

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Christopher Butts, :
Corydon Cochran, Henry :
Butson, :
Plaintiffs, :
v. : File No. 2:06-CV-1
ConAgra Foods, Inc., :
Defendant. :

OPINION AND ORDER

Pro se plaintiffs Christopher Butts, Corydon Cochran, and Henry Butson bring this action claiming that they consumed defective chicken manufactured by defendant ConAgra Foods, Inc. ("ConAgra"). The parties appeared for a bench trial on January 8, 2009. At the conclusion of the plaintiffs' case, defendant ConAgra moved for judgment pursuant to Fed. R. Civ. P. 52. The Court took the motion under advisement. For the reasons set forth below, ConAgra's motion is now GRANTED and this case is DISMISSED.

Factual Background

In November 2005, plaintiffs Butts, Cochran and Butson were each Vermont inmates housed at a prison facility in Kentucky. On November 22, 2005, Butts went to the prison commissary and purchased a box of pre-

cooked chicken pieces. He then returned to his prison cell and placed the chicken in his "cooler" overnight. It is undisputed that ConAgra was the manufacturer of the chicken.

The next day, Butts divided the six pieces of chicken among himself, Cochran and Butson, with each inmate allotted two pieces. The three men were in the practice of buying chicken and sharing it with each other on a weekly basis. On the day in question, Butts and Butson ate theirs together. Cochran, whose cell was on a different floor, ate his separately.

Prior to consuming the chicken, each inmate heated his pieces in a microwave. Butts did not notice anything unusual in his first piece. While biting into the second piece, however, he felt what he has described as a "pop," followed by some form of puss-like substance shooting into his mouth. Butts spat the substance out in the bathroom, and is not sure if he swallowed any.

Butts showed his second piece of chicken to Butson, who opined that Butts may have just eaten chicken intestines. Butts testified at trial that the substance appeared to contain pieces of corn, and may have been a

grain pouch or "crawl." Shortly after eating the chicken, he became ill and vomited several times. He also had diarrhea for at least one week. He was unable to eat for a period of time, and claims that he experienced significant weight loss over the following months.

Butts conceded at trial that his symptoms may have been psychosomatic, and is still not certain what was in the chicken he consumed on November 23, 2005. The chicken was not admitted into evidence, and has not been analyzed by an expert. Accordingly, no expert testimony was offered at trial.

Immediately after eating the allegedly-defective chicken, Butts went to Cochran's cell and alerted him not to eat his portion. Having already consumed his two pieces, Cochran had not noticed anything unusual. He nonetheless forced himself to vomit for fear of contracting a disease. Plaintiff Butson did not report any illness or vomiting, but claimed that his chicken had a clam-like taste.

None of the plaintiffs received medical treatment after eating the chicken. When Butts informed prison medical staff about his illness during a routine medical

visit, he was advised not to eat chicken. Both Butts and Cochran claim that they no longer eat any chicken because of their experience in 2005.

Discussion

The plaintiffs' *pro se* complaints present their legal claims in terms of gross negligence and recklessness.¹ (Paper 40-2). However, because this is a case against a manufacturer for marketing a defective product, the Court will apply a strict liability standard. See, e.g., Westric Battery Co. v. Standard Elec. Co., 482 F.2d 1307, 1314 (10th Cir. 1973) (applying strict liability standard to manufacturer); Matthews v. Campbell Soup. Co., 380 F. Supp. 1061, 1062-63 (D.C. Tex. 1974); see also Chambers v. United States, 106 F.3d 472, 475 (2d Cir. 1997) (it is "routine" for courts to construe *pro se* filings "without regard to labeling in determining what, if any, relief" the plaintiff is entitled to); Haines v. Kerner, 404 U.S. 519 (1972) (*pro se* pleadings to be construed liberally). To prevail in

