

[Braswell v. Lowe's Home Ctrs., Inc.](#)

Court of Appeals of Tennessee, at Nashville

October 5, 2004, Argued ; January 27, 2005, Filed

No. M2003-02082-COA-R3-CV

Reporter

173 S.W.3d 41; 2005 Tenn. App. LEXIS 45

KENNETH E. BRASWELL v. LOWE'S HOME CENTERS, INC.

Subsequent History: Appeal denied by [Braswell v. Lowe's Home Ctrs., 2005 Tenn. LEXIS 705 \(Tenn., Aug. 22, 2005\)](#)

Prior History: **[**1]** [Tenn. R. App. P. 3](#) Appeal as of Right; Judgment of the Circuit Court Affirmed. Appeal from the Circuit Court for Davidson County. No. 01C-2445. Walter Kurtz, Judge.

Disposition: Affirmed.

Core Terms

customer, mats, trial court, instructions, fallen, jury's verdict, asserts, slipped, fault, requested instruction, allocation of fault, sixty-five, cashier's, employees, jury's, front, home improvement, shopping cart, special jury, filed suit, floor mat, embodied, parties', waiting, floor, pick

Case Summary

Procedural Posture

Appellant, customer, challenged the judgment of the Circuit Court for Davidson County, Tennessee, returning a jury verdict for appellee, store, after determining that the customer was sixty-five percent at fault for his injuries resulting from a fall.

Overview

The customer tripped over a floor mat while waiting in a cashier's line at the store. The customer asserted that he injured himself when his head struck the floor. The jury determined that the customer was sixty-five percent at fault and that the store was thirty-five percent at fault. The customer argued that the evidence did not support the jury's verdict, and that the trial court erred by

declining to use his special jury instructions. The appellate court ruled that the instructions the trial court used fairly embodied the parties' claims and defenses, and provided the jury with the appropriate legal principles needed to decide the case. The trial court's instructions tracked the Tennessee Pattern Jury Instructions. Also, the customer could not testify with any certainty about the nature of the mat he fell on. The store presented credible evidence that the customer fell on clear office mats that had fallen from the shopping cart of the customer in front of him, and that the customer fell before its employees had a reasonable opportunity to help the customer pick up the mats.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Civil Procedure > ... > Jury Trials > Jury Instructions > General Overview

Civil Procedure > ... > Jury Trials > Jury Instructions > Requests for Instructions

HN1 Trial courts may appropriately decline to give a requested jury instruction (1) if it is not supported by the evidence; (2) if its substance is already covered in the charge; and (3) if it is incorrect or incomplete in any respect. Thus, when a party takes issue with a trial court's refusal to give a requested instruction, the appellate court's task is to review the instructions actually given in their entirety, and to determine whether they fairly and accurately embody the parties' theories.

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

Civil Procedure > Appeals > Standards of Review > General Overview

HN2 As every trial lawyer knows, challenging a jury's allocation of fault is the legal equivalent of a "Hail Mary"

pass. The comparison and allocation of fault is for the jury, and the appellate court will not second-guess a jury's allocation of fault if it is supported by any material evidence. The process of ascertaining the evidentiary support for a jury's verdict is very deferential toward the verdict. The reviewing courts must (1) take the strongest legitimate view of the evidence that favors the verdict; (2) assume the truth of all the evidence that supports the verdict; and (3) allow all reasonable inferences that sustain the verdict.

Counsel: David S. Gardner, Nashville, Tennessee, for the appellant, Kenneth E. Braswell.

Reid D. Leitner, Nashville, Tennessee, for the appellee, Lowe's Home Centers, Inc.

Judges: WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., JJ., joined.

Opinion by: WILLIAM C. KOCH, JR.

Opinion

[*42] This appeal involves a customer who tripped over a floor mat while waiting in a cashier's line at a home improvement store. The customer filed suit against the store in the Circuit Court for Davidson County, and a jury returned a verdict for the store after determining that the customer was sixty-five percent at fault for his injuries. The customer asserts on this appeal that the evidence does not support the jury's verdict. We affirm the judgment.

Kenneth Braswell was shopping at a Lowe's Home Improvement Warehouse ("Lowe's") in Nashville on December 15, 2000 when he slipped and fell. According to Mr. Braswell, he was standing in a cashier's [*2] line waiting for the customer in front of him to check out. When he decided to step out of line to ask a nearby employee a question, he slipped on a "hard plastic mat" and fell to the floor. He asserts that he injured himself when his head struck the floor.

