IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

R. S. REED & SONS, INC.,	)	
	)	
Plaintiff/Appellee,	)	**Gibson Circuit No. 7272**
	)	
VS.	)	**Appeal No. 02A01-9709-CV-00206**
	)	
FREIGHTLINER CORP. AND	)	
EMERSON ELECTRIC CO.,	)	
	)	
Defendants/Appellants.	)	

APPEAL FROM THE CIRCUIT COURT OF GIBSON COUNTY
AT TRENTON, TENNESSEE
THE HONORABLE DICK JERMAN, JR., JUDGE

THOMAS H. RAINEY
TIMOTHY G. WEHNER
RAINEY, KIZER, BUTLER, REVIERE & BELL
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REVERSED AND REMANDED

ALAN E. HIGHERS, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

HOLLY KIRBY LILLARD, J.

In this products liability action, Defendants Freightliner Corporation and Emerson Electric Company appeal the trial court's judgment awarding Plaintiff/Appellee R.S. Reed & Sons, Inc., the sum of $30,700. For the reasons stated hereinafter, we reverse the trial court's judgment.

Reed purchased a Freightliner truck in 1990. In December 1992, while parked at Reed's place of business, the Freightliner truck caught fire and sustained extensive damage. Reed subsequently filed this products liability action against Freightliner Corporation, the manufacturer of the truck, and against Emerson Electric Company, the manufacturer of the truck's solenoid switch, which Reed contended was the cause of the fire.

Prior to trial, the trial court entered an order granting Freightliner's motion in limine to prohibit Reed "from offering any proof at trial that the subject fire was caused by any defect other than the alleged defective solenoid switch." At trial, therefore, the evidence focused on the existence of any defect in the solenoid switch. A mechanic who worked for Reed testified that, since Reed purchased the truck, no repair work had been done to the solenoid switch. On the day of the fire, the truck was parked outside on a concrete pad. The mechanic had performed some type of service on the truck that morning. Over two hours later, another Reed employee reported that he observed smoke coming out of the truck.

The testimony of Reed's expert in fire investigations, Izzy Golan, was presented by deposition. Golan testified that the fire could have taken over two hours to develop because of the limited amount of oxygen inside the truck. Golan personally examined the truck after the fire and concluded that, based upon the fire pattern and the severity of the fire damage, the fire originated in the solenoid switch. In Golan's opinion, a defect in the solenoid switch caused the fire; however, Golan admitted that he could not identify a particular defect in the switch.

Joseph P. Borelli, the director of electromechanical engineering at White-Rodgers, was called as a witness by both parties. White-Rodgers was the division of Defendant Emerson Electric Company which designed and manufactured the subject solenoid switch. When called by Reed to testify, Borelli explained that the solenoid switch was a type of relay switch between the truck's starter and the battery. The solenoid switch operated by magnetically forcing its contacts into a closed position, thereby producing enough current to start the truck's engine. Borelli explained that the solenoid switch only operated when the truck's ignition key was turned to the start position. Borelli acknowledged that "arcing," which he defined as the flow of an electrical current through a space or insulating gap, could occur when the switch's contacts were opening or closing and, further, that a spark caused by arcing could produce a high enough temperature to start a fire. Borelli examined the solenoid switch in question, however, and testified that he observed no evidence of arcing within the switch. Borelli also testified that the solenoid switch had a thermoplastic casing. Borelli denied that changing the design of the solenoid switch from a metal to a plastic casing increased the likelihood of a fire in the truck's engine compartment, but he acknowledged that "metals do not burn" while "plastics will melt."

In testifying for the defense, Borelli stated that he was familiar with the design and manufacture of the subject solenoid switch because he joined the company when the device was in its initial design phases. Borelli testified that, in his opinion, the switch met or exceeded industry standards. Borelli also reiterated his opinion that the solenoid switch was not the origin or cause of the fire. Other defense witnesses likewise testified that they believed the solenoid switch was not the origin or cause of the fire.

At the trial's conclusion, the trial court entered a judgment in favor of Reed in the amount of $30,700, which the parties previously had stipulated to be the correct measure of damages. In support of its decision to impose liability against the Defendants, the trial court made the following factual findings:

> After hearing the proof, the Court is of the opinion that the plaintiff has carried [its] burden to prove that there was