¹ At trial, the plaintiffs did not advance either of these theories specifically. The plaintiffs did not offer any evidence of wilfulness or recklessness by ConAgra, and for reasons stated below, would not be able to satisfy the causation element of a negligence claim.

an action based upon strict products liability, a plaintiff must establish (1) that a product was sold in a defective condition, (2) that the product was unreasonably dangerous to the user or consumer, and (3) that use of the product resulted in physical harm. See Restatement (Second) of Torts § 402A (1965); Paquette v. Deere and Co., 168 Vt. 258, 269 (1998) (Vermont "has adopted the doctrine of strict liability as embodied in [§ 402A]"); Greene v. B.F. Goodrich Avionics Systems, Inc., 409 F.3d 784, 788 (6th Cir. 2005) (noting that Kentucky has adopted § 402A). In this case, the plaintiffs have failed to meet this standard.

First, the plaintiffs did not establish that the product was defective. Plaintiff Butts testified at trial that when he bit into his second piece of chicken, an unknown substance squirted into his mouth. When he and Butson viewed the chicken immediately thereafter, they concluded that Butts had just eaten part of the chicken's intestinal tract, and possibly its "craw." They were not, however, able to identify with any level of certainty what it was that Butts had eaten. Neither of the other inmates noticed any similar substances in

their pieces. As noted above, there has been no expert analysis of the chicken, and the chicken was not admitted into evidence.² Consequently, the Court finds that the evidence failed to prove a defective product.

Second, the plaintiffs did not prove that the product was unreasonably dangerous. While Butts may have eaten something other than chicken meat, the evidence did not establish that the contents of the chicken box were harmful in any way. Butson ate his chicken with no physical consequences. Cochran's vomiting was self-induced. Only Butts became sick, but he admitted that his sickness may have been psychosomatic.

"Nothing precludes a plaintiff from using circumstantial evidence to prove a products liability case so long as the evidence is 'sufficient to tilt the balance from possibility to probability.'" Greene, 409 F.3d at 788-89 (quoting King v. Ford Motor Co., 209 F.3d 886, 893 (6th Cir. 2000)). In this case, the fact that Butts became ill does not establish either defect or

² One impediment to admitting the chicken into evidence was the chain of custody. The plaintiffs reported that since 2005, the chicken was primarily in the possession of their "legal aid," former plaintiff and fellow inmate Byron Martin. Martin did not appear at trial.

harmfulness. On cross-examination, Butts testified that he sought medical care on November 21, 2005, two days before eating the chicken, for a respiratory ailment. The suggestion during questioning was that he was already ill, and that his subsequent symptoms may have been the result of a flu-like virus. It was also shown that a doctor had told Butts to lose weight, as his weight at the time was approximately 330 pounds. Given these facts, and the lack of any analysis or testing of the chicken to show whether it was, in fact, dangerous, the Court will not hold ConAgra liable for distributing an unreasonably dangerous product.

Third, for reasons already discussed, the plaintiffs cannot show that the chicken actually caused an injury. Indeed, there is no direct evidence to show that the contents of the chicken led to anyone's illness.

On the issue of injury, plaintiffs Cochran and Butson claim only emotional injuries. Without an actual physical injury, however, their emotional injuries are not cognizable. See Vaillancourt v. Med. Ctr. Hosp. of Vermont, 139 Vt. 138, 143 (1980); 42 U.S.C. § 1997e(e). Accordingly, the claims submitted by plaintiffs Cochran

and Butson are DISMISSED. As to plaintiff Butts, the Court finds that he did not establish that the product was defective, that it was unreasonably dangerous, or that it caused him harm. All claims brought by plaintiff Butts are, therefore, also DISMISSED.

Conclusion

For the reasons set forth above, ConAgra's Rule 52 motion for judgment is GRANTED, and this case is DISMISSED.

Dated at Burlington, in the District of Vermont, this 9th day of January, 2009.

/s/ William K. Sessions III
William K. Sessions III
Chief Judge, United States District Court