

Norma Hicks LOWERY *v.* Pat KELLEBREW

82-25

633 S.W.2d 40

Supreme Court of Arkansas
Opinion delivered May 24, 1982

APPEAL & ERROR — PRIMA FACIE CASE NOT OVERCOME. — Where appellee made a *prima facie* case of slip and fall which appellant failed to overcome, the jury's verdict will be affirmed.

Appeal from Chicot Circuit Court; *Paul K. Roberts*, Judge; affirmed.

Griffin, Rainwater & Draper, for appellant.

Holloway & Bridewell, for appellee.

DARRELL HICKMAN, Justice. Pat Kellebrew was awarded \$25,000 in this slip and fall case. The only thing unusual is that Pat Kellebrew, the appellee, filed suit against his daughter, Norma Hicks Lowery, the appellant. Otherwise, it is a simple case of whether the jury chose to believe Mr. Kellebrew's evidence.

Kellebrew, age 70, testified that on January 26, 1976, his daughter called him to move a motorcycle from her carport. In doing so he slipped and fell on the concrete carport and injured himself. He said that he was knocked unconscious and when he came to in a few moments his pants had grease or oil on them. His medical expenses totalled over \$3,000.

Kellebrew's sons went to Mrs. Lowery's house to help move their father. They both testified that Kellebrew's feet were lying in an oil spot in the carport, and that the oil spot had been there at least several days. James Kellebrew testified that the spot was about three feet in circumference.

Mr. Kellebrew said that before the accident he had done carpentry work, painting, and farm work, and made up to \$4,000 a year doing so. He said that that was the amount he

was allowed to earn and still receive his social security benefits. He testified that he was not able to work after he was injured because of severe pain in his back and legs.

The two issues raised are whether there was substantial evidence to support the jury's verdict and whether there was sufficient evidence to support an instruction of loss of working time. In both instances it is a question of the credibility of the witnesses. The jury chose to believe Pat Kellebrew and his sons. The appellee made a prima facie case of slip and fall which the appellant failed to overcome. *Safeway Stores Inc. v. Waddy*, 253 Ark. 473, 486 S.W.2d 683 (1972); *Weingarten, Inc. v. Thompson*, 251 Ark. 914, 475 S.W.2d 697 (1972).

Affirmed.
