Room 214. She turned out the lights in the room as she left. As she emerged from Room 214 into the dimly lit hallway she fell over her luggage which had been left in the hallway by the bellboy. The court sustained recovery of damages and held that the duty of exercising reasonable care to keep the premises safe included keeping the halls and passageways free from hazards. This rule would appear to especially apply where the plaintiff was following the bellboy through the halls and at all times previously he had been carrying her luggage. The *Bartelt* case cites and distinguishes *Walker v. Roosevelt Hotel Company*, 214 Iowa 1150, 241 N.W. 484 in which plaintiff was held to be contributorily negligent as a matter of law when he fell over a laundry cart in a passageway. The cases were distinguished on the adequacy of light.

CONCLUSION

The trial court properly granted defendants' motion for summary judgment dismissing plaintiff's complaint. The glaring omission of plaintiff to turn on the bed lamp cannot be termed a "close question of fact" which must be weighed by a jury. Reasonable minds cannot differ on whose fault it is when a person stubs his toe on a chair in the passageway in a motel bedroom while moving

about in the dark, being unable to see because he hasn't turned on the light!

The chair upon which plaintiff stubbed his toe was not a hazard nor a dangerous condition until plaintiff proceeded toward it in the darkness. He attributes his inability to see the chair to the shadow which was caused by the outside neon light, but the presence of the shadow was due to plaintiff's own negligent omission. It was impossible for defendants to foresee that Mr. Morris would not turn on either the overhead light or the bed lamp on the night stand which were provided for his use. Defendants were not negligent in failing to foresee the chain of events which led to plaintiff's injury. Plaintiff's testimony that his wife had laid out his pajamas on the bed for him, that he had previously familiarized himself with the room, but the chair was in the shadow is such a combination of circumstances and unusual thought processes that no reasonable motel owner could be expected to foresee that a guest would skip the simple act of turning on the light and resort to this method of walking in the dark.

Even though the court should find that defendants were negligent, the conclusion is inescapable that plaintiff himself was guilty of contributory negligence. The cause of the accident was the failure to turn on the light. About that there can be no doubt. This is the normal thing that would have been done by any other prudent guest and the omission to perform this simple task was the direct proximate cause of plaintiff's injury. The stage of action on which this accident took place did not assume a negligent character until plaintiff proceeded without turning on the light.

The order of the trial court is correct and should be affirmed.

Respectfully submitted,

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