In August 2001, Mr. Braswell filed suit against Lowe's in the Circuit Court for Davidson County asserting that Lowe's had been negligent in the placement or maintenance of the floor mat. At trial, several Lowe's employees testified that Mr. Braswell had slipped on office mats that had fallen from the shopping cart of the

customer in front of him, and Mr. Braswell conceded that he was unsure whether he slipped on a support mat used by the Lowe's cashier or on the clear office mats that had fallen from the other customer's cart. However, he insisted that even if he had fallen on the office mats, the Lowe's employees were negligent for not picking up the fallen mats sooner or warning him that they had fallen.

The jury determined that Mr. Braswell was sixty-five percent at fault and that Lowe's was thirty-five percent at fault. Thereafter, the trial court entered a judgment for Lowe's and denied Mr. Braswell's motion for a new trial.

[**3] Mr. Braswell asserts on this appeal that the evidence does not support the jury's verdict and that the trial court erred by declining to use his special jury instructions.

We turn first to Mr. Braswell's complaint that the trial court erred by refusing to include his special instructions in its charge to the jury. He argues that without his requested instructions, which consisted of fragments from various appellate court opinions, the jury did not have a clear understanding of his duty of care as a customer and Lowe's duty as the operator of a self-service business open to the public.

HN1 Trial courts may appropriately decline to give a requested instruction (1) if it is not supported by the evidence, (2) if its substance is already covered in the charge, and (3) if it is incorrect or incomplete in any respect. [Ingram v. Earthman](#), 993 S.W.2d 611, 636 (Tenn. Ct. App. 1998). Thus, when a party takes issue with a trial court's refusal to give a requested instruction, our task is to review the instructions actually given in their entirety, see [Otis v. Cambridge Mut. Fire Ins. Co.](#), 850 S.W.2d 439, 446 (Tenn. 1992); [Abbott v. American Honda Motor Co.](#), 682 S.W.2d 206, 209 (Tenn. Ct. App. 1984), [*4] and [*43] to determine whether they fairly and accurately embody the parties' theories. See [Gorman v. Earhart](#), 876 S.W.2d 832, 836 (Tenn. 1994).

The trial court's instructions in this case tracked the Tennessee Pattern Jury Instructions specifically prepared for cases of this sort. We have concluded that the instructions the trial court used fairly embodied the parties' claims and defenses and provided the jury with the appropriate legal principles needed to decide the case. Accordingly, the trial court did not err in denying Mr. Braswell's request for special jury instructions.

Mr. Braswell's second complaint is that the evidence does not support the jury's determination that he was

sixty-five percent at fault. **HN2** As every trial lawyer knows, challenging a jury's allocation of fault is the legal equivalent of a "Hail Mary" pass. The comparison and allocation of fault is for the jury, [Brown v. Wal-Mart Discount Cities](#), 12 S.W.3d 785, 789 (Tenn. 2000), and this court will not second-guess a jury's allocation of fault if it is supported by any material evidence. [Henley v. Amacher](#), 2002 Tenn. App. LEXIS 72, No. M1999-02799-COA-R3-CV, 2002 WL 100402, at *10 (Tenn. Ct.App. Jan. 28, 2002) [****5**] (No [Tenn. R. App. P. 11](#) application filed). The process of ascertaining the evidentiary support for a jury's verdict is very deferential toward the verdict. The reviewing courts must (1) take the strongest legitimate view of the evidence that favors the verdict, (2) assume the truth of all the evidence that supports the verdict, and (3) allow all reasonable inferences that sustain the verdict. [Kelley v. Johns](#), 96 S.W.3d 189, 194 (Tenn. Ct. App. 2002).

Mr. Braswell could not testify with any certainty about the nature of the mat he fell on. However, Lowe's presented credible evidence that Mr. Braswell fell on clear office mats that had fallen from the shopping cart of the customer in front of him and that Mr. Braswell fell before its employees had a reasonable opportunity to help the customer pick up the mats. This evidence, without more, provides a legally sufficient foundation for the jury's verdict.

We affirm the judgment and remand the case to the trial court for whatever further proceedings may be required. We tax the costs of this appeal to Kenneth E. Braswell and his surety for which execution, if necessary, may issue.

WILLIAM C. KOCH, [****6**] JR., P.J., M.S.