UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-5336

AMERICAN MANUFACTURERS MUTUAL INS. CO.,

Plaintiff-Appellant,

VERSUS

JANET WALKER NEAL COLBERT, ETC., ET AL.,

Defendants,

JANET WALKER NEAL COLBERT, ETC., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Louisiana

(92-CV-1061)

(February 8, 1995)

Before POLITZ, Chief Judge, WISDOM, and SMITH, Circuit Judges.

WISDOM, Circuit Judge:[*]

In this subrogation action, the plaintiff/appellant, American Manufacturers Mutual Insurance Company, sued 17 defendants to recover a payment of 77 thousand dollars to its insured homeowners for the destruction of the insureds' guest house and

[*] Local Rule 47.5.1 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Pursuant to that Rule, the Court has determined that this opinion should not be published.

garage adjacent to their home in Shreveport, Louisiana. The plaintiff later dismissed ten of the defendants and added one more. Each of the original defendants filed motions for summary judgment, all of which the trial judge granted. Because we disagree with the trial judge's conclusion that this was a case for summary judgment in favor of the defendants, we REVERSE and REMAND the case for a trial on the merits.

I

Some facts are not in dispute. On the night of June 8, 1991, while Arthur and Carolyn Gibson, the insureds, were vacationing on the Alabama coast, the Gibson's adolescent son, Ben, asked some of his high school classmates to his parents' home. The party grew. Some who attended were invited, some were not. Many drank alcoholic beverages and smoked cigarettes in the Gibson's guest house. When the gathering grew to an unmanageable size, Ben Gibson suggested that they relocate to a local bar. Some went to the bar, some went home. In the early morning of June 9, 1991, the guest apartment burned to the ground.

The following factual questions are in dispute: how did the fire start, who started it, who saw whom smoking cigarettes, and who poured beer on a couch in the guest house when it began to smoke. The plaintiff sued even minors: Hollis Lawrence, Justin Corbell, Cooper Heard, Jodi Jones, Anna Neal, Thomas Young, and Paige Ramsey.[1] The plaintiff alleges that the negligence of one or

[1] Louisiana law provides that the parent or tutor is liable for the torts of his or her minor child or ward. La. Civ. Code Ann. art. 2318 (West 1972). The plaintiff also sued the

more of the defendants caused the fire. The plaintiff alleges that someone dropped a cigarette into the folds of a couch in the guest apartment, and that some of the defendants were aware of the fire, yet failed to extinguish the fire or inform Ben that a fire was beginning. The defendants filed motions for summary judgment denying the allegations in the complaint. The trial judge consolidated the defendants' motions as one motion for summary judgment, and granted the motion. The plaintiff filed a timely notice of appeal. We reverse and remand.

II

We review the district court's summary judgment decision de novo.[2] Overriding all other considerations is the basic principle, as stated by Judge Elbert Tuttle, then on the Court of Appeals for the Fifth Circuit: "On a motion for summary judgment, the pleadings of the opposing party must be taken as true, unless by the admissions, depositions or other material introduced it appears beyond controversy otherwise."[3]

On a motion for summary judgment, the moving party's initial burden is to demonstrate that there are no factual issues

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parents of the minors: Paul Lawrence, Gladys Corbell, Steven Heard, Scotty Jones, Janet Walker Neal Colbert, Birdy Young, and Johnson Ramsey.

[2] Berry v. Armstrong Rubber Co., 989 F.2d 822, 824 (5th Cir. 1993), cert. denied, 114 S. Ct. 1067 (1994).

