THOMAS MONTEROSE *v.* PAUL CROSS
(AC 19185)

Foti, Schaller and Mihalakos, Js.

Argued February 17—officially released November 14, 2000

Counsel

George E. Mendillo, for the appellant (plaintiff).

Robert M. Brennan, for the appellee (defendant).

Opinion

MIHALAKOS, J. The plaintiff, Thomas Monterose, appeals from the judgment rendered, following a jury trial, in favor of the defendant, Paul Cross, in this action sounding in negligence. On appeal, the plaintiff claims that the trial court improperly (1) refused to charge the jury on the standard of care applicable to the defendant in his work as a rigger, (2) failed to charge the jury regarding the testimony of expert witnesses as to the standard of care applicable to riggers and (3) charged the jury as to comparative negligence. We reverse the judgment of the trial court.

The jury reasonably could have found the following facts. The plaintiff went to the defendant's house to

borrow a large wooden spool approximately four feet in width and weighing about 400 pounds. The defendant was experienced as a rigger and in moving heavy objects.[1] Together, the plaintiff and the defendant loaded the spool onto the plaintiff's truck. While the plaintiff and the defendant attempted to secure the spool, the spool slipped, fell out of the truck and landed on the plaintiff's leg. The defendant testified at trial that he never should have attempted to flip the spool over on its side and that by doing so, there was a substantial risk of injury to the plaintiff.

The plaintiff claims first that the court improperly failed to instruct the jury in accordance with his request to charge on the standard of care required of one who is a rigger and possesses a skill above that of an ordinary prudent person. The court refused to so charge on the grounds that the defendant was not an expert and that there was insufficient evidence to charge on the requested standard of care.

The plaintiff had alleged in his second amended complaint that the defendant was a rigger trained and experienced in equipment customarily used by riggers in moving things and, further, that the defendant failed to use the care and skill ordinarily used by riggers. The defendant admitted in his answer that he had experience as a rigger, but also stated that he was employed not as a rigger but as a welder.

At trial, there was testimony by the defendant that he had substantial experience in rigging and that he had been involved in moving all of his life. When asked to describe his qualifications as a rigger, the defendant testified that he had the ability to move equipment safely and to place it where people would not be injured.

There also was testimony from two expert witnesses, one of whom was Raymond Bedard. He testified that he had been employed as a rigger for thirty-eight years. In a hypothetical question posed to Bedard involving the facts previously discussed, he was asked, on the basis of his knowledge and experience as a rigger, if there had been a departure from the standard of care that would apply to a rigger, to which he responded in the affirmative.[2] No objection to the hypothetical question was made, nor was an objection made to Bedard's opinion as to the standard of care.

This case involved a claim of alleged negligence committed by a person who allegedly had a particular skill and training. The loading and setting of the spool required expertise that is beyond the ordinary knowledge and experience of the jurors. Therefore, to prove professional negligence, expert testimony is required. Here, expert testimony was offered.

"When a topic requiring special experience of an expert forms a main issue in the case, the evidence on that issue must contain expert testimony or it will not

suffice.'' (Internal quotation marks omitted.) *Sickmund* v. *Connecticut Co.*, 122 Conn. 375, 379, 189 A. 876 (1937). For example, in a case involving alleged negligence by an engineer in connection with repairs to a refrigeration plant, our Supreme Court found that it was incumbent on the plaintiff to produce evidence from an expert. ''The plaintiff held itself out to be a skilled engineer. . . . The jury should have been instructed that the plaintiff was bound to exercise that degree of care which a skilled engineer of ordinary prudence engaged in the same line of business would have exercised in the same or similar circumstances.'' *Goodrich Oil Burner Mfg. Co.* v. *Cooke*, 126 Conn. 551, 553, 12 A.2d 833 (1940).

The conclusion of negligence is ordinarily one of mixed law and fact invoking the applicable standard of care, which is a question of law and its application to the facts of the case, which is a question of fact. The ultimate test of the existence of a duty to use care, the nonperformance of which constitutes negligence, is to be found in the reasonable foreseeability of harm resulting from a failure to use that care.

The defendant argues that the court was correct in charging that the standard of care was that of a reasonably prudent person. The plaintiff rejects that argument and claims that the court should have charged that the proper standard of care was that which a rigger would employ under the same circumstances. See *Smith* v. *Leuthner*, 156 Conn. 422, 424–25, 242 A.2d 728 (1968). The court in its charge defined the concept of negligence as involving the doing of something that a reasonably prudent person would not have done under similar circumstances or the failure to do something that a reasonably prudent person would have done under similar circumstances.[3] At the conclusion of the court's charge, the plaintiff's counsel asked the court to charge on the standard of care applicable to riggers.[4] The court declined to do so.[5]

The correctness of a charge is determined by the proof offered during the course of the trial. Here, the court had before it testimony from the defendant and from an expert witness as to the standard of care. ''It is not the proper course for a judge to lay down the general principles applicable to a case and leave the jury to apply them, but it is his duty to inform the jury what the law is as applicable to the facts of the case.'' (Internal quotation marks omitted.) *Sisson* v. *Stonington*, 73 Conn. 348, 354, 47 A. 662 (1900). We conclude that the court improperly failed to charge the jury on the appropriate standard of care applicable to the defendant, and therefore a new trial is required.

