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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-821

Filed: 2 June 2020

Mecklenburg County, No. 18-CVS-2615

TEMPERANCE GAINES-PERKINS, Plaintiff,

v.

McGLYNN RESTORATION, LLC, d/b/a SERVPRO OF SOUTH CHARLOTTE,
Defendant.

Appeal by plaintiff from order entered 25 February 2019 by Judge J. Thomas Davis in Mecklenburg County Superior Court. Heard in the Court of Appeals 17 March 2020.

James, McElroy & Diehl, P.A., by Preston O. Odom, III, for plaintiff-appellant.

Dean & Gibson, PLLC, by Michael R. Haigler, for defendant-appellee.

DIETZ, Judge.

Temperance Gaines-Perkins moved many of her belongings into her daughter's rental townhome. Later, a fire broke out in the kitchen, leading to extensive damage inside the home. The landlord's insurer hired a remediation firm to deal with the damage.

When Gaines-Perkins examined her belongings a month later, she found damage and sued the remediation firm for trespass and negligence. The trial court entered a directed verdict on her claims at the close of the evidence and Gaines-Perkins appealed.

We affirm. As explained below, Gaines-Perkins's purported evidence that the remediation company caused the damage was merely conjecture. Although we permit juries to draw logical inferences from circumstantial evidence, we do not permit litigants to rely solely on speculation and guesswork. That is what Gaines-Perkins did here. Accordingly, we affirm the trial court's entry of a directed verdict on her claims.

Facts and Procedural History

In April 2017, a fire damaged a townhome in the Charlotte area. Plaintiff Temperance Gaines-Perkins's daughter rented that townhome and lived there. Shortly before the fire, Gaines-Perkins moved various items of her personal property into the townhome. The property was in the townhome when the fire occurred.

Defendant McGlynn Restoration, LLC, d/b/a ServPro of South Charlotte ("ServPro") is a remediation company hired by the landlord's property insurance company to remediate the fire damage to the townhome at the request of the landlord.

In mid-May, roughly a month after the fire, Gaines-Perkins entered the townhome and discovered damage to her personal property. She sued ServPro,

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asserting claims for trespass to personal property and negligence, alleging that ServPro damaged and interfered with her property while performing its fire remediation services.

The case went to trial before a jury in 2019. At trial, Gaines-Perkins presented evidence from only three sources: her own testimony; videos and photographic evidence she took of her personal property in May, June, and July of 2017; and testimony from an employee of another remediation company who visited the property with Gaines-Perkins more than a month after the fire occurred.

Gaines-Perkins testified that, after first responders put out the fire, she entered the townhome escorted by the fire chief and observed extensive fire and water damage. The damage was centered around the kitchen, where the fire started. After walking through the property, Gaines-Perkins met with a friend of the landlord who told her that the property would be boarded up and secured. Gaines-Perkins testified that she saw an individual named Sean, who said he worked for ServPro, board up the door. Gaines-Perkins testified that, at the time, she did not ask Sean “what was going to happen with [my] contents inside that home.”

Gaines-Perkins testified that sometime in mid-April an individual named Rory contacted her, told her that ServPro, his employer, had been hired to remediate the fire damage at the townhome, and explained that ServPro had “begun taking the house down to the studs and sub-floor” and “had covered everything in plastic.”

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Gaines-Perkins testified that she expressed concerns about her personal property in the townhome. Rory told her that ServPro might be able to store her belongings and that he would get her an estimate for storage. Gaines-Perkins testified that Rory took her email address, but she never heard back from him or anyone else at ServPro. After asking the landlord for ServPro's phone number, Gaines-Perkins attempted to contact the company but was unsuccessful.

Gaines-Perkins then explained that she spoke to the landlord's insurance adjuster sometime in late April and asked for access to the townhome. The adjuster provided her with a lockbox code for access to the property, but she was out of town at the time and unable to immediately go to the property. Later, in mid-May, Gaines-Perkins entered the townhome with Joy Anderson, an employee of ServiceMaster, another remediation firm, and recorded video of her property inside the home.

Gaines-Perkins explained that "the house had been gutted" and, importantly, she believed there was more damage to her belongings than what she observed on her initial walkthrough immediately after the fire. Gaines-Perkins also observed that the soot from the fire had been disturbed in areas around her belongings, and she saw other indications that someone had moved and disturbed her property after the fire occurred.

On cross-examination, Gaines-Perkins testified that she drove by the townhome several times in April or early May to check on it, but she never saw

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anyone at the townhome, including any of ServPro's workers. When asked if ServPro, or anyone associated with ServPro, denied her access to the townhome or told her she could not access the property, Gaines-Perkins responded, "Not expressly, no." She also acknowledged that she did not know who had been inside the property between the fire and her mid-May walkthrough. ServPro's counsel asked Gaines-Perkins, "And you never saw anybody from Servpro damage your property; correct?" She responded, "I did not directly, no, I did not." ServPro's counsel then asked her, "And as you sit there today, you have no evidence that [ServPro] is the one who damaged your property; correct?" Gaines-Perkins responded, "Not directly, no direct evidence."

