

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30361

JOHN L. DAVIS,

Plaintiff-Appellant,

FIDELITY AND CASUALTY COMPANY
OF NEW YORK,

Intervenor-Plaintiff-Appellant,

versus

J. E. MERIT CONSTRUCTORS, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana

(CA-91-859-A-M1)

(March 8, 1995)

Before WISDOM, WIENER and PARKER, Circuit Judges.

PER CURIAM:*

In this diversity action, Plaintiff-Appellant John L. Davis sued J. E. Merit Constructors, Inc. (Merit) for negligently causing

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

a chemical leak that injured him. His case consisted entirely of circumstantial evidence. Upon completion of Davis's presentation of his case to the jury, the district court granted Merit's motion for judgment as a matter of law. The court also denied Davis's motion for a new trial, which he filed jointly with Intervenor-Appellant Fidelity and Casualty Company. Although the notice of appeal challenges only the denial of a motion for new trial, the briefs challenge both the denial of the motion for a new trial and the granting of judgment as a matter of law. As the two issues are so closely related, we review both orders.

The district court directed a verdict for Merit on a finding that "the plaintiff has failed to offer sufficient evidence from which a reasonable jury could conclude that [Merit] was negligent." Yet in reaching this conclusion, the court acknowledged that the evidence could support Davis's theory, albeit inferences favorable to Merit were equally if not more likely.

As the trial court found that inferences favorable to Davis were at least as plausible as contrary inferences, we must reverse the directed verdict. "[I]f the evidence might reasonably lead to either of two inferences it is for the jury to choose between them." 9 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2528 at 569 (1971). Directed verdicts are appropriate "only when there can be only one reasonable conclusion drawn from the evidence. . . . Viewing the evidence in the light most favorable to the party against whom the motion is made, the court must give that party the benefit of all reasonable inferences

from the evidence." Brock v. Merrell Dow Pharmaceuticals, Inc., 874 F.2d 307, 308-09 (5th Cir.), modified on other grounds, 884 F.2d 166 (5th Cir. 1989) (per curiam), and cert. denied, 494 U.S. 1046 (1990). Here the court found Davis's theory unpersuasive but not implausible, so Davis's case should have gone to the jury.

On appeal, Merit attempts to preserve the directed verdict in its favor by arguing that even if Davis's case had gone to the jury, as a matter of law the jury could never have ruled for him. Even viewed in the light most favorable to Davis, posits Merit, the circumstantial evidence showed only that Davis's injuries were as likely as not the result of Merit's negligence. Merit argues that under Louisiana law a plaintiff must show more to prevail: To prove a negligence case by circumstantial evidence under Louisiana law, a plaintiff must show "that the injuries were more likely than not the result of the particular defendant's negligence." Cay v. State of Louisiana, Dep't of Transportation and Development, 631 So.2d 393, 395 (La. 1994) (emphasis added). Merit insists that, as Davis could show at best that his reading of the evidence was only as plausible as Merit's, the jury could never have found Merit liable under Louisiana law. As it would have been futile to continue trying the case, Merit urges, the directed verdict in its favor was proper.

We need not consider this argument because Merit did not raise it in the district court. In any event, federal procedural law, not substantive state law, controls whether a plaintiff has

produced enough evidence to let the jury determine his case. See John Hancock Mutual Life Ins. Co. v. Dutton, 585 F.2d 1289, 1292-93 (5th Cir. 1978) (affirming denial of motion for judgment notwithstanding the verdict because "[u]nder federal law, if the evidence is of such a character that reasonable men exercising impartial judgment may differ in their conclusion, then the jury verdict must stand.") (internal quotation marks and citations omitted); Misco-United Supply, Inc. v. Petroleum Corp., 462 F.2d 75, 79 (5th Cir. 1972) (motions for directed verdicts are governed by federal standard as to sufficiency of the evidence). Cf. Wright & Miller, supra, § 2525 at 548, 553 (federal rule on sufficiency of evidence for purposes of directing verdicts overrides state rules that demand more proof).

As we reverse the judgment as a matter of law in favor of Merit, we also vacate the district court's denial of Davis's motion for a new trial, and remand for further proceedings consistent with this opinion.

REVERSED in part, VACATED in part, and REMANDED.