

CITY OF KENNETT V. AKERS

564 S.W.2d 41 (1978)

BARDGETT, Judge.

This is a suit by the City of Kennett for damages done to its electric power and light system caused by a radio antenna tower which was being erected by defendant Akers falling onto the City's power lines. The jury verdict and judgment was for plaintiff-respondent City for \$18,563.19. Defendant-appellant Akers appealed to the Missouri Court of Appeals, Springfield district, which affirmed and, among other things, held that the instruction authorizing a verdict for plaintiff which stated, "First, defendant allowed the antennae tower to fall into the electric power line, and Second, defendant was thereby negligent, and . . ." submitted specific, not general, negligence. Defendant's application for transfer was sustained by this court principally to consider whether the submission mentioned was specific or general and, if general whether plaintiff, having pleaded both specific and general negligence, was entitled to submit on a general negligence (*res ipsa loquitur*) type of instruction.

Defendant had purchased a radio antenna tower to be erected on his lot in Kennett, Missouri. The tower was of a common type built in a triangle with each side being approximately ten inches and being in six 10-foot sections, with an antenna on top approximately seven feet in height and having total weight of about 200 to 225 pounds and total height of 67 feet. Defendant had previously put up several other similar towers in and around Kennett. Defendant had a welder construct a steel double-hinged plate with one of the plates being stationary and attached to the concrete base and the other bolted to the tower and hinged to the north so that the tower could be raised thereon. This was a self-sustaining tower. Defendant, with some other men aiding him, assembled the tower on the ground, laid it across a dump truck at an angle and placed the antenna on top thereof, and with a block and tackle running south to the back of the yard, pulled the tower up and into place. There was attached to the tower a cable on each of the three legs thereof, which were to be used as additional precaution in sustaining the tower with one cable to the southwest, one to the southeast, and one to the north. The cables were attached approximately 40 feet from the base of the tower. The men secured the cables to light or telephone poles to the north, southeast and southwest. Defendant had obtained other light or telephone poles in order to subsequently bury same in the ground for anchorage, thus removing the cables from the light or telephone poles. The tower was higher than the electrical lines. Defendant's house was about 15 to 20 feet in height and the tower was 40 to 47 feet above the house. After the tower was secured at the base, one of the men proceeded up the tower to about the 40-foot level and removed the block, tackle and rope which had been used to raise the tower.

The tower had been constructed as a self-sustaining tower and had been standing for approximately 45 minutes, and while they were in the process of attaching the guy wires for additional securing purposes the tower fell. Defendant did not know what caused it to fall. He did not drop the tower nor did anybody else drop it. When the tower fell, it struck the tree and electrical lines to the south and injured defendant and two others who were holding the cables. Defendant's hands were burned but he remained at the site, and the other two were taken to a hospital. One of the primary lines fell down across the chain link fence and the fire therefrom immediately jumped to the ground, started melting the sand and turning it into hunk's of glass-like material with a lot of sparks, arcing, fire, blue and red flames, and another primary line fell into the tree and was sparking and smoking, and all of same continued until Oscar Poe, lead lineman for the City, terminated same manually at the disconnect located to the south of the lines.

Plaintiff's second-amended petition alleged, "Defendants carelessly and negligently allowed the tower to fall into and collapse into the electric power line owned and operated by the Plaintiff."

Plaintiff submitted the case to the jury by instruction No. 2 which reads:

Your verdict must be for plaintiff if you believe: First, defendant allowed the antennae tower to fall into the electric power line, and Second, defendant was thereby negligent, and: Third, as a direct result of such negligence the plaintiff sustained damage.

We must determine if this is the kind of occurrence which can be properly pled and submitted on general *res ipsa loquitur* negligence.

Falling objects have been fertile ground for the application of the *res ipsa loquitur* doctrine ever since a barrel of flour rolled out of a warehouse and fell on a passing pedestrian in *Byrne v. Boadle*, 2 H. & C. 722, 159 Eng. Rep. 299 (1863). Much has been written about the doctrine and the courts of various states have defined or explained it differently. In Missouri it is considered a rule of evidence and, if applicable to a given factual situation or event, simply means that the happening of the event provides sufficient circumstantial evidence so as to allow, but not compel, the jury to infer from that evidence that the event happened because of the defendant's negligence and to so find. The event must be an unusual occurrence of a character which ordinarily results from negligence and from which, therefore, negligence is a reasonable inference. Whether or not a given event is that unusual occurrence which ordinarily results from negligence is a judicial decision which is arrived at by judges applying their common experience in life to the event which gives rise to a suit and deciding whether the criteria for the *res ipsa loquitur* are satisfied.

The event in the instant case is the falling of defendant's radio antenna tower which was being erected or had just been erected by the defendant and other men acting for and under the direction and control of defendant on the defendant's property. Recently, it was held that *res ipsa loquitur* was applicable where a valve gate fell from a sling as it was being lowered into a pit by a city crew. The occurrence in the instant case — an antenna tower falling — is an unusual occurrence and does not ordinarily happen in the absence of negligence. There is no question but what exclusive control was in the defendant. The doctrine is applicable to this occurrence.

Defendant contends that there were two occurrences in this cause, one at the site where the tower fell and the other at the transformer. The evidence viewed in a light most favorable to the City does not support this conclusion. The tower fell causing a serious overcurrent which traveled at or near the speed of light past the impotent breakers until it reached the transformer. The entire sequence took only a fraction of a second. The damage to the transformer was the direct and proximate result of the tower falling across the power lines. No modification of the instruction was required under this point.

Judgment affirmed.