SUPREME COURT OF WISCONSIN

Fandrey v. American Family Mutual Insurance Co., 272 Wis. 2d 46

680 N.W.2d 345 (2004) · No. No. 02-2628 · Decided June 3, 2004

SUMMARY

The Supreme Court of Wisconsin considered whether traditional public-policy factors may preclude liability under Wisconsin's dog-bite statute, Wis. Stat. § 174.02, after statutory liability is otherwise established. The court held that such factors may limit liability and affirmed summary judgment for American Family Mutual Insurance Company because the undisputed facts supported preclusion of the claim.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Jon P. Wilcox, J.; Ann Walsh Bradley, J.; Shirley S. Abrahamson, C.J.
JURISDICTION	Wisconsin
DECIDED	June 3, 2004
DOCKET	No. 02-2628
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Wisconsin Supreme Court accepted certification from the court of appeals concerning whether traditional public-policy factors may limit liability under Wisconsin's dog-bite statute and whether summary judgment was properly granted on that basis.
STANDARD OF REVIEW	Summary judgment is reviewed independently using the same methodology as the circuit court, with evidence and reasonable inferences viewed in the light most favorable to the nonmoving party. Whether public-policy factors bar liability is a question of law reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Mackenzie Fandrey, a minor, by James B. Connell, her Guardian ad Litem, Wisconsin Physicians Service Insurance Corporation v. American Family Mutual Insurance Company

TOPICS

strict liability · torts · proximate cause · statutory interpretation · standard of review

PRACTICE AREAS

torts · strict liability · premises liability · insurance · appellate procedure

QUESTIONS PRESENTED

1. Whether traditional public-policy factors may preclude liability under Wisconsin's strict-liability dog-bite statute, Wis. Stat. § 174.02, even when statutory liability and cause-in-fact are otherwise established.
2. Whether the circuit court properly applied public-policy factors to grant summary judgment without a trial.
3. Whether the undisputed facts supported the conclusion that recovery would be disproportionate to the homeowners' culpability, impose an unreasonable burden, and enter a field with no sensible or just stopping point.

HOLDINGS

1. Wisconsin courts may use the traditional six public-policy factors, formerly associated with proximate cause, to limit or preclude liability under the dog-bite statute even when the plaintiff otherwise establishes statutory liability and cause-in-fact.
2. A trial is not required when the material facts are undisputed, easily ascertainable, and the relevant public-policy issues have been fully presented.
3. Public policy precluded liability because recovery would be disproportionate to the homeowners' culpability, impose an unreasonable burden on them, and enter a field with no sensible or just stopping point.

KEY QUOTATIONS

> *"Thus, we hold that Wisconsin courts may utilize the traditional six public policy factors, formerly referred to as "proximate cause," to limit liability in appropriate cases under § 174.02."* (2004 WI 62, ¶ 26)

> *"Further, we hold that public policy precludes the imposition of liability under the facts of this case because: 1) recovery would be too out of proportion with the culpability of the homeowners; 2) allowing recovery would place too unreasonable a burden on the homeowners; and 3) allowing recovery would enter a field that has no sensible or just stopping point."* (2004 WI 62, ¶ 40)

FACTUAL BACKGROUND

Michelle Rausch brought her three-year-old daughter, Mackenzie, to the home of Michelle's friends, Nicole and her husband, without calling ahead or receiving an invitation. The homeowners were away, and Michelle entered through an unlocked back door, placed cookies on the kitchen table, and put Mackenzie on a chair. Mackenzie entered the living room and was injured near the homeowners' dog, Molly. The undisputed evidence showed that

Michelle and Mackenzie had neither express nor implied consent to enter the home and that Michelle knew the homeowners kept Molly inside.

PROCEDURAL HISTORY

Mackenzie Fandrey, through her guardian ad litem, sued American Family under Wis. Stat. § 174.02 after being injured by the insureds' dog. American Family asserted that the claim was barred by public policy and filed a third-party claim against Mackenzie's mother for contribution and indemnification. The Marathon County Circuit Court, