

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 24, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-0666
STATE OF WISCONSIN**

Cir. Ct. No. 01SC23844

**IN COURT OF APPEALS
DISTRICT I**

**MICHAEL D. GREGORY, JR.,
PLAINTIFF-RESPONDENT,**

v.

**SAMUEL WEBSTER,
DEFENDANT-APPELLANT.**

APPEAL from a judgment of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed.*

¶1 CURLEY, J.¹ Samuel Webster appeals from the judgment entered after a bench trial awarding the plaintiff, Michael D. Gregory, Jr., \$4,087.39 in damages and costs as the result of an injury that occurred on Webster's property. Webster contends: (1) Gregory failed to prove that Webster owned the property in

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

question; (2) Gregory failed to establish actual or constructive notice of the alleged defect; and (3) the evidence was insufficient to support the trial court's findings.² This court affirms.

I. BACKGROUND.

¶2 On February 15, 2001, Gregory went to visit his grandmother at her apartment building owned by Webster. After entering the lobby of the building, Gregory fell through the lobby stairs to the basement. The stairs were under repair at the time and the first step was completely missing. There was no light on in the lobby or any warning device to alert Gregory to the hole in the stairs. After the fall, Gregory complained of neck and back pain and was taken to the hospital by ambulance.

¶3 On July 27, 2001, Gregory sued Webster in small claims court as the owner of the building for his medical bills totaling \$3,681.16. A bench trial was held on February 6, 2002. The trial court ruled in favor of Gregory and entered judgment on his behalf in the amount of \$4,87.39, \$4,023.39 in damages plus \$64 in costs.

II. ANALYSIS.

¶4 Webster first claims that “the complaint in no way connects [him] to the property alleged.” Thus, Webster concludes that Gregory failed to prove that

² Webster also alleges that he was deprived of equal protection, a fair and just hearing, and due process as required by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Because Webster has failed to develop his argument beyond this conclusory statement, this court declines to address these constitutional issues. *See Dumas v. State*, 90 Wis. 2d 518, 523, 280 N.W.2d 310 (Ct. App. 1979) (“We decline this opportunity to decide an undefined constitutional issue.”).

the property belonged to Webster. However, the following testimony elicited at trial satisfactorily establishes that Webster was the owner of the property in question:³

THE COURT: Are you denying Webster owns the building?

MR. SHABAZZ: No. I'm stating that there's nothing ... in the evidence that's substantial that he actually – he actually fell through a building that belonged to Mr. Webster.

....

THE COURT: Now, Mr. Gregory, what he's trying to say is how do you know Mr. Webster owns this building?

[MR. GREGORY]: Because my grandmother pays him the rent every first of the month.

....

As well as I went down to the Register of Deeds office, which is downstairs in the basement, and I accumulated that [Webster] and Hamdullah Shabazz ... are the owners of the building....

¶5 Based upon this testimony, the trial court found that Webster owned the building in question. Because Webster has offered no proof to the contrary and the trial court's finding of fact is not clearly erroneous, we will not overturn the trial court's finding that Webster owned the building. *See* WIS. STAT. § 805.17(2) (1999-2000) ("In all actions tried upon the facts without a jury or with

³ Abdullah Shabazz was allowed to assist Webster at trial because of Webster's hearing and speech problems. It appears from the record that Webster was elderly and somewhat infirm at the time of trial. Abdullah Shabazz was the brother of the co-owner of the property in question, Hamdullah Shabazz, who was deceased.

an advisory jury, the court shall find the ultimate facts ... [and those] [f]indings of fact shall not be set aside unless clearly erroneous....”).⁴

¶6 Next, Webster contends that Gregory failed to establish actual or constructive notice of the alleged defect. He claims that the trial court erred in failing to require proof of notice as required by WIS JI—CIVIL 1900.4, which states in relevant part:

To find that (defendant) failed to (construct) (repair) (maintain) the premises in question as safe as the nature of the place reasonably permitted, you must find that (defendant) had actual notice of the alleged defect in time to take reasonable precautions to remedy the situation or that the defect existed for such a length of time before the accident that (defendant) or its employees in the exercise of reasonable diligence (this includes the duty of inspection) should have discovered the defect in time to take reasonable precautions to remedy the situation.

However, the trial court found that the missing stair was a structural defect. This court concludes that this finding is not clearly erroneous. Thus, to the extent that Webster’s property contained a structural defect, notice was not required. *See Hannebaum v. Dorenzo and Bomier*, 162 Wis. 2d 488, 500, 469 N.W.2d 900 (Ct. App. 1991) (“Notice is not required as to structural defects.”).

¶7 Finally, Webster contends that Gregory “[fell] below the stand[ard] of proving his case.” Webster may properly challenge the sufficiency of the evidence on appeal. *See* WIS. STAT. § 805.17(4) (“In actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may be raised on appeal whether or not the party raising the question has

⁴ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

objected in the trial court to such findings or moved for new trial.”). However, as previously noted, findings of fact by a trial court shall not be set aside on appeal “unless clearly erroneous.” WIS. STAT. § 805.17(2). Under the clearly erroneous standard of review, even though the evidence would permit a contrary finding, findings of fact will be affirmed on appeal as long as the evidence would permit a reasonable person to make the same finding. *See Reusch v. Roob*, 2000 WI App 76, ¶ 8, 234 Wis. 2d 270, 610 N.W.2d 168.

¶8 Here, the trial court’s findings were reasonable. The record reflects that Gregory walked into a dark lobby of a building owned by Webster at 6:30 in the morning. The evidence further reflects that Gregory sustained injuries to his back and neck when he fell through a missing portion of the stairs, which constitutes a structural defect, that was unmarked and unlit. Finally, the record contains adequate proof of Gregory’s injury in the form of medical bills and his own testimony regarding the injury. Accordingly, because the findings of fact made by the trial court are not clearly erroneous, the trial court is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

