McDougald v. Perry
Supreme Court of Florida, 1998
716 So.2d 783

Wells, J. *** Lawrence McDougald sued Henry Perry and Perry's employer, C S Chemical, Inc., (collectively referred to as respondents), for personal injuries sustained in an accident which occurred on July 26, 1990, on U.S. Highway 60 West, in Bartow, Florida. On July 26, McDougald was driving behind a tractor-trailer which was driven by Perry. The trailer was leased by C S from Ryder Truck Rentals, Inc. As Perry drove over some railroad tracks, the 130-pound spare tire came out of its cradle underneath the trailer and fell to the ground. The trailer's rear tires then ran over the spare, causing the spare to bounce into the air and collide the windshield of McDougald's Jeep Wagoneer.

The spare tire was housed in an angled cradle underneath the trailer and was held in place by its own weight. Additionally, the tire was secured by a four to six-foot long chain with one-inch links, which was wrapped around the tire. Perry testified that he believed the chain to be the original chain that came with the trailer in 1969. Perry also stated that, as originally designed, the chain was secured to the body of the trailer by a latch device. At the time of the accident, however, the chain was attached to the body of the trailer with a nut and bolt.

Perry testified that he performed a pretrip inspection of the trailer on the day of the accident. This included an inspection of the chain, although Perry admitted that he did not check every link in the chain. After the accident, Perry noticed that the chain was dragging under the trailer. Perry opined that one of the links had stretched and slipped from the nut which secured it to the trailer. The judge instructed the jury on the doctrine of res ipsa loquitur. The jury subsequently returned a verdict in McDougald's favor. ***

On appeal, the district court reversed with instructions that the trial court direct a verdict in respondents' favor. The district court concluded that the trial court erred by: *** [instructing the jury on res ipsa loquitur.] For the reasons expressed herein, we quash the decision below and approve the *** application of res ipsa loquitur to the circumstances of a wayward automobile wheel accident.

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In Marrero [v. Goldsmith, 486 So.2d 530 (Fla. 1986)], we stated:

> Res ipsa loquitur is a Latin phrase that translates "the thing speaks for itself." Prosser and Keaton, Law of Torts § 39 (5th ed. 1984). It is a rule of evidence that permits, but does not compel, an inference of negligence under certain circumstances. "[T]he doctrine of res ipsa loquitur is merely a rule of evidence. Under it an inference may arise in aid of the proof." Yarbrough v. Ball U-Drive

> System, Inc., 48 So.2d 82, 83 (Fla. 1950). In Goodyear [Tire & Rubber Co. v. Hughes Supply, Inc., 358 So. 2d 530 (Fla. 1982)], a products liability case, we explained the doctrine as follows:
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> It provides an injured plaintiff with a common-sense inference of negligence where direct proof of negligence is wanting, provided certain elements consistent with negligent behavior are present. Essentially the injured plaintiff must establish that the instrumentality causing his or her injury was under the exclusive control of the defendant, and that the accident is one that would not, in the ordinary course of events, have occurred without negligence on the part of the one in control.

In concluding that it was reversible error for the trial court to give the res ipsa loquitur instruction, the Second District determined that "McDougald failed to prove that this accident would not, in the ordinary course of events, have occurred without negligence by the defendants." McDougald, 698 So.2d at 1259 (citing Goodyear). The court explained that, "[t]he mere fact that an accident occurs does not support the application of the doctrine." In support of the Second District's conclusion, respondents cite to Burns v. Otis Elevator Co., 550 So.2d 21 (Fla. 3d DCA 1989), in which the Third District stated:

To prevail at trial, plaintiff must still present sufficient evidence, beyond that of the accident itself, from which the jury may infer that the accident would not have occurred but for the defendants' breach of due care. Respondents assert that this language means that res ipsa loquitur did not apply in this case because "there was no expert or other testimony or evidence that the failure of the safety chain and the spare tire's exit onto the roadway would not ordinarily occur in the absence of [respondents'] negligence."

The Second and Third Districts misread and interpret too narrowly what we stated in Goodyear. We did not say, as those courts conclude, that "the mere fact that an accident occurs does not support the application of the doctrine." Rather, we stated:

> *An injury standing alone, of course, ordinarily does not indicate negligence. The doctrine of res ipsa loquitur simply recognizes that in rare instances an injury may permit an inference of negligence if coupled with a sufficient showing of its immediate, precipitating cause.*

Goodyear and our other cases permit latitude in the application of this common-sense inference when the facts of an accident in and of themselves establish that but for the failure of reasonable care by the person or entity in control of the injury producing object or instrumentality the accident would not have occurred. On the other hand, our present statement is not to be considered an expansion of the doctrine's applicability. We continue our prior recognition that res ipsa loquitur applies only in "rare instances."

The following comments in section 328D of Restatement (Second) of Torts (1965) capture the essence of a proper analysis of this issue:

> c. Type of event. The first requirement for the application of the rule stated in this Section is a basis of past experience which reasonably permits the conclusion that such events do not ordinarily occur unless someone has been negligent. There are many types of accidents which commonly occur without the fault of anyone. The fact that a tire blows out, or that a man falls down stairs is not, in the absence of anything more, enough to permit the conclusion that there was negligence in inspecting the tire, or in the construction of the stairs, because it is common human experience that such events all too frequently occur without such negligence. On the other hand there are many events, such as those of objects falling from the defendant's premises, the fall of an elevator, the escape of gas or water from mains or of electricity from wires or appliances, the derailment of trains or the explosion of boilers, where the conclusion is at least permissible that such things do not usually happen unless someone has been negligent. To such events res ipsa loquitur may apply.
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> d. Basis of conclusion. In the usual case the basis of past experience from which this conclusion may be drawn is common to the community, and is a matter of general knowledge, which the court recognizes on much the same basis as when it takes judicial notice of facts which everyone knows. It may, however, be supplied by the evidence of the parties; and expert testimony that such an event usually does not occur without negligence may afford a sufficient basis for the inference. Such testimony may be essential to the plaintiff's case where, as for example in some actions for medical malpractice, there is no fund of common knowledge which may permit laymen reasonably to draw the conclusion. On the other hand there are other kinds of medical malpractice, as where a sponge is left in the plaintiff's abdomen after an operation, where no expert is needed to tell the jury that such events do not usually occur in the absence of negligence.

Restatement (Second) of Torts § 328D cmts. c-d (1965).

We conclude that the spare tire escaping from the cradle underneath the truck, resulting in the tire ultimately becoming airborne and crashing into McDougald's vehicle, is the type of accident which, on the basis of common experience and as a matter of general knowledge, would not occur but for the failure to exercise reasonable care by the person who had control of the spare tire. As the Fifth District noted [in another case], the doctrine of res ipsa loquitur is particularly applicable in wayward wheel cases. *** [C]ommon sense dictates an inference that both a spare tire carried on a truck and a wheel on a truck's axle will stay with the truck unless there is a failure of reasonable care by the person or entity in control of the truck. Thus an inference of negligence comes from proof of the circumstances of the accident.

Furthermore, we do not agree with the Second District that McDougald failed to establish this element because "[o]ther possible explanations exist to explain the failure of the chain." McDougald, 698 So.2d at 1260. Such speculation does not defeat the applicability of the doctrine in this case. As one commentator has noted:

> The plaintiff is not required to eliminate with certainty all other possible causes or inferences. . . . All that is required is evidence from which reasonable persons can say that on the whole it is more likely that there was negligence associated with the cause of the event than that there was not.

W. Page Keeton, et al., Prosser and Keaton on the Law of Torts, § 39, at 248 (5th ed. 1984). * * *

Accordingly, we quash the decision below, and remand this case with directions that the district court reinstate the trial court's judgment as to respondents' liability based upon the jury's verdict and for further proceedings consistent with the district court's decision on issues related to damages.

It is so ordered.