Joy Anderson, the ServiceMaster employee, testified that she observed damage to Gaines-Perkins's personal property, but did not know when or how the damage happened. Anderson further testified that her employer, ServiceMaster, would not have conducted this sort of demolition work without first removing all of the personal property from the home. On cross-examination, Anderson testified that she had no knowledge of "what state the property was in immediately after the fire" or who was in the property between the fire and her May walkthrough with Gaines-Perkins. Anderson had no knowledge of what work ServPro or anyone else performed inside the townhome.

Importantly, Gaines-Perkins never presented any evidence of the specific work ServPro performed inside the townhome or evidence of who else had access to the

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townhome to perform any work, damage assessments, or other actions inside. Gaines-Perkins did not call any witnesses from ServPro, did not call any witnesses affiliated with the landlord who owned the home, and did not call any witnesses from the insurance company that hired ServPro and was coordinating the remediation work that took place as part of its insurance contract.

At the close of Gaines-Perkins's case, ServPro moved for a directed verdict. The trial court orally granted the motion, noting "[i]t's pure speculation as to what they did or didn't do, let alone damaging the property." The court later entered a written order concluding that "[t]here was no evidence before the Court that Defendant and/or employees of Defendant ever touched, moved, or otherwise came into contact with the Plaintiff's personal property, and accordingly no evidence that Defendant and/or its employees damaged Plaintiff's property." Gaines-Perkins timely appealed the trial court's order.

Analysis

Gaines-Perkins challenges the trial court's entry of a directed verdict in favor of ServPro on all her claims. As explained below, we reject Gaines-Perkins's arguments and affirm the trial court's ruling.

"A directed verdict is proper when there is no evidence of an essential element of plaintiff's claim." *Cap Care Grp., Inc. v. McDonald*, 149 N.C. App. 817, 821, 561 S.E.2d 578, 581 (2002). "The plaintiff, to overcome a motion for a directed verdict, is

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required to offer evidence sufficient to establish, beyond mere speculation or conjecture, every essential element” of her claims. *Oliver v. Royall*, 36 N.C. App. 239, 242, 243 S.E.2d 436, 439 (1978).

“The standard of review of directed verdict is whether the evidence, taken in the light most favorable to the non-moving party, is sufficient as a matter of law to be submitted to the jury.” *Davis v. Dennis Lilly Co.*, 330 N.C. 314, 322, 411 S.E.2d 133, 138 (1991). “In determining the sufficiency of the evidence to withstand a motion for a directed verdict, all of the evidence which supports the non-movant’s claim must be taken as true and considered in the light most favorable to the non-movant, giving the non-movant the benefit of every reasonable inference which may legitimately be drawn therefrom and resolving contradictions, conflicts, and inconsistencies in the non-movant’s favor.” *Turner v. Duke Univ.*, 325 N.C. 152, 158, 381 S.E.2d 706, 710 (1989).

I. Trespass to personal property based on interference

We first address Gaines-Perkins’s trespass to personal property claim based on her theory that ServPro interfered with her rightful access to her personal property.

The essential elements of this claim are (1) that the plaintiff “demonstrate that she had either actual or constructive possession of the personalty or goods in question at the time of the trespass,” and (2) “that there was an unauthorized, unlawful

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interference or dispossession of the property” by the defendant. *Fordham v. Eason*, 351 N.C. 151, 155, 521 S.E.2d 701, 704 (1999) (citations omitted). Thus, in order to survive ServPro’s motion for a directed verdict on this claim, Gaines-Perkins must have presented at least some evidence that ServPro unlawfully interfered with her possession of her personal property inside the townhome. The trial court properly concluded that she did not.

Importantly, there is no evidence that ServPro ever prevented Gaines-Perkins from lawfully entering the townhome to access her personal property. ServPro was a contractor working for the insurer of the townhome with the permission of the landlord who owned the townhome. Gaines-Perkins testified that no one affiliated with ServPro “expressly” told her that she was not allowed access to the property. And Gaines-Perkins’s own evidence indicates that, when she contacted the adjuster for the insurer, who hired ServPro to perform the work, the adjuster provided her with a lockbox code that allowed her to access the property.

Thus, the trial court properly concluded that, even viewing all the evidence in the light most favorable to Gaines-Perkins, there was insufficient evidence as a matter of law to show that ServPro engaged in any unauthorized, unlawful interference or dispossession of her personal property inside the townhome. Accordingly, the court properly entered a directed verdict on this theory of trespass to personal property. *Oliver*, 36 N.C. App. at 242, 243 S.E.2d at 439.

