

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

WILLIAM BALDINI; JULIE BALDINI,

Plaintiffs-Appellants,

v.

LANKFORD HOTEL PARTNERSHIP,

Defendant-Appellee,

ROBERT RUTKA; SALLY RUTKA; J.

WARREN FRAME; FLORENCE A.

FRAME,

Defendants & Third Party

No. 99-1851

Plaintiffs-Appellees,

and

MAYOR AND CITY COUNCIL OF OCEAN

CITY, MARYLAND,

Defendant,

and

ANTHONY WALKER,

Third Party Defendant.

Appeal from the United States District Court

for the District of Maryland, at Baltimore.

Frederic N. Smalkin, District Judge.

(CA-97-2138-S)

Argued: April 7, 2000

Decided: April 26, 2000

Before MOTZ, Circuit Judge, Samuel G. WILSON,

Chief United States District Judge for the

Western District of Virginia, sitting by designation,

and Gerald Bruce LEE, United States District Judge

for the Eastern District of Virginia, sitting by designation.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: Granger George Maher, III, LAW OFFICES OF PAUL R. KRAMER, P.A., Baltimore, Maryland, for Appellants. Herbert Romulus O'Connor, III, O'CONNOR & GRANT, Towson, Maryland, for Appellees. **ON BRIEF:** Paul R. Kramer, LAW OFFICES OF PAUL R. KRAMER, P.A., Baltimore, Maryland, for Appellants.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

William Baldini and his wife, Julie, appeal an order of the district court granting summary judgment to the owners of the Lankford Hotel--the Lankford Hotel Partnership, Robert and Sally Rutka, and J. Warren and Florence A. Frame--on the Baldinis' diversity negligence claim. Finding no error, we affirm.

I.

The case grows out of an incident occurring on July 4, 1995 when the Baldinis were guests at the Lankford Hotel in Ocean City, Maryland. The facts, viewed in light most favorable to the Baldinis, are as follows.

The Baldinis went for a bicycle ride in the late afternoon. When they returned several hours later, William Baldini pushed his bicycle up the ramp near the Lankford Hotel. Anthony Walker believed that Baldini bumped into him. Walker and Baldini exchanged words and

then, according to Julie Baldini, Walker gave William Baldini "a quick punch or a push" and William "went through the railing" in front of and owned by the Lankford Hotel, causing him to fall about eight feet. Baldini assertedly suffered extensive permanent injuries.

He and his wife filed this action alleging that the owners of the Lankford Hotel were responsible for William's injuries because their fence was dangerous and defective, having not been properly maintained. The Baldinis also sued the Mayor and City Council of Ocean City but ultimately stipulated to the dismissal of the municipal defendants. The remaining defendants filed a third party claim against Walker who, after pleading guilty to battering Baldini, is serving a jail sentence.

Following extensive discovery, these remaining defendants moved for summary judgment, asserting that the Baldinis had failed to produce any evidence that the Lankford or its owners were responsible for William Baldini's injuries. The district court granted this motion. The court reasoned that the Baldinis had produced "insufficient evidence of negligent construction or maintenance of the railing on the part of the defendants to bring this suit to trial." Specifically, the district court held that, without expert testimony, a jury could not determine whether "deterioration observable in [photographs submitted by the Baldinis] was in fact 'rot' affecting the structural integrity of the railing." The court found that the report of the Baldinis' expert, a structural engineer, could not establish negligence because the report contains no evidence of testing and does not even state that the railing was required to comply with the 1991 Standard Building code the expert used to evaluate the railing. The report said only that the 1991 code "was very likely the building code used by the Town of Ocean City at the time of the incident."

II.

After having had the benefit of oral argument and after careful review of the parties' briefs, the record and the applicable law, we conclude that the district court correctly decided the issues before it. Accordingly, we affirm on the reasoning of the district court. See Baldini v. Lankford Hotel Partnership, No. S-97-2138 (D.Md. May 18, 1999).

AFFIRMED