

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2008

FREDERICK CHERUBIN,

Appellant,

v.

Case No. 5D07-1040

GARY BEVERLY AND CENTRAL FLORIDA TRANSIT, INC.,

Appellee.

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Opinion filed January 9, 2009

Appeal from the Circuit Court
for Orange County,
George A. Sprinkel, Judge.

K. E. Pantas, of Pantas Law Firm, P.A.,
Orlando, for Appellant.

Richard R. Garland, of Dickson & Gibbons,
P.A., Sarasota, for Appellee.

MONACO, J.,

This appeal arises out of a trial in a negligence action in which the trial court granted a motion for directed verdict in favor of the defendant/appellee, Central Florida Transit, Inc. A motion for a directed verdict against the plaintiff may only be granted when there is no reasonable evidence upon which a jury could legally predicate a verdict in favor of the non-moving party. See *St. Johns River Water Mgmt. Dist. v. Fernberg Geological Servs.*, 784 So. 2d 500 (Fla. 5th DCA), *review denied*, 805 So. 2d 806 (Fla. 2001). In considering the propriety of the trial court's granting of a directed

verdict an appellate court must determine whether the facts, when viewed in the light most favorable to the non-moving party, established a *prima facie* case in support of the cause of action. See *Blake v. Hi Lu Corp.*, 781 So. 2d 1122 (Fla. 3d DCA 2001).

In the present case the evidence at trial establishing a *prima facie* case of negligence on the part of the appellee was sparse, to say the least. Nevertheless, sparse or not, the evidence was sufficient to require a jury to make the liability determination.

Accordingly, we reverse and remand for a new trial.

REVERSED and REMANDED.

GRiffin, J., concurs.

SAWAYA, J., dissents without opinion.