

Riley v. Travelers Home & Marine Insurance Company (SC 19968)

Brief Summary: Plaintiff's home was damaged in a fire. Defendant declined plaintiff's insurance claim. Plaintiff subsequently sued defendant for breach of contract and negligent infliction of emotional distress. After plaintiff rested his case defendant moved for a direct verdict on the latter claim. Trial court reserved decision on the direct verdict, defendant then presented its own case, jury returned a verdict for the plaintiff on both counts. Court held the waiver rule applies to civil in which the trial court reserves its decision on a direct verdict. Pursuant to the rule, defendant, by opting to introduce evidence after the reservation of the direct verdict waived right to appeal.

A room on the second floor of the plaintiff's house caught on fire destroying all its contents including a \$30,000 uncashed check given to the plaintiff's wife as a work bonus. The fire marshal concluded that the fire was accidental, having been started by an electrical problem inside the wall of the room. The plaintiff then notified the defendant, Travelers Home & Marine Insurance Company, who assigned one of its employees, a certified fire investigator, to investigate the fire. The defendant's investigator concluded that the fire was not accidental, rather, it was started vapors of kerosene poured on the floor. Defendant then denied the plaintiff's insurance claim, concluding that the fire was intentional. Plaintiff then sued for breach of contract and negligent infliction of emotional distress. Defendant denied the plaintiff's claims and, by way of special defense, alleged that the plaintiff intentionally caused the fire and concealed or misrepresented material facts or circumstances, engaged in fraudulent conduct, and/or made materially false statements regarding the fire and insurance claim. At the conclusion of the plaintiff's case, defendant moved for a direct verdict on the negligent infliction of

emotional distress claim arguing that there was insufficient evidence to establish that they were negligent in investigating the insurance claim thus, there was insufficient evidence for the emotional distress claim. The court reserved judgment (did not give an opinion) on the direct verdict and proceeded to the defendant's case. After the defendant's presentation of evidence, the jury returned a verdict in favor of the plaintiff on both counts. After that, the defendant filed a motion for judgment notwithstanding the verdict, arguing that the plaintiff failed to present any evidence (other than the letter denying his insurance claim) that would permit the jury to reasonably conclude that they are liable to him for the negligent infliction of emotional distress. Furthermore, the defendant argued that although the plaintiff developed evidence regarding their conduct during cross-examination of one of its employees, the evidence cannot be considered in evaluating whether the plaintiff satisfied his burden of proof in his case-in-chief. The trial court disagreed and after reviewing all the evidence concluded that the jury's verdict was supported by the evidence.

On appeal, defendant argued that the trial court was limited to the evidence adduced during the plaintiff's case-in-chief which was insufficient to establish the negligent infliction of emotional distress claim. The Appellate court rejected the claim and held that the waiver rule precluded the defendant from claiming that the trial court was limited in its review of the sufficiency of the evidence to the evidence presented in the plaintiff's case-in-chief. The issues before the Supreme Court of Connecticut were (1) whether by not resting at the end of the plaintiff's case-in-chief, but instead presenting evidence, the defendant waived its right on appeal to claim that the trial court should have granted its motion for a directed verdict pursuant to Practice Book § 16-37? And (2) whether the waiver rule is applicable when a trial court reserves decision on a motion for a directed verdict at the close of the plaintiff's case-in-chief. The court

concluded that the defendant waived his right to appeal the ruling on the motion and that the waiver rule is applicable when a trial court reserves decision on a motion for a directed verdict at the close of the plaintiff's case-in-chief.

Under the waiver rule, when a trial court denies a defendant's motion for a directed verdict at the close of the plaintiff's case-in-chief, the defendant waives the right to appeal the trial court's ruling on the motion by choosing to introduce evidence on their own behalf.

The defendant argued that the waiver rule is inapplicable because the trial court did not deny their motion for a directed verdict, rather, the court reserved judgment. However, the court stated that Practice Book § 16-37 treats the trial court's election to reserve decision as the equivalent of a denial of the motion for purposes of subsequent proceedings as it states that if a motion is denied or for any reason is not granted, the judicial authority is deemed to have submitted the action to the jury subject to a later determination of the legal question raised by the motion. Put differently, when a motion for directed verdict is reserved, the issue of the motion is decided later by the jury. Thus, if the defendant presents evidence they risk assisting the plaintiff in establishing their case as the jury considers all the evidence presented and the jury's decision becomes the only appealable decision. In deciding to apply the waiver rule when a court reserves judgment the court cited *Perkins* which explained that the purpose of the rule is to eliminate the bizarre result that could occur where a conviction is reversed for insufficient evidence despite the record containing sufficient evidence.

The defendant also argued that the reservation option in Practice Book § 16-37 forces defendants to choose between resting his/her case and being deprived the benefits of the motion. The court rejected this argument stating, first, that the waiver rule's validity in a civil context has never been doubted in Connecticut. Second, that there is no distinction between a trial court

reserving judgment and denying a directed verdict motion as in both instances the action is deemed to be submitted to the jury subject to a later determination of the motion's legal question. Third, the court is required to review the evidence most favorably to the prevailing party, thus, the court must consider all of the evidence, even the defendant's evidence, to determine whether the evidence supports the jury's determination.

The court concluded by stating that nothing in the language of Practice Book § 16-37 suggests that a trial court adjudicating a postverdict motion for judgment notwithstanding the verdict may ignore evidence elicited during the defendant's case when deciding whether the evidence was sufficient after the verdict. Thus, concluding that the defendant waived its right to challenge the sufficiency of the evidence in the plaintiff's case-in-chief, and that the trial court properly relied on all the evidence when it denied the defendant's motion for judgment notwithstanding the verdict.

The key takeaway in this case is that the waiver rule applies when a court decides to reserve judgment on a motion for a directed verdict. This is salient because it forces defendants to decide whether they want the jury to decide the merits of the case based only on the plaintiff's evidence or if they want to present their own evidence and risk filling gaps in the plaintiff's case. This case protects plaintiff's because it does not allow defendant's to present evidence and then have a decision reversed based on the insufficiency of only a portion of the evidence—the plaintiff's case-in-chief.