II. Negligence and trespass based on property damage

We next turn to Gaines-Perkins's claims alleging that ServPro damaged her personal property inside the townhome. She alleges a trespass claim, the elements of which are discussed above, and a negligence claim, which requires proof that "(1) the defendant owed the plaintiff a duty of reasonable care, (2) the defendant breached that duty, (3) the defendant's breach was an actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages as the result of the defendant's breach." *Gibson v. Ussery*, 196 N.C. App. 140, 143, 675 S.E.2d 666, 668 (2009) (citations omitted).

Both of these claims require evidence that ServPro damaged Gaines-Perkins's property. This is necessary to show the second element of the trespass claim—that ServPro engaged in an unauthorized, unlawful interference or dispossession of the property—and the third element of the negligence claim—that ServPro's breach of some duty was the actual and proximate cause of the damage to her property.

The evidence necessary to survive a motion for directed verdict on these essential elements must be enough to take the question "out of the realm of suspicion." *Id.* at 144, 675 S.E.2d at 668–69. The evidence "cannot rest on mere conjecture or surmise." *Sabol v. Parrish Realty of Zebulon, Inc.*, 77 N.C. App. 680, 686, 336 S.E.2d 124, 127 (1985), *aff'd*, 316 N.C. 549, 342 S.E.2d 522 (1986). "If all that can be said is that the defendant *may* have done the acts which caused the injury,

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and it is equally true that defendant may not have, then the evidence is merely conjectural and is not sufficient to go to the jury.” *Id.*

Here, Gaines-Perkins’s evidence was far too speculative to be sent to the jury. She testified that her property was more damaged when she viewed it in mid-May than it was immediately after the fire occurred in April. She presented evidence that, during this time, ServPro employees had access to the property and did remediation work there that would have required ServPro to move at least some of her property. And she testified that between early April and mid-May, she passed by the exterior of the townhome several times and never saw anyone else working inside.

This is not enough evidence to survive a motion for directed verdict. For example, there were many other people with access to this home following the fire. It was a rental home leased by Gaines-Perkins’s daughter and there was evidence that the landlord had access to the property and authorized others to access it. Likewise, ServPro was hired by the landlord’s insurer and reported to an adjuster at the insurance company. The adjuster and other employees of the insurer also had access to the property following the fire—even providing the lockbox code to Gaines-Perkins so that she could enter. Gaines-Perkins offered no evidence from which a jury reasonably could infer that it was ServPro, not any of these other parties with access to the property, who caused the alleged damage. Her insistence that it must have been ServPro, and not someone else with lawful access, is mere conjecture.

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Moreover, there was evidence that the townhome's interior suffered extensive fire and water damage as a result of the fire, particularly in the kitchen area. Gaines-Perkins presented no evidence that the damage to her property was caused by ServPro employees and not by the deteriorated condition of the interior of the townhome. Indeed, Gaines-Perkins did not even call any witnesses from ServPro concerning the work the company performed inside the home. A jury could only speculate about what work ServPro (or anyone else) actually performed inside the townhome, much less whether that work caused the damage as opposed to something else.

We are mindful that, in many situations, there will be no *direct* evidence that the defendant caused a particular harm. Instead, the jury must rely on reasonable inferences from *circumstantial* evidence. *Sabol*, 77 N.C. App. at 686, 336 S.E.2d at 127. But there is a difference between logical inferences based on circumstantial evidence and mere conjecture. "This is necessarily so because an inference is a permissible conclusion drawn by reason from a premise established by proof." *Id.* Gaines-Perkins's case offered only conjecture, not proof.

One could imagine a scenario where, with evidence that narrowed the universe of people and events that took place inside the townhome, a jury could draw a reasonable inference based on circumstantial evidence. For example, with evidence of the work ServPro performed in the home, and evidence that no one else performed

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any repair work, damage assessments, or inspections that caused them to disturb Gaines-Perkins's possessions, a jury might reasonably infer that ServPro caused the damage, even without any direct evidence. But that is not this case—Gaines-Perkins based her case on “speculations, guesses, or conjectures” instead of building a case with circumstantial evidence that could allow the jury to make logical inferences in her favor. *Herring v. Food Lion, LLC*, 175 N.C. App. 22, 27, 623 S.E.2d 281, 285 (2005), *aff'd*, 360 N.C. 472, 628 S.E.2d 761 (2006). Accordingly, the trial court properly determined that ServPro was entitled to a directed verdict on these claims as a matter of law.

Gaines-Perkins also challenges other aspects of the trial court's directed verdict ruling, but we need not address those issues. “[A] trial court's ruling must be upheld if it is correct upon any theory of law.” *Templeton v. Town of Boone*, 208 N.C. App. 50, 54, 701 S.E.2d 709, 712 (2010). Because we hold that the trial court correctly entered a directed verdict for the reasons above, we need not address the other grounds on which the trial court based its directed verdict ruling. *Id.*

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges STROUD and HAMPSON concur.

Report per Rule 30(e).