Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-166

AARON PARKER

versus

K&K INSURANCE GROUP, INC. AND CHURCHILL DOWNS LOUISIANA HORSERACING COMPANY, L.L.C.

IN RE K&K INSURANCE GROUP, INC. AND CHURCHILL DOWNS LOUISIANA HORSERACING COMPANY, L.L.C.
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE JACQUELINE F. MALONEY, DIVISION "D", No. 854-493

May 11, 2026

Panel composed of Judges Susan M. Chehardy, Fredericka Homberg Wicker, and Scott U. Schlegel

WRIT DENIED

In this writ application, defendants, K&K Insurance Group, Inc. and Churchill Downs Louisiana Horseracing Company, L.L.C. ("Churchill"), seek review of the trial court's March 24, 2026 judgment denying their motion for summary judgment. For the following reasons, we deny defendants' writ application.

This matter arises from an incident that occurred on December 9, 2023, at Churchill's off-track betting casino located in Gretna, Louisiana. Plaintiff, Aaron Parker, alleges that he was sitting in a chair at the casino when it suddenly collapsed causing him to fall to the floor. On May 22, 2024, Mr. Parker filed a

petition for damages alleging that defendants were liable for the injuries he sustained because Churchill knew or should have known that the chair was defective/unreasonably dangerous.

Defendants filed a motion for summary judgment on November 21, 2025, arguing that Mr. Parker did not have any evidence to prove that Churchill had actual or constructive knowledge of any apparent defects in the chair at issue prior to the incident. Defendants argued that Mr. Parker admitted in his deposition that he did not see any defects in the chair and he did not know why it collapsed. Defendants further argued that as part of Churchill's policy, it conducted monthly inspections of the chairs to ensure that the welding on the chairs was intact. The last inspection prior to the incident was completed less than a month before on November 18, 2023, and the report indicated that there were no issues with any of the chairs in the casino.

In his opposition to the summary judgment motion, Mr. Parker argued that genuine issues of material fact existed based on the affidavit of his expert architect/civil engineer, Mitchell Wood. In his affidavit, Mr. Wood stated that he examined the chair at issue on September 19, 2025. He explained that the chair is a non-adjustable hollow aluminum chair manufactured on December 5, 2012. The support bars under the seat were welded to the frame of the chair and there were no nuts, bolts, or screws securing the seat to the frame of the chair.

Mr. Wood further explained that "welded metal can experience 'fatigue' through daily wear and tear, leading to sudden failure by cracking under stress," and opined as follows:

> 20.a. The chair that failed specifically had a strict weight limit (maximum) of 225 lbs. Given the defendants (sic) use of the chair, it should have been reasonably anticipated that patrons exceeding this maximum weight would utilize this chair. Defendant knew or should have known that a chair with this labelled weight limit was not

suitable for the heavy use by the general public at its facility. Mr. Parker testified that he weighed approximately 225 lbs. at the time of this incident.

b. The age of the chair at issue is far beyond the anticipated useful life of a chair of this design, quality, and weight capacity. Additionally given that defendants (sic) establishment is open for 135 hrs. per week which poses a long period of wear and tear on chairs. (sic) The OTB's long hours of operation would strain the useful life expectancy of commercial chairs that are typically predicated upon 40 hr. work week.

c. Under no circumstances should defendant have allowed this chair to remain in use for 11 years after the date of its manufacture. Given that the date of manufacture was on a label under the chair seat, defendant knew or should have known that at the time of this incident on December 9, 2023, this chair was well beyond its useful life and should have been taken out of service years before this accident took place.

d. In viewing the video of the accident, it appears that all 4 frame support welds failed at the same time during the accident. In my judgment, to have all 4 welds to "fracture" simultaneously would indicate the chair had already structurally failed.

e. My inspection of the chair revealed areas of rust in the area of the welds.

Following oral argument on March 19, 2026, the trial court denied the motion for summary judgment finding that "this case is factually distinctive from the cases that were cited by the Defense . . . and that there is a genuine issue of material fact in this case."

A motion for summary judgment should be granted if there is no genuine issue as to material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The initial burden of proof is with the mover to show that no genuine issue of material fact exists. If the moving party will not bear the burden of proof at trial, the moving party must only point out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. *Id*.; *Romero v. Wal-Mart, Inc.*, 23-518 (La. App. 5 Cir. 5/29/24), 388 So.3d 1269, 1272, *writ denied*, 24-844 (La. 10/15/24), 394 So.3d 818.

Factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion and all doubts must be resolved in the opponent's favor. *Willis v. Medders*, 00-2507 (La. 12/8/00), 775 So.2d 1049, 1050; *Tull v. Pinnacle Entertainment, Inc.*, 23-236 (La. App. 5 Cir. 12/27/23), 380 So.3d 679, 682. In determining whether an issue of fact is genuine, as necessary for it to preclude summary judgment, courts cannot consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. *B & P Restaurant Group, LLC v. Delta Administrative Services, LLC*, 18-442 (La. App. 5 Cir. 9/4/19), 279 So.3d 492, 501, *writ denied*, 19-1755 (La. 1/14/20), 291 So.3d 685.

La. C.C. art. 2317.1 governs negligence claims against the owner or custodian of property, and provides:

> The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of res ipsa loquitur in an appropriate case.

To impose liability for an unreasonably dangerous defect, a plaintiff must show that: (1) the thing was in the defendant's custody or control, (2) the thing had a vice or defect that presented an unreasonable risk of harm, (3) the defendant knew or should have known of the unreasonable risk of harm, and (4) the damage was caused by the defect. *Richard's Real Est. Props., LLC v. City of Grand Isle*, 25-253 (La. App. 5 Cir. 12/3/25), 428 So.3d 695, 698. With regard to the knowledge element, a plaintiff must prove that the defendant had actual or constructive knowledge of the vice or defect. *Klumpp v. Ochsner Clinic Foundation*, 24-175 (La. App. 5 Cir. 12/18/24), 410 So.3d 315, 323. The concept of constructive knowledge imposes a reasonable duty to discover apparent defects

in things under the defendant's garde. *Richard's*, 428 So.3d at 698. Constructive knowledge can be found if the conditions that caused the injury existed for such a period of time that those responsible, by the exercise of ordinary care and diligence, must have known of their existence in general and could have guarded the public from injury. *Id*.

After *de novo review*, we find that the expert's affidavit raises genuine issues of material fact regarding the element of constructive knowledge that precludes summary judgment at this time. Accordingly, we find no error in the trial court's judgment denying defendants' summary judgment motion, and we deny this writ application.

Gretna, Louisiana, this 11th day of May, 2026.

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **05/11/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-C-166

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Jacqueline F. Maloney (DISTRICT JUDGE)
David J. Scotton (Relator)
Russell L. Foster (Relator)
Marc L. Frischhertz (Respondent)
Dominick F. Impastato, III (Respondent)

MAILED