

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-153

NOVEMBER TERM, 2007

Gerald Prosch	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Superior Court
	}	
	}	
Gordon Ware, Jr., Doria Ware, Gordon Ware, Sr. and Lillian Ware	}	DOCKET NO. 34-1-06 Wrcv

Trial Judge: Theresa S. DiMauro

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals a jury verdict concluding that defendants have the better claim for legal title to an area of land. On appeal, plaintiff contends that the verdict is unsupported by the evidence. We conclude that plaintiff's claim was not preserved below and affirm.

The parties own adjoining land in Woodstock and dispute ownership of a five-acre parcel along the boundary line. Plaintiff filed an action in superior court seeking damages for timber trespass and a declaratory judgment to settle title to the parcel. At trial, both sides presented expert testimony concerning their chain of title to the land. The court provided the jury with a special verdict form with multiple questions, inquiring first whether "plaintiff or defendants have established the better claim for title ownership of the land in dispute." Plaintiff did not object to the form or to the court's instructions regarding it. At no time during trial did plaintiff move for a directed verdict on the legal question of whether he held superior title to the property in question. The jury returned a verdict in favor of defendants, answering only the first question—that defendants had established superior title ownership of the land in dispute. Plaintiff filed this appeal.

Plaintiff contends that the jury's verdict is without evidentiary support and that a verdict should have been in his favor as a matter of law, rather than as a matter of discretion. We agree with defendants that plaintiff failed to adequately preserve his claim for appeal. During trial, plaintiff did not object to submitting the question of superior ownership to the jury. Plaintiff did not move for a directed verdict on the issue. In addition, plaintiff did not object to the special verdict form submitting this exact question to the jury or to the relevant jury instructions. "[P]laintiff cannot now raise, as a question of law, the sufficiency of the evidence since he failed to move for directed verdict at any time during trial." Merrill v. Reville, 135 Vt. 517, 519

(1977). Plaintiff has failed to preserve this argument for appeal. See Ball v. Barre Elec. Supply Co., 146 Vt. 245, 246 (1985) (explaining that a party fails to preserve an argument challenging the submission of claims to the jury where that party failed to object to the trial court). We have explained that a plaintiff cannot raise, on appeal, as a question of law, the sufficiency of the evidence where he failed to move for directed verdict at any time during trial. Merrill, 135 Vt. at 519. By not moving for a directed verdict, plaintiff conceded that the issue presented a factual question for the jury to consider. Id. at 520. Thus, we find no basis to disturb the jury's verdict.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice