July 2013 MPT

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MPT-1: *Monroe v. Franklin Flags Amusement Park*

Larson v. Franklin High Boosters Club, Inc.

Franklin Supreme Court (2002)

Two years ago, the Franklin High Boosters Club decided to run a fund-raiser for the school's cheerleading team on Halloween. They rented a local warehouse and constructed what they called a "House of Horrors" inside. The "House of Horrors" included a path to follow with various stops in rooms along the way. At each stop, the room was appropriately decorated so that some mock "horror" awaited those who entered—including individuals playing headless ghosts, zombies, vampires, werewolves, Frankenstein monsters, and the like. These roles were played by members of the club, made up and dressed appropriately. They were instructed to play the parts to the hilt. Their aim, simply put, was to scare the customers, who had each paid $20 for the privilege of being frightened.

The fund-raiser netted $4,800 for the club and would have been an unqualified success but for one incident. John Larson, a 72-year-old gentleman, entered the "House of Horrors" with his two grandchildren. At one of the stops, when one of the "vampires" came at him suddenly, Larson, startled, reeled backward, tripped over his own feet, and fell, breaking his arm and dislocating his shoulder. He sued the club for negligence, seeking recompense for his medical expenses and pain and suffering.

The trial court granted the club's motion for summary judgment, and the court of appeal affirmed. For the reasons stated below, we reverse and remand.

A court will grant a motion for summary judgment when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. A "material fact" for summary judgment purposes is a fact that would influence the outcome of the controversy.

Larson cites *Dozer v. Swift* (Fr. Ct. App. 1994) as establishing the standard for liability for negligence in cases of this sort. In *Dozer*, the defendant was a coworker of the plaintiff. The defendant knew that the plaintiff was of a frail constitution and had arachnophobia—an inordinate fear of spiders. Solely to play a prank on the plaintiff, the defendant obtained a number of live but harmless spiders and dropped them over the wall of the plaintiff's cubicle while the plaintiff was sitting at his desk eating

lunch. The plaintiff, in utter panic, fell backward from his desk chair and sustained a serious head injury. The defendant was found liable in negligence.

As the courts below correctly held, Larson's reliance on *Dozer* is misplaced. The first question is whether there is a duty. In all tort cases, the duty is to act reasonably under the circumstances and not to put others in positions of risk. In *Dozer*, the defendant did not live up to that duty and therefore negligently caused the injury to the plaintiff, for which the defendant bore liability.

But to say that individuals have a duty to act reasonably under the circumstances—that is, to avoid risk—is only the starting point of a negligence analysis. Once the court has determined that there is a duty, it must next determine 1) *what* duty was imposed on the defendant under the *particular circumstances* at issue, 2) whether there was a breach of that duty that resulted in injury or loss, and 3) whether the risk which resulted in the injury or loss was encompassed within the scope of the protection extended by the imposition of that duty.

The question of the defendant's duty is not whether the plaintiff was subjectively aware of the risk. Rather, the question is whether the defendant acted unreasonably under the circumstances vis-à-vis the plaintiff.[2]

As the courts below also correctly held, the particular circumstances here differ from those in *Dozer*, because they occurred in a different setting. Therefore, the duty that the defendant owed to the plaintiff here must be analyzed in those particular circumstances.

Patrons at an event which is designed to be frightening are expected to be surprised, startled, and scared by the exhibits; the operator does not have a duty to guard against patrons reacting in bizarre, frightened, or unpredictable ways. Patrons obviously have knowledge that they can anticipate being confronted by exhibits designed to startle and instill fear. They must realize that the very purpose of the attraction is to cause them to react in bizarre, frightened, or unpredictable ways. Under other circumstances, presenting a frightening or threatening act might be a violation of a general duty not to scare

2 It is well settled that assumption of the risk is no longer a valid defense under Franklin law. The plaintiff's knowledge and conduct may be considered in determining whether, under the particular circumstances at issue, the defendant breached a duty to the plaintiff. If the defendant is found to have breached that duty, then the plaintiff's knowledge and conduct are considered to determine the extent of the plaintiff's comparative negligence.

others. *Dozer*. For example, being accosted by a supposed "vampire" in the middle of a shopping mall on a normal weekday in July might indeed be a violation of the general duty. But in this setting, on Halloween, the circumstances are different.

Larson, by voluntarily entering a self-described "House of Horrors" on Halloween, accepted the rules of the game. Hence, Larson's claim—that the club was negligent in its very act of admitting him to the "House of Horrors" because the establishment of the exhibit itself, with features designed to frighten patrons, breached the club's duty to act reasonably—must fail.

