NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CA 0052

CASEY KRUEGER

VERSUS

LA QUINTA INN & SUITES, BATON ROUGE, LQ MANAGEMENT, L.L.C. AND RONALD BYLAND

Judgment Rendered: SEP 2 1 2018

* * * * * * * *

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. C604473

The Honorable R. Michael Caldwell, Judge Presiding

* * * * * * * *

Derriel C. McCorvey **H. D. Register, III** **Lafayette, Louisiana**	**Counsel for Plaintiff/Appellant** **Casey Krueger**
Michael R. Sistrunk **Rachel S. Guttmann** **Elizabeth B. McDermott** **Covington, Louisiana**	**Counsel for Defendants/Appellees** **La Quinta Inn & Suites, Baton Rouge, LQ Management, L.L.C. and Ronald Byland**

* * * * * * * *

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

THERIOT, J.

Casey Krueger appeals the judgment of the Nineteenth Judicial District Court in favor of La Quinta Inn & Suites and LQ Management, L.L.C. in conformity with the jury's verdict. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On August 22, 2010, Casey Krueger ("Mr. Krueger") and his family were staying at a La Quinta Inn & Suites located in Baton Rouge, Louisiana. During their stay, Mr. Krueger and his wife, son, mother, and father went to the motel's pool area around 7:30 p.m. Mr. Krueger entered the pool while his other family members sat poolside. While carrying his son and walking around in the pool, Mr. Krueger stepped on what he described as a "large obtuse object" on the bottom of the pool. Mr. Krueger handed his son to his wife and observed a substantial amount of blood coming from his left foot. Mr. Krueger's parents helped him exit the pool and paramedics were called. The petition alleges that while Mr. Krueger was waiting for the paramedics, his family found numerous broken beer bottles in the trash can located in the pool area. Additionally, Mr. Krueger's father allegedly observed a large piece of glass in the deeper end of the pool.

Once paramedics arrived, they transported Mr. Krueger to a local hospital where he received treatment and stitches. After a follow up visit with his primary physician, Mr. Krueger was advised that surgery was needed. Mr. Krueger had surgery on his foot on September 9, 2010.

On August 22, 2011, Mr. Krueger filed suit against La Quinta Inn & Suites, Baton Rouge and LQ Management, L.L.C. alleging negligence and seeking damages for past and future medical expenses and lost wages. Mr. Krueger also named Ronald Byland, the general manager of the La Quinta

Inn & Suites at issue, as a defendant. On October 20, 2011, LQ Management, L.L.C. and Mr. Byland (collectively "the defendants") answered the petition and denied Mr. Krueger's negligence claims.[1]

On April 4, 2013, the defendants filed a motion for summary judgment, alleging that Mr. Krueger had failed to provide any evidence that the defendants had actual or constructive knowledge of the defect. On May 29, 2013, the trial court signed a judgment granting the defendants' motion for summary judgment. Mr. Krueger subsequently appealed the trial court's judgment to this court. On July 10, 2014, this court reversed the trial court's ruling and remanded the case for further proceedings, finding that genuine issues of material fact still existed as to whether the motel was properly staffed and properly maintained, and that the available deposition testimony did not answer those questions.

Trial on this matter was held on April 3, 4, and 5, 2017. On April 17, 2017, the trial court signed a judgment in conformity with the jury's verdict and rendered judgment in favor of the defendants. The jury found that there was a defect in the premises of the La Quinta Inn & Suites that caused or contributed to Mr. Krueger's accident. However, when asked whether the defendants knew or should have known of the defect and failed to take corrective measures within a reasonable time or to warn of its existence, eleven of the twelve jury members answered "no." Accordingly, the trial court rendered judgment against Mr. Krueger. This appeal followed.

