United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 11, 2024
Lyle W. Cayce
Clerk

No. 23-30261

STEPHANIE SMITH; DWAYNE SMITH,

Plaintiffs—Appellants,

versus

DG LOUISIANA, L.L.C., *also known as Dollar General Store 10933*; DOLGENCORP, L.L.C., *also known as Dollar General Store 10933*; XYZ INSURANCE COMPANY,

Defendants—Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:19-CV-360

Before STEWART, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:[*]

This is an appeal from the trial of a slip-and-fall claim. Stephanie and Dwayne Smith sued Appellees under Louisiana's Merchant Liability Statute ("MLS") after Stephanie slipped and fell in one of their stores. The Smiths lost at trial. They appeal, arguing that (1) the District Court abused its discretion by rejecting their desired constructive notice instruction based on

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

Crawford v. Ryan's, 741 So. 2d 96 (La. App. 2 Cir. 1999), and (2) the jury's verdict was against the great weight of the evidence. But *Crawford* interpreted an outdated MLS while the District Court's instruction closely tracked the current MLS, and there were numerous grounds that could support the jury's verdict. So both arguments fail, and we AFFIRM.

I. Background

The Smiths needed rat poison, so they went to the Erwinville, Louisiana Dollar General to buy some on March 25, 2018, sometime between 2:00–3:00 PM. But they couldn't find it on their own, so an employee named Brandon Shipley stepped in to help. When the three arrived at the aisle containing the rat poison, Shipley noticed a small amount of dog food scattered on the floor that wasn't there when he conducted a cleanliness inspection around 1:45 PM. Shipley warned the couple to watch their step, but Stephanie still slipped—not on the dog food, but on a box of roach bait.[1]

The Smiths filed suit against DG Louisiana, LLC, Dolgencorp, LLC (together, "Dollar General") and XYZ Insurance Company (Dollar General's insurance company) under the MLS. Eventually they went to trial to determine whether and to what degree any negligence attributable to Dollar General caused Stephanie's fall and attendant injuries.

---

[1] Notable when considering the jury verdict's viability is Stephanie's history of falling in stores and claiming injuries. In 1999 she fell in a store and hit her head on concrete, complaining of nausea and memory issues, though a CT scan showed completely normal results afterward. She fell again in 2006 while pushing a cart over a mat, twisting her knee and hurting her back. She fell once more in 2012, slipping on a box and damaging the same tooth she claims was damaged by the fall in this case. She described this incident and the one at bar in the same way, noting that she fell "like a sack of potatoes." The Smiths' testimony indicates that many, if not all, of the injuries they attribute to the fall at issue actually came from her previous falls. *Infra* 3–4 (discussing same in further detail).

The Smiths, before and during trial, asked for a tailored instruction based on *Crawford*, 741 So. 2d 96. That instruction read as follows:

> The precise time that a substance is on the floor for Constructive Notice, known as the Temporal Element, can be inferred when the plaintiff can establish that the hazard was in existence when the merchant escorted the plaintiffs through the area where the hazard is located.

The District Court, on the first day of trial, made clear that it was carefully considering the proposed instructions but was waiting for the parties to put on evidence before it decided one way or another. Two days later, the District Court provided the parties with its jury charges (which did not include the Smiths' desired *Crawford* instruction), alongside an explanation of why it had doubts concerning the instruction's application to the case.

Credibility issues arose concerning the Smiths' testimony throughout trial. These include the following:

- Dwayne testified that Dollar General failed to complete an incident report on the day of the accident, but then admitted that he was in the store at the time employees did so and remembered as much.
- Dwayne testified that, because of the accident, he now had to help Stephanie complete chores around the home. But then he admitted that Stephanie could do "practically nothing," including household chores, after her 2012 incident.
- Dwayne testified that he and Stephanie had not been able to enjoy fishing together because of the accident, but then admitted that they had not been fishing together for "six or seven years."
- Stephanie claimed she had no memory issues as a result of this accident, but then admitted that she had such issues since 2015 (reporting as much to the Social Security Agency under penalty of perjury) and that she lied about the timeline in hopes that she could make Dollar General believe

> that the roach box accident was the original cause, likely as an attempt to get money for a neck surgery.