[3] Hiern v. St. Paul-Mercury Indem. Co., 262 F.2d 526, 529 (5th Cir. 1959).

warranting trial.[4] The moving party has the affirmative duty to show that there is no genuine issue of material fact, even on issues where the other party would have the burden of proof at trial. Our Court recognizes that the process of moving for summary judgment imposes a substantial burden on the party requesting it.[5]

Rule 56 contemplates a shifting burden: it is only after the moving party has discharged its initial burden under Rule 56 that a responsive burden falls on the nonmoving party to come forth with evidence demonstrating that there is a genuine issue of fact warranting trial.[6] If the moving party fails to meet its initial burden, summary judgment must be denied, even if the nonmoving party does not respond to the motion.[7]

To meet its initial summary judgment burden, a moving party who does not bear the burden of proof at trial need not negate the elements of the nonmoving party's case.[8] The moving party can meet its initial summary judgment burden by pointing to areas of the record indicating the absence of evidence supporting

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[4] Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc); Russ v. International Paper Co., 943 F.2d 589, 592 (5th Cir. 1991), cert. denied, 112 S. Ct. 1675 (1992).

[5] Isquith v. Middle South Utilities, Inc., 847 F.2d 186, 199 (5th Cir.) cert. denied, 488 U.S. 926 (1988).

[6] International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1264 (5th Cir. 1991), cert. denied, 112 S. Ct. 936 (1992).

[7] John v. State of Louisiana, 757 F.2d 698, 708 (5th Cir. 1985).

[8] Little v. Liquid Air Corp., 37 F.3d at 1075.

the nonmoving party's case.[9] In contrast, the moving party cannot meet its initial summary judgment burden merely by denying the allegations in the opponent's complaint.[10]

In Dawkins v. Green,[11] we reversed the district court's grant of summary judgment in favor of the defendants even though the plaintiffs presented no evidence in opposition to the defendant's motion for summary judgment. The defendants in Dawkins failed to carry their initial burden to show that no genuine issue of material fact existed in the case; "the affidavits filed by the defendants [were] simply a restatement of the denials contained in their answers".[12] The defendant's evidence in support of their motion for summary judgment did not establish that no genuine issue of fact existed. Because the defendants failed to carry their initial burden on summary judgment, we found that summary judgment was inappropriate and remanded the case for a trial on the merits.[13]

Similarly, in Benton-Volvo-Metairie, Inc. v. Volvo Southwest, Inc.,[14] we found that the party moving for summary judgment failed to meet its initial burden under Rule 56 and

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[9] Duplantis v. Shell Offshore, Inc., 948 F.2d 187, 190 (5th Cir. 1991); Saunders v. Michelin Tire Corp., 942 F.2d 299, 301 (5th Cir. 1991).

[10] See 10A Wright, Miller & Kane, Federal Practice and Procedure § 2727 at 131.

[11] 412 F.2d 644 (5th Cir. 1969).

[12] Id. at 646.

[13] Id. at 647.

[14] 479 F.2d 135 (5th Cir. 1973).

reversed a summary judgment for the defendants. This Court concluded that merely restating the denials and countercharges contained in a defendant's answer does not satisfy that party's initial burden under Rule 56 to show the absence of a genuine issue of fact.[15]

Like the parties moving for summary judgment in Dawkins and Volvo Southwest, the moving parties in this case fail to meet their initial burden under Rule 56. In support of their motions, the defendants do nothing more than deny the allegations in the plaintiff's complaint; the defendants' evidence merely restates the denials contained in their answers. Such evidence is not sufficient to satisfy the initial burden of the party moving for summary judgment. Summary judgment in this case was, therefore, inappropriate.

In this case, the plaintiff's complaint alleges that someone dropped a cigarette into the folds of a couch, that no one extinguished the fire, and that no one notified the homeowners' son of the fire. We accept these allegations as true. In support of their motion for summary judgment, the defendants offer nothing but a restatement of the denials contained in their answers. We hold that the defendants failed to meet their initial burden under Rule 56 to demonstrate an absence of material fact. When the moving party fails to meet its initial burden, summary judgment must be denied, regardless of the nonmoving party's response.[16]

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[15] Id. at 139.

[16] Little v. Liquid Air Corp., 37 F.3d at 1075.

Summary judgment was improper in this case; the disputed facts cry for a trial with the full opportunity of the fact finder to determine the credibility of the witnesses. One, some, or most of the defendants were present, participated in, or knew of the events preceding the fire. We reverse and remand for a trial on the merits.