

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

HOLLY A. BEST	:	APPEAL NO. C-080250
	:	TRIAL NO. A-0401012
and	:	
	:	<i>JUDGMENT ENTRY.</i>
WAYNE D. BEST,	:	
Plaintiffs-Appellants,	:	
vs.	:	
BSF III-B, LLC,	:	
JONES, LANG, LASALLE, AMERICAS, INC., d.b.a. N.A.I. EAGLE,	:	
and	:	
OTIS ELEVATOR COMPANY, d.b.a. AMTECH ELEVATOR SERVICES,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiffs-appellants, Holly A. Best and Wayne D. Best, sued the following defendants-appelles: (1) BSF III-B, L.L.C. (“BSF”), (2) Jones, Lang, LaSalle, Americas, Inc., d.b.a. N.A.I. Eagle (“Jones”), and (3) Otis Elevator Co., d.b.a. Amtech Elevator Services (“Amtech”). They alleged that, due to the defendants’ negligence, Holly Best had been injured while riding in an elevator that had come to a sudden stop. They also alleged that Wayne Best had suffered a loss of consortium because of

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

his wife's injuries. BSF was the owner of the building in which the elevator was located. Jones was the building-management company. As BSF's agent, Jones contracted with Amtech to service the elevator. Following a jury trial, the trial court entered judgment in favor of all defendants. The Bests moved for judgment notwithstanding the verdict ("JNOV") or, in the alternative, a new trial. The trial court denied both motions.

Bringing forth three assignments of error, the Bests now appeal the judgment for the defendants and the denial of their post-trial motions. For the following reasons, we affirm.

In their first assignment of error, the Bests maintain that the trial court erred by failing to instruct the jury that Jones and Amtech owed the highest degree of care to a passenger in an elevator. We overrule this assignment of error. A property manager and a maintenance contractor owe only a duty of ordinary care to a passenger in an elevator.<sup>2</sup>

In their second assignment of error, the Bests argue that the trial court erred in denying their motions for a JNOV and for a new trial.

We review de novo the decision to grant or deny a motion for a JNOV. A JNOV is proper if, upon viewing the evidence in a light most favorable to the nonmoving party, reasonable minds could only conclude in favor of the moving party.<sup>3</sup> But where there is substantial evidence supporting the nonmoving party upon which reasonable minds could reach different conclusions, the court must deny that motion.<sup>4</sup>

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<sup>2</sup> See *Sant v. Hines Interests Ltd. Partnership*, 10<sup>th</sup> Dist. No. 05AP-586, 2005-Ohio-6640; *Koepfler v. CRI, Inc.*, (Mar. 27, 1998), 1<sup>st</sup> Dist. No. C-970333.

<sup>3</sup> *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 95 Ohio St.3d 512, 2002-Ohio-2842, 769 N.E.2d 835, ¶14.

<sup>4</sup> *Osler v. Lorain* (1986), 28 Ohio St.3d 345, 347, 504 N.E.2d 19.

Here, the defendants presented substantial evidence demonstrating that each had exercised the requisite care in maintaining the elevator that had malfunctioned. Wayne Ferguson, an employee of the maintenance contractor, Amtech, testified that when he had arrived at the building to service the elevator, it had been out of service and inaccessible by tenants in the building. He testified that he had kept the elevator out of service while he performed tests to determine the problem. After 30 minutes of testing the elevator, he was unable to duplicate the initial problem for the service call. Therefore, he placed the elevator back in service. The defendants also presented the expert testimony of Ron Creak, who testified to the industry standards of the operation, maintenance, and care of elevators. Creak opined that the defendants had taken every reasonable step to prevent the elevator from over-speeding, and he opined that Ferguson had acted appropriately by putting the elevator back into service after he had been unable to duplicate the problem that had initiated the service call. Viewing this evidence in favor of the defendants, we conclude that reasonable minds could have reached different conclusions concerning whether the defendants had been negligent.

The Bests argue that the doctrine of *res ipsa loquitur* supported the JNOV. We disagree. The doctrine of *res ipsa loquitur* is one of evidence, which permits a jury, *but not the court in a jury trial*, to draw an inference of negligence when the instrumentality causing the injury was under the defendant's exclusive management and control, and the accident occurred under such circumstances that, in the ordinary course of events, it would not have occurred if ordinary care had been observed.<sup>5</sup> Thus, the Ohio Supreme Court has held that that under no circumstances

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<sup>5</sup> *Wise v. Timmons*, 64 Ohio St.3d 113, 117, 1992-Ohio-117, 592 N.E.2d 840, citing *Glowacki v. North Western Ohio Ry. & Power Co.* (1927), 116 Ohio St. 451, 157 N.E. 21, paragraph one of the syllabus.

may a trial court direct a verdict for a plaintiff simply because the doctrine of *res ipsa loquitur* applies.<sup>6</sup> Likewise, because the test to be applied by a trial court is the same for a directed verdict as well as a JNOV, it stands to reason that the application of *res ipsa loquitur* does not support the granting of a JNOV.<sup>7</sup>

Furthermore, we hold that the trial court did not abuse its discretion in overruling the Bests' motion for a new trial.<sup>8</sup> The Bests argue that the jury verdict is not supported by the weight of the evidence. We cannot agree because the defendants' expert provided the unrefuted opinion that the defendants did not breach their duty of care with respect to the operation of the passenger elevator. The Bests also contend that they should have been granted a new trial because it was error to admit the two medical reports that contained hearsay opinions. Even if this was error, it was harmless. The two medical reports spoke to the issue of damages, and the jury never reached this issue because they found that the defendants had not breached their duty of care to the Bests.

The second assignment of error is overruled.

In their final assignment of error, the Bests argue that the trial court erred by admitting into evidence medical reports that contained information that should have been redacted.

The trial court admitted into evidence a psychological evaluation, provided that the worker's compensation insurance information contained within was redacted. The information was inadequately redacted such that the jury might have been able to read the redacted information. Because there was no objection to the admission of this evidence, we review this assignment for plain error.

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<sup>6</sup> *Id.*, citing *St. Marys Gas Co. v. Brodbeck*, (1926), 114 Ohio St. 423, 433, 151 N.E. 323.

<sup>7</sup> *Osler*, *supra*, at 345.

<sup>8</sup> *Wynn v. Gilbert*, 1<sup>st</sup> Dist. No. C-060457, 2007-Ohio-2709, ¶136.

“In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.”<sup>9</sup> After reviewing the record, we cannot say that the integrity of the judicial process was undermined by the admission of the evidence at issue here. First, there was no proof that the inadequacy of the redaction was intentional. Second, it is clear from the answers to the interrogatories accompanying the general verdict forms that the jury determined that the Bests had not sufficiently proved that any defendant had breached a recognized standard of care. Third, the redacted matter was relevant to the issue of damages, and the jury never reached the issue of damages. Accordingly, we hold that the admission of these medical reports did not amount to plain error.

Therefore, the final assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HILDEBRANDT and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 25, 2009

per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>9</sup> *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 1997-Ohio-401, 679 N.E.2d 1099, syllabus.