

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

*David Wiles*

KENNETH FRANCIS WEIMER, and )  
ADRANETTA ERVIN WEIMER, )  
 )  
Plaintiffs, )

v. )

Civil Action No. 78-0127-E(K)

EMORY CRITES, and )  
WANDA CRITES, his wife, and )  
KESSEL LUMBER SUPPLY, INC., )  
a corporation, and )  
DONALD E. CARR, )  
 )  
Defendants. )

OPINION and FINAL ORDER

This action, which has been pending now for nearly ten years, comes before the Court on the defendants' motion for summary judgment. The motion was filed on May 26, 1988 by the defendant Kessel Lumber Supply, and has been joined by the defendants Emory and Wanda Crites and Donald E. Carr.

For the reasons stated herein, the Court grants summary judgment for the defendants. There are no remaining issues of material fact, and on the undisputed facts as alleged and shown in the record the defendants are entitled to judgment as a matter of law.

This case was scheduled for a trial to the Court without a jury during the week of July 11, 1988 in Elkins. Because of the Court's decision, that trial will be cancelled, judgment shall be entered for the defendants, and the file in this case shall be closed.

As a matter of law, plaintiffs cannot prevail on their claims for two separate and independent reasons. First, on the facts of this case, plaintiffs are not able to prove with any reasonable degree of certainty the extent of any damages which they incurred as a result of the defendants' actions. The extent of such damages, if any, that could have resulted from the defendants' actions will simply be impossible to determine from the facts as alleged or shown in the record. The Court, as finder of the facts, would have to resort to sheer speculation and conjecture in order to estimate such damages. Any expert opining on the subject would have to do the same.

Too many variables were at work in the cause of the fire, in the course that it took, and the speed with which it burned the house. The direction and force of the wind, the dryness of the timber and wood, and whether some combustible fluid may have been involved--all of these are examples of the unknown and unknowable factors that affected the time it took for the fire to destroy the structure. Further, no one can say whether, had the third fire truck not been delayed, this would have made any difference; one can only guess. See Home Insurance Co. v. Commercial and Industrial Services, Inc., 225 N.W.2d 716, 719 (Mich.App. 1974) (while some uncertainty as to amount of damages is allowable, uncertainty as to whether any enhanced damages were incurred as result of defendant's action, is fatal). For these reasons, the extent of any alleged enhanced damages is simply too speculative and uncertain for a fact finder to award them.

Second, and for similar reasons, the plaintiffs are unable to prove that the defendants' actions were the proximate cause of any damages incurred. The alleged actions of the defendants were too remote and removed from the fire damages, and any causal link between them too speculative, for the Court to find that these actions constituted the proximate cause. As noted above, it is impossible to determine from the facts as alleged or shown in the record, whether the defendants' actions and the resulting delay of the third fire truck were an efficient or "but for" cause of any enhanced damage suffered by the plaintiffs--that is, whether the building would not have been destroyed to the same extent, even if the road had been in perfect condition and the third fire truck had not been delayed.

Again, to make any determination on this issue of causation, the Court would necessarily have to rely on speculation and conjecture, because there are simply no facts from which logical and reasonably probable inferences can be drawn. See Home Insurance Co., supra, 225 N.W.2d at 719. A number of indeterminate and variable factors dictated the speed and course of the fire; there may even have been several intervening natural causes, such as the wind. In retrospect, one can only conjecture whether the delay actually resulted in enhanced damages. The law, however, does not permit such speculation in findings of proximate cause or damages. See, e.g., Coker v. Southwestern Bell Telephone Co., 580 P.2d 151, 154 (Okla. 1978).

Therefore, on both the issues of causation and damages, the defendants are entitled to judgment as a matter of law. There

are no genuine questions of fact, material to these two issues, remaining in the case. Rule 56(c), Fed. R. Civ. P.

Accordingly, the Court hereby GRANTS the defendants' motion for summary judgment. JUDGMENT is hereby ENTERED in favor of the defendants and against the plaintiffs.

It is so ORDERED. The Clerk is directed to send a copy of this Opinion and Order to all counsel of record and to defendant Donald E. Carr, and to close the file in this case.

5 JULY 1988

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RICHARD L. WILLIAMS,  
United States District Judge

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DATE