Because a new trial is necessary, the plaintiff's other claims need not be considered. We must, however, consider the defendant's claim that the judgment can be affirmed on the basis of the general verdict rule. We

do not agree that the general verdict rule applies in this case.

The defendant argues that the general verdict rule applies because there was no request for interrogatories and that this court, therefore, must presume that the jury found every issue in favor of the prevailing party.

''The general verdict rule operates to prevent an appellate court from disturbing a verdict that may have been reached under a cloud of error, but is nonetheless valid because the jury may have taken an untainted route in reaching its verdict.'' (Internal quotation marks omitted.) *Kunst* v. *Vitale*, 42 Conn. App. 528, 535 n.4, 680 A.2d 339 (1996).

In this case, there was a general denial and a special defense of contributory negligence. Even if we assume that the jury rejected the plaintiff's allegations of negligence *and* found him contributorily negligent, *both* of those determinations are undermined by the court's failure to instruct the jury as to the proper standard of care. There is therefore no ''untainted route'' to the verdict. See id. We therefore conclude that the general verdict rule does not apply in this case.

The judgment is reversed and the case is remanded for a new trial.

In this opinion FOTI, J., concurred.

[1] Paragraph two of the plaintiff's second amended complaint alleges: ''At all times hereinafter mentioned, the defendant, Paul Cross, was and still is a rigger trained and experienced in moving heavy things such as furniture, equipment, steel and other large objects, and trained and experienced in the use of forklifts, cranes and other equipment customarily used by riggers in moving things.''

In his answer to paragraph two of the plaintiff's second amended complaint the defendant stated: ''The defendant admits to having experience as a rigger and in moving heavy objects, but is employed as a welder, not a rigger.''

[2] Bedard was questioned in part as follows:

''Q. Now, if you assume the facts I've already given you, and you assume that the spool is where I've indicated [it] was positioned in the truck, and you further assume that there's one person who is approximately six feet tall on the driver's side of the truck and another person who is approximately six feet and six inches tall on the passenger side of the truck. Both of these individuals are standing on the ground, and the individual on the operator's side of the truck lifts the spool from one of the wheels with the intention of tipping it toward the individual on the passenger's side of the vehicle. Can you tell me, based on your knowledge and experience as a rigger, whether or not attempting to lay the spool down in that fashion would be a departure from the standard of care that would apply to a rigger?''

''A. Yes.''

[3] ''The Court: So, therefore, I have to talk to you about the concept of negligence. In general, it may be defined as the doing of something which a reasonably prudent person would not have done under like and similar circumstances, or it may be an omission to do something which a reasonably prudent person would have done under similar circumstances or conditions. In other words, the law requires that people use reasonable care under all circumstances. Reasonable care means the care of a reasonably prudent person. I emphasize that phrase reasonably prudent person. From that, it follows that in a situation of danger, the care must be proportionate to the danger. This involves two inquiries on your part. First, what was the conduct of the parties, and what were the circumstances; second, what ought the defendant, as a reasonably prudent person, to have done under those circumstances. And when you're considering the defendant's claims, then you would say, 'And what would the plaintiff, as a reasonably prudent person,

have done under similar circumstances?' The ultimate test of the existence of a duty to use reasonable care is to be found in the foreseeability that harm may result if the care is not exercised. By that, it is meant that one charged with negligence must be found to have foreseen the probability or that the particular injury would result was foreseeable. But the test that you should apply is this: Would the ordinary, reasonable, prudent person in the position of the defendant, knowing what he knew or should have known, anticipate that the harm of the same general nature as that actually suffered was likely to result?''

[4] ''[Defense Counsel]: Thank you, Your Honor. Your Honor, I would ask that you further instruct the jury concerning the standard of care applicable to skilled persons in this case, in particular the standard of care applicable to riggers. The testimony of [the defendant] confirmed that he in fact was a rigger and that what he was doing with [the plaintiff] in loading the spool onto the truck was a rigging activity. So, I'd ask Your Honor to instruct the jury concerning that particular standard of care which would apply to [the defendant] as a rigger. And that's under, Your Honor, number three in my request to charge.''

[5] In denying the plaintiff's request to charge, the court stated: ''I thought that in my charge that I stopped and concentrated with the ordinary, reasonable person in the position of the defendant, knowing what he knew or should have known, anticipate that injury would have occurred. So, I think that without saying that he's a rigger, I think that I've covered that. I don't think that he was an expert or that he was hired as an expert or that he did something in that capacity, but I did, I think, charge that they should take into consideration what he knew or should have known. I think there's some evidence as to what he knew or should have known. So, I'm going to deny your request.''