> some defect present within the internal workings of this vehicle, and that caused the fire. And that further, the Plaintiff didn't do anything on [its] own to contribute to that damage. The only proof that I've got in the record which actually addresses what caused the fire, really was the testimony of the plaintiff's expert. He said it was a solenoid. And from that physical evidence, it's fairly obvious that it occurred somewhere around the solenoid. Although it may not have been part of the internal workings of it, something happened around there that caused this fire.
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> And frankly in [Cox v. General Motors Corp., No. 02A01-9502-CV-00025, 1996 WL 266649 (Tenn. App. May 21, 1996)], I think it's somewhat -- as [the court in Cox] stated, the vehicles just don't sit in the parking lot and catch on fire for no reason. And that if the plaintiff can prove that the plaintiff didn't do anything to the switch after it got to it, and the proof is therefore that -- to satisfy that, and that some malfunction occurred, that that's sufficient to hold the defendant under the theory of strict liability and tort. It further says that the malfunction has got to be not of his own making, and that's what has been proven.
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> . . . .
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> Let me state that I don't think that Mr. Golan ever said that there was a defect within the internal workings of the switch itself. And really from the proof, it doesn't really look like it. But it does appear that it happened somewhere at the switch.
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> Mr. Golan testified that he was of the opinion that the solenoid caused it. And I have to assume circumstantially that it was as a result of some type of arcing that was caused that started the fire. And I'm going to specifically make that finding -- right or wrong.

On appeal, the Defendants contend that the trial court's judgment cannot be sustained because, although the trial court found that the fire started at or around the solenoid switch, the court also found that Reed failed to prove the existence of a defect in the switch itself. We agree.

In order to recover under any theory of products liability, a plaintiff must establish that the product causing the injury was defective or unreasonably dangerous at the time it left the manufacturer's control. Fulton v. Pfizer Hosp. Prods. Group, Inc., 872 S.W.2d 908, 911 (Tenn. App. 1993); T.C.A. § 29-28-105(a) (1980). This rule applies whether the plaintiff is seeking to recover under the theory of negligence, strict liability, or breach of warranty. Browder v. Pettigrew, 541 S.W.2d 402, 404 (Tenn. 1976). To meet this burden

of proof, the plaintiff must be able to trace the injury to some specific error in the product's construction or design. Id.; accord Fulton, 872 S.W.2d at 912.

In the present case, the trial court found "that there was some defect present within the internal workings of [the] vehicle," that this defect "caused the fire," and that the fire "occurred somewhere around [or at] the solenoid" switch. The trial court also found, however, that Reed failed to prove that there was a defect within the solenoid switch itself.

We conclude that these findings are insufficient to support a judgment in Reed's favor. As previously indicated, the trial court's pre-trial order granting Freightliner's motion in limine precluded Reed from presenting evidence that the fire "was caused by any defect other than the alleged defective solenoid switch." This order, which was not appealed, limited the issues at trial to whether or not the solenoid switch was defective and whether this defect caused the fire in question. Inasmuch as the trial court found that Reed failed to prove the existence of a defect in the solenoid switch, Reed cannot prevail in this products liability action. See Whaley v. Rheem Mfg. Co., 900 S.W.2d 296, 299 (Tenn. App. 1995).

Moreover, as noted above, to meet its burden of proof Reed was required to trace the injury to some specific error in the truck's construction or design. Browder, 541 S.W.2d at 404.; accord Fulton, 872 S.W.2d at 912. At trial, the only construction or design error to which Reed sought to trace its injury related to the solenoid switch itself. Accordingly, even if the trial court had not entered its pre-trial order limiting the evidence, the record would fail to support the trial court's finding that there was some other defect present within the "internal workings" of the truck.

In urging this court to affirm the trial court's judgment, Reed contends that it presented sufficient circumstantial evidence to support a finding that the truck was defective. We recognize that a defect in a product may be proven by direct evidence, circumstantial evidence, or a combination of both, and that such circumstantial evidence

may include proof of proper use, handling, or operation of the product and the nature of the malfunction, as well as expert testimony. Whaley, 900 S.W.2d at 299-300. In our view, however, the issue in this case is not (as it has been in other cases) whether the circumstantial evidence was sufficient to submit the defect issue to the finder of fact or to support a finding of liability. See, e.g., Browder v. Pettigrew, 541 S.W.2d 402 (Tenn. 1976); Valentine v. Conchemco, Inc., 588 S.W.2d 871 (Tenn. App. 1979); see also Cox v. General Motors Corp., No. 02A01-9502-CV-00024, 1996 WL 266649 (Tenn. App. May 21, 1996). Instead, the issue in this case is whether the trial court's judgment can be sustained in light of the court's finding that Reed failed to prove the existence of a defect in the truck's solenoid switch. We conclude that it cannot.

The trial court's judgment is hereby reversed, and this cause is remanded for further proceedings consistent with this opinion. Costs of this appeal are taxed to Appellee, for which execution may issue if necessary.

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HIGHERS, J.

CONCUR:

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CRAWFORD, P.J., W.S.

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LILLARD, J.