The Smiths re-urged their desired instruction on the final day of trial. The District Court denied the Smiths' request, stating:

> I agree with [Dollar General] on this one, because [the jury] can consider a lot of things. And if we were to put everything that they can consider we'd have a very long jury charge, okay. I'm sure you'll argue that, and they can properly consider that and [Dollar General] can make the argument [it] makes. But at any rate, I don't think it needs to be in the charge and so I deny that request.

Notably, the Smiths conceded that there was "nothing wrong with the charge" as written.

The jury ultimately found against the Smiths. The verdict form did not specify which element(s) of the MLS the Smiths failed to prove, only asking whether the Smiths proved each of the MLS's requirements by a preponderance of the evidence. The Smiths appealed, challenging the District Court's jury instructions as an abuse of discretion and the jury's verdict as being against the great weight of the evidence.

II. Standards of Review

We "review challenges to jury instructions for abuse of discretion and afford the trial court great latitude in the framing and structure of jury instructions." *Eastman Chem. Co. v. Plastipure, Inc.*, 775 F.3d 230, 240 (5th Cir. 2014) (citing *United States v. Carrillo*, 660 F.3d 914, 925–26 (5th Cir. 2011)). A two-pronged test applies to jury instruction challenges: (1) we must determine whether appellants "demonstrate that the charge as a whole creates substantial and ineradicable doubt whether the instructions properly guided the jury in its deliberations", and (2) "even if [we] find[] that the jury instructions were erroneous, [we] will not reverse if [we] determine[], based on the entire record, that the challenged instructions could not have affected

the outcome of the case." *Puga v. RCX Solutions, Inc.*, 922 F.3d 285, 291 (5th Cir. 2019). "The instructions need not be perfect in every respect provided that the charge in general correctly instructs the jury, and any injury resulting from the erroneous instruction is harmless." *Eastman Chem. Co.*, 775 F.3d at 240 (quoting *Rogers v. Eagle Offshore Drilling Servs., Inc.*, 764 F.2d 300, 303 (5th Cir. 1985)).

Our "standard of review with respect to a jury verdict is especially deferential." *Id.* (quoting *SMI Owen Steel Co., Inc. v. Marsh U.S.A., Inc.*, 520 F.3d 432, 437 (5th Cir. 2008)). A "verdict must stand unless appellant can show that there is no substantial evidence to support it, considering the evidence in the light most favorable to appellees, and clothing it with all reasonable inferences to be deduced therefrom." *Liberty Mut. Ins. Co. v. Falgoust*, 386 F.2d 248, 253 (5th Cir. 1967) (citing *Gulf Oil Corp. v. Griffith*, 330 F.2d 729, 731 (5th Cir. 1964)). Put otherwise, we "must draw all reasonable inferences in the light most favorable to the verdict and cannot substitute other inferences that we might regard as more reasonable . . . For it is the function of the jury as the traditional finder of the facts, and not for the Court, to weigh conflicting evidence and inferences, and determine the credibility of witnesses." *Eastman Chem. Co.*, 775 F.3d at 238 (cleaned up).

III. The District Court did not Abuse its Discretion by Declining the Smiths' Desired Jury Instruction

We must first ask whether the charge as a whole created a substantial and ineradicable doubt as to whether the instructions properly guided the jury in its deliberations. *Puga*, 922 F.3d at 291. It didn't.

The Smiths devote significant space attempting to analogize *Crawford*, arguing that it provides for a "unique" way to interpret premises liability separate from the MLS. But *Crawford* concerned an incident that occurred one month *before* the most recent version of the MLS came into

effect; this case concerns the current MLS. *See* La. R.S. 9:2800.6, Acts 1996, 1st Ex. Sess., No. 8, §1, eff. May 1, 1996; *Crawford*, 741 So. 2d 96. Indeed, the *Crawford* court itself recognized that it was applying the previous, *not current*, version of the MLS. *Crawford*, 741 So. 2d at 99 n2.

