

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-41039

JAMES WAYNE,

Plaintiff-Appellant,

v.

BODDEN INTERESTS INC, ET AL,

Defendants,

BODDEN INTERESTS INC; JODY P MCCORMICK,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(C-95-CV-38)

November 21, 1997

ON PETITION FOR REHEARING

Before KING, DUHÉ, and WIENER, Circuit Judges.

PER CURIAM:*

Plaintiff-appellant James Wayne's counsel petitioned this panel for a rehearing of this case because, in their words, we "have simply missed the point of this appeal." In an abusive petition, counsel upbraids this panel for focusing on the sufficiency of the evidence in deciding this case. The petitioner argues that we passed over questions of law that would

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

have affected the outcome of the case. Counsel now asks this panel not to take their brief at face value and to focus on the other legal arguments buried within their sufficiency of the evidence arguments.² The panel considered and rejected those legal arguments.

We draw counsel's attention to the following passages in his brief:

[T]he trial court erred . . . because there [was] no evidence or insufficient evidence to support the jury's finding . . . and that there was no evidence or insufficient evidence to support the findings
. . . [T]here was no evidence to support the jury's finding

Appellant's Brief at 9 (summary of the argument) (emphasis added).

Plaintiff submits that a proper examination of the evidence . . . reveals the jury's finding in this regard is not only unsupported by any evidence, but in fact, the overwhelming evidence requires a finding to the contrary.

Id. at 13 (emphasis added).

This status of the record establishes that there was no evidence to support either the submission of Question No. 2 to the jury, or the answer to it by the jury.

Id. at 14 (emphasis added).

[D]efendants completely failed to provide evidentiary support of the nature that would factually support the jury's answer to Special Question 2.

Id. at 15 (emphasis added).

[I]t is clear that the verdict is contrary to reason and the weight of the credible evidence

Id. at 16 (emphasis added).

² Counsel cites in their petition nine cases, five of which they did not cite in their briefs on appeal despite all of them being available during the briefing period.

[T]here simply is no legally credible evidence to support this finding in the evidence.

Id. at 17 (emphasis added).

Not only did Defendant not produce any evidence . . . , but the undisputed evidence is to the contrary.

Id. at 18 (emphasis added).

[T]here is absolutely no evidence that the FDIC, as lessor, set out to intentionally conceal the identity of the owner [T]here is no evidence . . . that would lead any reasonable person to conclude that the FDIC committed fraud The jury's findings in this regard are based upon speculation, hunch, or mere suspicion which certainly does not rise to the level of competent evidence

Id. at 19-20 (emphasis added).

[T]he Defendants failed to present any evidence of authority

Id. at 22 (emphasis added).

The Defendants' "evidence" did not present a material fact issue

Id. at 23 (emphasis added).

There is no evidence that the Defendant made specific requests for repairs, and there is no evidence that any specific repairs requested, if any[,] were not made There is no evidence that the FDIC . . . was aware of or had knowledge of any falsity . . . , nor is there any evidence that Mr. Murphy intended to mislead

Id. at 24 (emphasis added).

There is no evidence that Plaintiff obstructed or physically prevented Defendants' representatives . . .

. . . [T]here is no evidence that the Plaintiff would have refused a request by the Defendants to re-enter

A reasonable and fair-minded jury simply could not come to a conclusion, based upon the trial evidence, that Plaintiff interfered with or prevented the Defendants The jury's finding . . . should

have been disregarded by the trial court because there was no credible evidence

Id. at 27-28 (emphasis added).

The answer of the jury . . . is not only unsupported by the evidence, but is clearly contrary to the great weight of all of the evidence.

Id. at 29 (emphasis added).

There was no evidence to support this finding by the jury [T]he zero damages finding by the jury was clearly erroneous and not supported by the facts and evidence.

Id. at 29-30 (emphasis added).

[T]here was a complete absence of evidence to support the jury's findings.

Id. at 30 (emphasis added).

[T]here was no credible evidence presented by Defendants to refute this evidence.

Id. at 32 (emphasis added).

[T]he trial court should have granted Plaintiff's Motion for New Trial because of a complete lack of evidence to support the jury's conclusion

Id. at 33 (emphasis added).

Counsel for the petitioner is advised that, in the future, before they embark upon a wholly unprofessional tirade against a court based upon the disposition of their client's claims, they would do well to reread their briefs with a view to identifying the grounds upon which they asked the court to focus.

IT IS ORDERED that the petition for rehearing filed in the above case is DENIED.