

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7670

CURTIS A. KING, SR.,

Plaintiff-Appellant,

THE TRAVELERS INSURANCE
COMPANY,

Intervenor-Appellant,

versus

CLARK EQUIPMENT COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA S90 0410 (G))

September 8, 1993

Before WIENER and EMILIO M. GARZA, Circuit Judges, and LITTLE*,
District Judge.

PER CURIAM:**

In this personal injury, diversity case, Plaintiffs-Appellants

* District Judge of the Western District of Louisiana,
sitting by designation.

** Local Rule 47.5 provides: "The publication of opinions
that have no precedential value and merely decide particular cases
on the basis of well-settled principles of law imposes needless
expense on the public and burdens on the legal profession."
Pursuant to that Rule, the Court has determined that this opinion
should not be published.

Curtis A. King, Sr. and The Travelers Insurance Company appeal the district court's grant of a motion for summary judgment, filed on behalf of Defendant-Appellee Clark Equipment Company, dismissing Appellants' action. Concluding that a recent Mississippi Supreme Court decision,¹ which postdates the district court's summary judgment, invalidates that judgment, we reverse and remand.

I

King filed the instant products liability action against Clark, the manufacturer of a log skidder which King was operating at the time he was injured. King's suit was grounded in strict liability and negligence, alleging that the skidder was unreasonably dangerous. Holding that, under Mississippi's "consumer expectations" test, King could not maintain an action of strict liability or negligence because the defects and deficiencies alleged were "open and obvious," the district court granted Clark's motion for summary judgment and dismissed the lawsuit.

II

The latest pronouncement by the Mississippi Supreme Court holds that Mississippi now employs^{SQ}and for some time has employed^{SQ}the so-called risk-utility analysis to test for unreasonably dangerous propensities of a manufactured product. According to the court, the "consumer expectations" analysis no longer provides the appropriate test. As the summary judgment rendered by the district court in this case was grounded entirely on the open and obvious nature of the alleged defect, it cannot

¹ Sperry-New Holland, A Division of Sperry Corporation v. Prestage, 617 So. 2d 248 (Miss. 1993).

stand.

We must therefore reverse that judgment and remand this case to the district court for further proceedings consistent with the currently applicable law of Mississippi. In so doing, however, we make no prediction of the ultimate disposition or result of this case.

REVERSED and REMANDED.