UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-40387

(Summary Calendar)

JASON S. ROYSTON and BRENDA M. ROYSTON,

Plaintiffs-Appellants,

versus

AMERICAN HONDA MOTOR COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Louisiana
(91-CV-1993)

(December 19, 1994)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:[*]

Jason Royston and Brenda Royston, his mother, sued American Honda Motor Company ("Honda") for damages incurred from injuries sustained by Jason Royston while riding a Honda CR 125 motorcycle. The Roystons appeal the judgment on a jury verdict against them. We affirm.

I

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Jason Royston's father purchased a Honda CR 125 motorcycle, which Jason Royston used in motocross races. During a motocross race, Jason Royston sustained back injuries. The Roystons sued Honda for damages on theories of product defect, failure to warn, and breach of warranty.[1] Over the Roystons' objections, the district court admitted evidence relating to the "as is" warranty contained in the owner's manual for the motorcycle.[2]

At the close of the evidence, the case was submitted to a jury using a special verdict form. The jury found that no defect in the motorcycle had caused any injury and that the motorcycle was not unreasonably dangerous for failure to warn. Because the jury found in Honda's favor on these issues, it did not reach the question of any contributory negligence of Jason Royston. The Roystons appeal the judgment against them, claiming that the admission of the "as is" warranty constituted prejudicial error.

II

The Roystons contend that the district court erred when it admitted evidence concerning the "as is" warranty. They argue that the warranty was not admissible because 1) warranties of that nature are void as against public policy under article 2004 of the Louisiana Civil Code; and 2) they abandoned their breach of warranty claim prior to trial, the evidence of the warranty had no

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[1] The parties disagree as to whether the warranty claim was abandoned prior to trial. Because of our disposition of this case, we do not address this conflict.

[2] The warranty stated: "This Honda motorcycle is sold as is without warranty, and the entire risk as to quality and performance is with the buyer."

bearing on any remaining issues. The Roystons further argue that the alleged error prejudiced them because it tainted the verdict by allowing the jury to decide that Jason Royston had assumed the risk of any injury.

We need not determine whether the district court properly admitted the evidence concerning the "as is" warranty because even if improper, the error was harmless.[3] The district court correctly instructed the jury that:

> Louisiana law and the law applicable to this case does not acknowledge the defense of assumption of the risk. It cannot be a defense in this case that a buyer assumes the risk as to the quality and performance of a product he purchases. It is the law of Louisiana and this case that the substandard conduct of an injured person which contributes to his own injury will reduce the recovery but will not bar it entirely.

We presume that the jury followed the district court's instructions. *See City of Los Angeles v. Heller*, 475 U.S. 796, 798, 106 S. Ct. 1571, 1573, 89 L. Ed. 2d 806 (1986) ("[T]he theory is . . . that juries act in accordance with the instructions given them . . . ."); *Parker v. Randolph*, 442 U.S. 62, 73, 99 S. Ct. 2132, 2139, 60 L. Ed. 2d 713 (1979) (plurality opinion) ("A crucial assumption . . . is that juries will follow the instructions given them by the trial judge. Were this not so, it would be pointless

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[3] *See* 28 U.S.C. § 2111 (1988) ("On the hearing of any appeal . . . , the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties."); Fed. R. Civ. P. 61 ("The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.").

for a trial court to instruct a jury . . . .").[4] Accordingly, we presume that the jury did not decide that Jason Royston had assumed the risk of any injuries caused by a product defect.

The jury's special verdict confirms this presumption that it did not consider assumption of risk. The jury never reached the question of whether Jason Royston bore any responsibility for any injury caused by a defect because the jury found that there was no defect that caused any injuries. The special verdict submitted to the jury stated as follows:

> 1. Do you find by a preponderance of the evidence, that the Honda CR125 motorcycle was defective in design and that defect was a legal cause of plaintiff's injuries?
> 2. Do you find by a preponderance of the evidence that American Honda Motor Company, Inc.'s CR 125 motorcycle was unreasonably dangerous because American Honda Motor Company failed to adequately warn of any danger inherent in reasonably anticipated use of this motorcycle as manufactured and if so, was such a failure to warn a legal cause of plaintiff's injury?
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> N.B. If your answer to either question No. 1 or No. 2 is "Yes" then answer question No. 3 [regarding any fault of Jason Royston].
> If your answer to questions No. 1 and No. 2 are both "No", go no further.

The jury answered "no" to both questions 1 and 2. Under the Roystons' theory, in order to base their decision on an assumption of risk, the jury would have had to disregard the clear instructions of both the district court and the special verdict

[4] Moreover, courts regularly give limiting instructions directing the jury to consider specific evidence for only some issues but not for others. Fed. R. Evid. 105.

form and secretly decide question 3 contrary to law *before* deciding questions 1 and 2.[5] Again, we presume that the jury followed the instructions and did not reorder the process of decisionmaking. Because assumption of risk was not an issue in the jury's decision, any related evidentiary error was harmless.[6]

III

For the foregoing reasons, we AFFIRM.

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[5] The Roystons argue that we should grant them a new trial on the theory that we cannot know exactly what the jury decided, citing *Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co.*, 370 U.S. 19, 29-30, 82 S. Ct. 1130, 1136, 8 L. Ed. 2d 305 (1962) (requiring reversal of general verdict where one theory of liability erroneous), and *Maryland v. Baldwin*, 112 U.S. 490, 493, 5 S. Ct. 278, 280, 28 L. Ed. 2d 822 (1884) ("[I]ts generality prevents us from perceiving upon which plea they found."). *Sunkist Growers* and *Baldwin*, however, as well as the other cases upon which the Roystons rely, dealt with general verdicts. In this case, the jury returned a special verdict, detailing clearly what it decided. Accordingly, the Roystons' argument has no merit.

The Roystons also suggest that, because the jury deliberated for only 35 minutes after 6 days of evidence, the jury must have improperly reached its verdict. The Roystons, however, offer no proof beyond this bald assertion, and we will not disturb the jury's verdict on the basis of mere speculation. *Knight v. Texaco, Inc.*, 786 F.2d 1296, 1299 n.2 (5th Cir. 1986).

[6] *See Concise Oil & Gas Partnership v. Louisiana Intrastate Gas Corp.*, 986 F.2d 1463, 1474 (5th Cir. 1993) (holding that, even if instruction on issue was error, error was harmless because jury did not need to apply that instruction); *Sullivan v. Rowan Cos.*, 952 F.2d 141, 149 (5th Cir. 1992) ("Because the district court's rulings implicitly mean that submitting [certain instructions] to the jury was unnecessary, the manner in which the instructions may, or may not have affected the verdict is not material."); *Smith v. Wal-Mart Stores (No. 471)*, 891 F.2d 1177, 1180 (5th Cir. 1990) (holding that errors in evidentiary rulings could not be prejudicial where immaterial to end result of case).