ASSIGNMENT OF ERROR

Mr. Krueger assigns the following as error:

> The Jury erred in finding that Defendants did not have actual or constructive knowledge of the defect (hazardous condition) on

[1] In his petition, Mr. Krueger named La Quinta Inn & Suites, Baton Rouge, LQ Management, L.L.C., and Mr. Byland as defendants. In their answer to the petition, LQ Management L.L.C. states that it was improperly named as La Quinta Inn & Suites, Baton Rouge.

their premises and failed to take corrective measures within a reasonable time or to warn of its existence.

STANDARD OF REVIEW

It is well-settled that an appellate court may not disturb a jury's factual findings in the absence of manifest error. *Gaspard v. Southern Farm Bureau Cas. Ins. Co.*, 2013-0800 (La. App. 1 Cir. 9/24/14); 155 So.3d 24, 30. On review the appellate court does not decide whether the jury was right or wrong; rather it must consider the entire record to determine whether a reasonable factual basis exists for the finding, and whether the finding is manifestly erroneous or clearly wrong. *Id.* Reasonable evaluations of credibility and inferences of fact should not be disturbed, even if the appellate court feels that its own evaluations and inferences are as reasonable. *Id.* Thus, where there are two permissible views of the evidence, the jury's choice between them cannot be manifestly erroneous or clearly wrong. *Id.* In conducting its review the appellate court must be cautious not to reweigh the evidence or substitute its own factual finding just because it would have decided the case differently. *Id.*

DISCUSSION

On appeal, Mr. Krueger argues that the jury was incorrect in finding that the defendants did not have constructive knowledge of the defect in their premises. In the alternative, Mr. Krueger argues that the doctrine of *res ipsa loquitur* applies. Accordingly, Mr. Krueger seeks to have the jury verdict reversed and seeks to recover his damages.

Constructive Knowledge

Louisiana Civil Code article 2317 provides:

> We are responsible, not only for the damage occasioned by our own act, but for that which is caused by the act of persons for whom we are answerable, or of the things which we have in our

custody. This, however, is to be understood with the following modifications.

Louisiana Civil Code article 2317.1, which governs damage caused by ruin, vice, or defect in things, 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.

Under La. Civ. Code art. 2317.1, the plaintiff has the burden of proving that: (1) the property which caused the damage was in the "custody" of the defendant; (2) the property had a condition that created an unreasonable risk of harm to persons on the premises; (3) the unreasonably dangerous condition was a cause in fact of the resulting injury; and (4) the defendant had actual or constructive knowledge of the risk. *Graupmann v. Nunamaker Family Ltd. Partnership*, 2013-0580 (La. App. 1 Cir. 12/16/13); 136 So.3d 863, 867-68.

An innkeeper has a duty to maintain his premises in a reasonably safe and suitable condition, and to warn guests of any hidden or concealed perils that are known or reasonably discoverable by the innkeeper. *Alvarado v. Lodge at the Bluffs, LLC*, 2016-0624 (La. App. 1 Cir. 3/29/17); 217 So.3d 429, 433, *writ denied*, 2017-0697 (La. 6/16/17); 219 So.3d 340. To that end, an innkeeper must conduct reasonable inspections of the premises and mechanical equipment. *Id.*

On the jury verdict form, all twelve members of the jury found there was a defect at the motel that caused or contributed to Mr. Krueger's accident. Despite this, eleven of the twelve jury members found that the

defendants neither knew nor should have known of the defect, and thus did not fail to take corrective measures within a reasonable time or warn of its existence. In other words, the jury found that the defendants did not have actual or constructive knowledge of the defect at issue.

The concept of constructive knowledge under La. Civ. Code art. 2317.1 imposes a reasonable duty to discover apparent defects in the thing in the defendant's *garde* or legal custody. *Broussard v. Voorhies*, 2006-2306 (La. App. 1 Cir. 9/19/07); 970 So.2d 1038, 1045, *writ denied*, 2007-2052 (La. 12/14/07); 970 So.2d 535. The determination of whether an owner or custodian had constructive knowledge of a defective condition is a question of fact. *Alvarado*, 217 So.3d at 433.