The courts below ended their analysis on that point and granted and affirmed the club's motion for summary judgment. But therein lies their error, for the proper analysis does not end there. Here, the further question is what additional duty is owed by a party which invites a patron for business purposes—in this case, what is the duty of the proprietor or operator of an amusement attraction to his patron who is an invitee. The operator impliedly represents that he has used reasonable care in inspecting and maintaining the premises and equipment furnished by him, and that they are reasonably safe for the purposes intended. The operator is not bound to protect patrons from every conceivable danger, only from unreasonably dangerous conditions. More specifically, such proprietors and operators have an obligation to ensure that there are not only adequate physical facilities but also adequate personnel and supervision for patrons entering the establishment.

Larson claims that the record shows that there is a question whether such adequate personnel and supervision existed here—most particularly, whether the role-playing individuals who were part of the experience in the "House of Horrors" were adequately instructed should some unfortunate event occur which injured a patron. Larson raised that question in his brief opposing the Club's motion for summary judgment, but neither the trial court nor the court of appeal addressed that claim. We cannot, on the record presented, determine if such adequate personnel, supervision, and instruction existed.

Accordingly, a genuine dispute of material fact exists which precludes granting the Club's motion for summary judgment.

Reversed and remanded.

Costello v. Shadowland Amusements, Inc.

Franklin Supreme Court (2007)

This is an appeal from a judgment of negligence against defendant Shadowland Amusements, entered by the Franklin District Court and affirmed by the Franklin Court of Appeal. On May 22, 2005, plaintiff Evelyn Costello had entered a "haunted house" at Shadowland's amusement park and gone into a room which was only dimly lit. In this room, the operators of the amusement park had projected ghoulish apparitions on the wall using laser holograms for realistic effect. Startled by these apparitions, Costello backed up and tripped over a bench that Shadowland had placed in the middle of the room, injuring herself. She sued for damages for both medical expenses and pain and suffering.

Defendant Shadowland cites our decision in *Parker v. Muir* (Fr. Sup. Ct. 2005) as a defense. There, plaintiff Parker sued defendant Muir for negligence, claiming damages for injuries she suffered as a result of her patronage of Muir's cornfield maze. The maze consisted of five miles of paths cut into the cornfield. Parker accompanied the youth group from her church to the maze. She had specifically suggested that the group go to the maze on their outing because she had been through the maze "at least twice" before, by her own admission. While venturing through the maze, she mentioned to the group that the paths were very rocky and that they should be careful. However, she tripped over a large rock in the path, fell, and broke her wrist. She sued Muir for negligence. The record showed that for the entire season during which the maze was open, this was the only reported accident.

As we noted in *Parker*, Franklin law provides that the owner or custodian of property is answerable for damage occasioned by its dangerous condition, but only upon a showing that the owner knew (or, in the exercise of reasonable care, should have known) of the dangerous condition, that the damage could have been prevented by the exercise of reasonable care, and that the owner failed to exercise such reasonable care. We also noted that the fact that an accident occurred as a result of a dangerous condition does not elevate the condition to one that is unreasonably dangerous. The past accident history of the

condition in question and the degree to which the danger may be observed by a potential victim are factors to be taken into consideration in the determination of whether a condition is unreasonably dangerous. Further, the condition must be of such a nature as to constitute a danger that would reasonably be expected to cause injury to a prudent person using ordinary care under the circumstances.

In *Parker*, we concluded that the mere presence of rocks on a path through a cornfield did not meet the standard for imposing liability. The plaintiff there knew of the condition from her prior trips through the maze. She warned the members of her group about it. She voluntarily entered the maze with that knowledge. No prudent person in such circumstances, using ordinary care, would incur injury. Indeed, any reasonable person would not be surprised to find rocks in a dirt path. The otherwise unblemished safety record of the maze prior to the accident bore out this conclusion.

Here, defendant Shadowland's reliance on *Parker* is misplaced. As we noted in *Larson v. Franklin High Boosters Club, Inc.* (Fr. Sup. Ct. 2002), every individual has a duty to act reasonably and not to put others in positions of risk. Shadowland did not act reasonably here. It was obviously aware of the dim lighting, the placement of the bench (it had itself put it there), and the hazard the bench might present. This dim lighting combined with the bench placement was a dangerous condition, one of which visitors were unaware, and the injury which resulted was one that Shadowland could have prevented using reasonable care. Shadowland did unreasonably put plaintiff Costello at risk and is therefore liable for Costello's injuries.

Affirmed.