

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0065

HARRIS DUFREN AND MELDA A. DUFREN

VERSUS

CHERAMIE CEMETERY ASSOCIATION,
ALLSTATE INSURANCE COMPANY, AND
STEWART RESOURCE CENTER, INC.

Judgment rendered November 3, 2006

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Appealed from the
17th Judicial District Court
in and for the Parish of Lafourche, Louisiana
Trial Court No. 97533
The Honorable Walter I. Lanier, III

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AND ALLSTATE INSURANCE COMPANY

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BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

PETTIGREW, J.

This appeal challenges a trial court's judgment dismissing the plaintiffs' claims against the defendants. We affirm.¹

On November 1, 2002, Harris Dufren went to the Chermie Cemetery in Galliano, Louisiana to visit the graves of various relatives. There were many people in the cemetery that day because of the ceremonies planned for the All Saints' Day holiday. Because the cemetery's main walkway was crowded, Mr. Dufren strayed off the walkway to an area closer to the tombs. As he traversed this area, he tripped on the raised apron of the Antoine J. Danos tomb and fell. Mr. Dufren, who was seventy-four years old at the time of the accident, sustained seven broken ribs and a fracture of a thoracic vertebra as a result of the fall. Thereafter, Mr. Dufren and his wife, Melda Dufren, filed this suit against the Chermie Cemetery Association and its insurer, Allstate Insurance Company.²

The evidence at trial established that the apron upon which Mr. Dufren tripped was approximately three inches higher than the area around it. Photographs of the accident site introduced at trial demonstrated that the majority of the tombs in the area were white; however, the Danos tomb, including the raised apron, was painted a darker gray color. Mr. Dufren testified that he had been to the cemetery on numerous occasions over the course of thirty years and that he was aware of the Danos tomb. He further acknowledged that he noticed the difference in color between the Danos tomb and the surrounding area on the day of the accident; however, he insisted that he did not notice the change in elevation at the apron of the Danos tomb. Mr. Dufren contended that the cemetery association should have taken additional steps to ensure that a person walking through the cemetery would notice the change in elevation, such as painting the apron a yellow or blue color, or placing a garbage can or vase at the edge of the apron.

The trial court found that the raised apron could constitute a tripping hazard; however, it determined that the contrast between the dark gray color of the raised

¹ This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1.B.

² Stewart Resource Center, Inc. also was named as a defendant in the original petition; however, this defendant was dismissed pursuant to a summary judgment signed February 16, 2005.

apron on the Danos tomb and the white of the surrounding area was sufficient to put visitors to the cemetery on notice of the change in elevation. Therefore, the trial court rendered judgment, dismissing Mr. Dufren's claims against the defendants with prejudice.³ This appeal, filed by the plaintiffs, followed.

On appeal, the plaintiffs contend that the trial court committed manifest error in concluding that the cemetery association had satisfied its duty to protect Mr. Dufren from an unreasonable risk of injury created by a defective tomb apron. Having examined the record and the trial court's oral reasons, we find there is a reasonable factual basis for the trial court's finding and that the finding is not clearly wrong when viewed in light of the entire record. See **Stobart v. State through Dept. of Transp. & Development**, 617 So.2d 880, 882 (La. 1993). Further, we find no legal error in the trial court's judgment. Accordingly, the judgment of the trial court is affirmed. All costs of this appeal are assessed to plaintiffs, Harris Dufren and Melda A. Dufren.

AFFIRMED.

³ The judgment does not address the claims of Melda Dufren, who was named as a plaintiff in the petition; however, no evidence was introduced at trial in support of Mrs. Dufren's claims. Mrs. Dufren has not appealed the failure of the trial court to award her damages.