

Kathleen Price v. BIC Corporation CV-94-607-B 07/29/99

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Kathleen Price, et al.

v.

Civil No. 94-607-B

BIC Corporation

MEMORANDUM AND ORDER

Matthew Moore was severely burned in a fire started by his three-year-old brother. His guardian subsequently brought suit on his behalf against the BIC Corporation. The suit alleges that Matthew's brother used a BIC lighter to start the fire and that BIC is liable for Matthew's injuries because it failed to incorporate available child-resistant features into the lighter's design that would have prevented the fire. The case was tried to a jury on negligence and strict liability theories. On November 18, 1998, the jury returned a special verdict in BIC's favor, responding "no" to the question "[h]as the plaintiff proved by a preponderance of the evidence that the fire was started with a BIC lighter?" Plaintiff filed a timely motion for a new trial,

arguing that the jury's verdict was contrary to the clear weight of the evidence. Because I agree, I vacate the verdict and direct the clerk to schedule the matter for a new trial.¹

I. FACTS

Mary Moore was lying in bed with 17-month-old Matthew and her boyfriend, James Hamel, when she first became aware that the couch in her living room was on fire. Doug and his three-year-old friend, Danielle, were in the living room at the time and Mary quickly brought them both into her bedroom after it became apparent that she and Hamel could not extinguish the blaze on their own. Mary, Hamel, Danielle, and Doug ultimately escaped by jumping from the bedroom window. Matthew was later rescued by firefighters. The fire caused extensive damage to the apartment before it was brought under control.

Investigators from the Dover, New Hampshire, Fire and Police Departments interviewed Danielle and Doug shortly after the fire. Danielle told investigators that "Doug had been playing with a lighter and had lit the couch on fire." The investigators had a

¹ The issuance of this memorandum and order was delayed by several months because the court reporter was unable until recently to complete a transcript of an essential portion of the trial.

difficult time understanding Doug because he had a speech impediment. One of the investigators prepared a report stating that Doug had told him "there was a big fire" and "he had a lighter and he lit it." The other investigator remembered hearing Doug use the words "couch" and "lighter."

The Dover Fire Department conducted an investigation to determine the origin and source of the fire. Assistant Fire Chief Robert Clymer, a trained fire investigator, determined that the fire had started on the couch in the living room. He ruled out several possible ignition sources, including defective electrical wiring and an appliance such as a lamp or a curling iron. During a careful search of the apartment, the investigators discovered a BIC lighter on the floor in the hallway between the living room and the master bedroom. They also found some cigarette butts in an ashtray in the master bedroom, three lighters on the floor in the master bedroom in a small space between the bed and the wall opposite the door, and three other lighters under the bed. None of the lighters found in the master bedroom were manufactured by BIC. The investigators found no other possible ignition sources in the apartment.

II. THE NEW TRIAL STANDARD

A trial court may grant a motion for new trial if the verdict was "against the demonstrable weight of the credible evidence or results in a blatant miscarriage of justice." Sanchez v. Puerto Rico Oil Co., 37 F.3d 712, 717 (1st Cir. 1994). "In reaching its decision, the district court has broad legal authority to determine whether or not a jury's verdict is against the clear weight of the evidence. Nonetheless, the trial judge's discretion, although great, must be exercised with due regard to the rights of both parties to have questions which are fairly open resolved finally by a jury at a single trial." Ahearn v. Scholz, 85 F.3d 774, 780 (1st Cir. 1996) (internal quotations and citations omitted). "The mere fact that a contrary verdict may have been equally - or even more easily - supportable furnishes no cognizable ground for granting a new trial." Id.

I review plaintiff's motion for a new trial in light of the guidance provided by these precedents.

III. ANALYSIS

I accept BIC's assertion that it is difficult to determine with certainty how the fire started. After all, the only eyewitnesses, Doug and Danielle, were three years old when the

fire occurred, and they cannot reasonably be expected to identify the type of lighter Doug used to start the fire. Certainty is also elusive here because the fire itself and the firefighter's heroic efforts to rescue Matthew and extinguish the blaze could have destroyed or altered important evidence. The civil justice system does not require certainty, however, and the clear weight of the evidence that is available convincingly demonstrates that Doug started the fire with a BIC lighter.

Although Doug and Danielle did not identify the type of lighter Doug used to start the fire, they both independently stated shortly after the fire occurred that Doug had started the fire with a lighter. BIC failed to introduce any contrary evidence on this point, and the plaintiffs' circumstantial evidence strongly corroborates their statements because the only plausible ignition sources found in the apartment were lighters.² Further, while it is theoretically possible that Doug may have used one of the lighters found in the master bedroom to start the

² While it is conceivable that Doug and Danielle were either lying or mistaken when they claimed that Doug had started the fire with a lighter, this possibility is extremely remote, especially in view of the fact that investigators found a BIC lighter on the floor, a few feet from the blaze and no evidence was found indicating that the fire was started with matches. BIC's assertion that Matthew may have used the stove in the kitchen to light a torch which he then used to start the fire is so speculative as to merit no comment.

fire, the clear weight of the evidence indicates otherwise. To determine that Doug may have used one of the lighters found in the bedroom, the jury would have to conclude that Doug ran past the BIC lighter lying on the floor in the hallway and placed the lighter he used to start the fire under the bed in the master bedroom or on the floor between the bed and the wall with the other lighters. The jury would also have to assume that it was simply an unfortunate coincidence that a BIC lighter was found on the floor a short distance from where the fire started and in the path that Doug followed after he set the fire. Basing a verdict on such speculative assumptions is clearly contrary to the weight of the evidence suggesting that Doug used the BIC lighter to start the fire. Accordingly, a new trial on the issue is required to avoid a grave injustice.

IV. CONCLUSION

Plaintiff's motion for new trial (document no. 110) is granted.

SO ORDERED.

Paul Barbadoro
Chief Judge

July 29, 1999

cc: Thomas Kerr, Esq.

C. Mark Furcolo, Esq.
Paul Cox, Esq.