The applicable MLS explicitly separates an employee's proximity to a hazard from a plaintiff's burden to prove constructive notice absent a showing of knowledge or lack of reasonable care. La. R.S. 9:2800.6(C)(1) ("The presence of an employee of the merchant in the vicinity in which the condition exists *does not, alone,* constitute constructive notice, unless it is shown that the employee knew, or in the exercise of reasonable care should have known, of the condition.") (emphasis added). In contrast, the desired *Crawford* instruction sought to have the jury find constructive notice based solely on Shipley's proximity to the hazard, with no regard to his knowledge and reasonable care (or lack thereof). ("Constructive Notice . . . can be inferred when the plaintiff can establish that the hazard was in existence when the merchant escorted the plaintiffs through the area where the hazard is located."). Such an instruction directly conflicts with the current MLS.

In contrast, the District Court's constructive notice instruction closely tracked the current MLS. And the Smiths conceded that there was "nothing wrong" with such an instruction. Given the above and considering "the great latitude" we give district courts "in the framing and structure of jury instructions," we do not see any abuse of discretion by the District Court. At worst, "the charge in general correctly instruct[ed] the jury," *Eastman Chem. Co.*, 775 F.3d at 240 (quoting *Rogers*, 764 F.2d at 303), as it tracked the current MLS's take on constructive notice. *Compare* La. R.S.

9:2800.6 (current MLS) *with* (closely tracking current MLS). The Smiths' challenge here fails.[2]

IV. The Jury Verdict was not Against the Great Weight of the Evidence

"[D]raw[ing] all reasonable inferences in the light most favorable to the verdict" and without "substitut[ing in] other inferences that we might regard as more reasonable," it is difficult to see how the jury's verdict is against the great weight of the evidence. *Eastman Chem. Co.*, 775 F.3d at 238 (cleaned up). Consider, for example, the credibility issues riddling the Smiths' testimonies discussed above and that "the question of a witness's credibility is the purest of jury issues." *Dotson v. Clark Equip. Co.*, 783 F.2d 586, 588 (5th Cir. 1986); *supra* 3–4 (discussing the Smiths' testimony).

Drawing all inferences in the light most favorable to the verdict as we must, there are numerous reasons why the jury could have found against the Smiths. For example, the jury could have discredited the Smiths' demonstrably false testimony and believed that they sought a quick slip-and-fall judgment to pay for Stephanie's neck surgery. *Supra* 4 (discussing same). It also could have determined that Dollar General fulfilled its duty of reasonable care when Shipley performed a cleanliness check less than an hour before their arrival and verbally warned Stephanie to watch for the slipping hazards. *Supra* 2 (discussing same). That Stephanie fell anyway was very unfortunate, but the MLS asks whether the merchant exercised reasonable care, *not* whether the plaintiff fell despite the merchant's exercise of reasonable care. La. R.S. § 9:2800.6.

---

[2] We do not address the parties' arguments concerning the second step of the jury instruction analysis because we found no abuse of discretion by the District Court.

The jury, one way or another, found against the Smiths. The Smiths fall below the high standard required to reverse its verdict because, at the very best, there might be questions about how it weighed the evidence. That is far from demonstrating that the verdict is against the great weight of the evidence, especially when "draw[ing] all reasonable inferences" in its favor and "without substitut[ing in] inferences that we might regard as more reasonable." *Eastman Chem. Co.*, 775 F.3d at 238 (cleaned up). The Smiths' second challenge fails as well.

V. Conclusion

The District Court did not abuse its discretion by declining the desired *Crawford* instruction, nor was the jury's verdict against the great weight of the evidence. We AFFIRM.