At trial, Mr. Krueger testified that while he was walking around the pool, he stepped on something and began bleeding. Mr. Krueger did not see what he cut his foot on, but saw trash in and around a trash can which was in the pool area. He saw beer cans, but did not see any glass bottles or broken glass.

After Mr. Krueger's father notified the motel's front desk worker, an ambulance arrived and brought Mr. Krueger to the hospital. Mr. Krueger described the cut suffered as a "large and deep cut" and testified that he received nine stitches at the hospital.

Following the accident, Mr. Krueger and his family returned home to Texas. Ten days after the accident, Mr. Krueger saw a physician, Dr. Brieger, who removed the stitches. Dr. Brieger then referred Mr. Krueger to another doctor, Dr. Martin, to assist with issues Mr. Krueger was having with his foot. Mr. Krueger saw Dr. Martin on September 8, 2010, seventeen days after the incident. On September 9, 2010, Dr. Martin performed surgery on Mr. Krueger's foot.

Mr. Krueger has $14,192.30 in medical bills and lost wages of $3,708.00 as a result of the accident. He never retained full flexion of his toe, meaning he cannot lower and line the toe up with the other toes. Mr. Krueger testified that he still had foot pain from 2012 to 2015, which led to him purchasing inserts to put in his shoes. The inserts are custom-made and cost $749; they last eight to ten months.

Raymond Krueger, Mr. Krueger's father, testified that immediately after the injury, Raymond observed a piece of glass in the pool under four or five feet of water. Raymond did not retrieve the glass because he was concerned that there was more glass in the pool. Raymond also testified that when he and his family first entered the pool area, they noticed that the trash can was overflowing. However, he stated that any glass aside from the piece he saw in the pool was located in the trash can, not in the area outside of the trash can. Further, he had not noticed anything prior to the incident that would suggest that the pool area was hazardous. He did not know how the glass had gotten in the pool and he had no information as to whether the defendants were aware of the glass in the pool.

Mary Elizabeth Krueger, Mr. Krueger's mother, testified that when they first arrived at the pool area, she saw a trash can "full of trash rimming out the top" with beer bottles in it and other trash around it. She did not know who had put the bottles into the trash can, nor did she know when the trash was put into the can. She stated that she did not see any broken glass and did not see any bottles outside of the trash can. She did not see any foreign body in the pool and did not know who had placed the glass in the pool, how the glass had gotten into the pool, or how long the glass had been in the pool.

Kristin Krueger, Mr. Krueger's wife, testified that while they were waiting for the paramedics, she noticed that the trash can on the side of the pool was full of trash, including broken and unbroken beer bottles. Kristin stated that there may have been trash around the base of the trash can, but that she didn't see any broken bottles outside of the trash can. Kristin testified that she only saw one employee the day of the accident, and that she saw a different employee the following day when they checked out of the motel. Kristin did not know who had placed the glass in the pool, nor had she seen any trash near the pool itself.

Tina Moore, a La Quinta Inn & Suites employee that has worked for La Quinta Inn & Suites off and on since March 2001, also testified at trial. Ms. Moore has been a manager at the Baton Rouge, Louisiana property since 2013, but was not employed at the La Quinta Inn & Suites at issue at the time of the accident. According to Ms. Moore, La Quinta Inn & Suites is a limited service motel, which means that it would be normal to have only one employee on duty at the time of Mr. Krueger's accident.

Ms. Moore testified that maintenance workers inspect the pool area once in the morning between 8:00 a.m. and 9:00 a.m., and once before they leave in the evening at 4:30 p.m. She also testified that there are two signs in the pool area which prohibit glass containers in the pool area and that, according to her files, those signs were on display in 2010. She could not give specifics as to whether the maintenance occurred as usual on the date of the accident, but testified that this is the only time anyone has cut their foot on glass in the pool area at the property in question.

