

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFFS

VS.

CIVIL ACTION NO.

DEFENDANTS

MEMORANDUM OPINION AND ORDER GRANTING
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER was heard and considered on the motion of the Defendants, , for summary judgment on the grounds that there are no genuine tryable issues on the material facts of negligence and causation for submission to a jury and that the Defendants are entitled to judgment on these issues as a matter of law. After considering the pleadings, materials submitted in support of and in opposition to the motions, together with the arguments and briefs of Counsel, it is my opinion that the motions are well taken based on these findings of undisputed facts and the conclusions of law applicable to them: The Plaintiff's , who is now deceased, purchased a mobile home from " " which was delivered to and setup on lot by " ". The front steps, which are not permanently attached to the mobile home, were positioned at the front door. The steps were not defective either in construction or design and were positioned in accordance with the instructions received from who was on the premises during the installation. Subsequently, sustained personal injuries consistent with falling and stated to , the Plaintiff {and also to , his/her treating physician, that he/she tripped (or fell) on the steps while attempting to enter the mobile home. later died. However, there is no medical evidence which establishes a causal link between his/her injuries and death. Other than statements to and Doctor, there is no evidence, direct or otherwise, which connects the front steps with the decedent's injuries. The Plaintiff contends that, when coupled with the Plaintiff's subsequent observations, this is sufficient to escape the consequences of the rule stated by our Supreme Court in *Galloway v. Travelen Ins. Co.*, 515 So.2d 678, 684 (Miss. 1987):

When a party, opposing summary judgment on a claim or defense as to which that party will bear the burden of proof at trial, fails to make a showing sufficient to establish an essential element of the claim or defense, then all other facts are immaterial, and the moving party is entitled to judgment as a matter of law.

In doing so, the Plaintiff contends that statements are admissible under either the medical or residual exceptions of Rules 803 or the residual exception of Rule 804 and that these, together with the Plaintiff's testimonial description of the steps position based solely on observations made after the event, supply the circumstantial evidence from which a jury could preponderantly find both negligence and causation. However, in my opinion, this reliance on the admissibility of these declarations and as well as their effect, if admitted, is erroneous. First, I do not believe that the statements are admissible under the residual exceptions because the

guarantees of trustworthiness are not present and even if admitted under the medical exception, they would be insufficient to establish the truth of the matters asserted as a material fact upon which a jury could base its verdict. Further, the mere assertion that "I tripped" or "I fell" cannot reasonably be interpreted as "I tripped (or fell) as the result of X's acts" and is therefore insufficient to prove either negligence or causation. This deficiency is not corrected by the Plaintiff's subsequent observations of the steps. Even if the jury concluded that the Plaintiff's testimony accurately describes the position in which the Defendant "*****" left them, it must also conclude that the condition was not latently hazardous but constituted an open and obvious condition which was reasonably safe for use by those exercising ordinary care for their own safety. Thus, in my view, there are too many gaps in the circumstantial web the Plaintiff must attempt to weave for this case to come within the standard stated by the Court in *PODC V. Magee*, 403 So.2d 1269 (Miss. 1981) to be:

Negligence may be established by circumstantial evidence in the absence of testimony by eye-witnesses provided the circumstances are such as to take the case out of the realm of conjecture and place it in the field of legitimate inference, and in such case the causal connection between the agency and the injury need not be shown by direct evidence. (emphasis Supplied) and that no fair minded jury could return a verdict in the Plaintiff's favor. Stated another way, if the evidence developed at the trial as it has on summary judgment a motion by the defendants for a directed verdict would be well taken.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendants motions for summary judgment are granted and judgments for the defendants are entered. All cost of court are assessed to the Plaintiff for which let execution issue.

ORDERED AND ADJUDGED on the day of , 20 .

CIRCUIT COURT JUDGE