Ms. Moore also testified that beer is not sold on the property and that any employee caught drinking on the property would be terminated immediately. She stated that there were no indications that the defendants or

any of the motel's employees knew that there was glass in the pool or placed glass in the pool. Although there was an accident report that detailed the incident, neither the employee who wrote the report, Crystal Clark, nor the maintenance employee who worked the day of the accident, Walter Marshall, were available for trial. Ms. Moore did not have any records or direct evidence regarding whether pool maintenance had been performed on the date of the accident, but testified that no one had reported a problem in the pool area prior to the accident.

Considering the facts of this case, the jury's findings in this case are not manifestly erroneous. Any broken glass bottles observed by Mr. Krueger's family were located inside of the trash can. La Quinta Inn & Suites has a policy prohibiting glass containers in the pool area and displays signs informing guests of that policy. La Quinta Inn & Suites does not sell alcohol on the premises. It is unclear where the glass in the pool came from. Additionally, there is no evidence that La Quinta Inn & Suites' pool inspection policy had not been followed on the day of the accident.

Eleven of the twelve jury members found that the defendants were unaware of the defect. Reasonable evaluations of credibility and inferences of fact should not be disturbed. *Gaspard v. Southern Farm Bureau Cas. Ins. Co.*, 155 So.3d at 30. Considering the evidence, the jury had a reasonable factual basis for their finding that the defendants did not know nor should have known about the glass in the pool. As such, we will not disturb the jury's findings.

Res Ipsa Loquitur

The doctrine of *res ipsa loquitur* applies in cases where the plaintiff uses circumstantial evidence alone to prove negligence by the defendant. *Linnear v. CenterPoint Energy Entex/Reliant Energy*, 2006-3030 (La.

9/5/07); 966 So.2d 36, 41 (citing *Cangelosi v. Our Lady of the Lake Regional Medical Center*, 564 So.2d 654 (La. 1989)). The doctrine, meaning "the thing speaks for itself," permits the inference of negligence on the part of the defendant from the circumstances surrounding the injury. *Id.* The doctrine applies when three criteria are met. *Id.* First, the injury is the kind which ordinarily does not occur in the absence of negligence. *Id.* Second, the evidence must sufficiently eliminate other more probable causes of the injury, such as the conduct of the plaintiff or a third person. *Id.* Third, the negligence of the defendant must fall within the scope of his duty to plaintiff. *Id.* This may, but not necessarily, be proved in instances where the defendant had exclusive control of the thing that caused the injury. *Id.*

If reasonable minds could not conclude that all three criteria are satisfied, then the legal requirements for the use of *res ipsa loquitur* are not met. *Mitchell v. Aaron's Rentals*, 2016-0619 (La. App. 1 Cir. 4/12/17); 218 So.3d 167, 175. The plaintiff does not have to eliminate all other possible causes or inferences, but must present evidence which indicates at least a probability that the injury would not have occurred without negligence. *Id.* *Res ipsa loquitur* is defeated if an inference that the injury was due to a cause other than the defendant's negligence can be drawn as reasonably as one that it was due to the defendant's negligence. *Id.*

The evidence in this case, including the witness testimony at trial, does not determine whether the accident was due to the defendants' negligence or due to a cause other than the defendants' negligence. It is possible that a third party caused broken glass to enter the pool. This was admitted by Mr. Krueger at trial; when he was asked whether he could foreclose the probability that a third person threw glass into the pool, Mr. Krueger responded, "I don't think so." Because it remains unclear whose

negligence led to broken glass being in the pool, *i.e.* it is unclear whether the defendants or a third party created this defect, the doctrine of *res ipsa loquitur* does not apply.

DECREE

For the above and foregoing reasons, the judgment of the Nineteenth Judicial Court is affirmed. Costs of this appeal are assessed to Appellant, Casey Krueger.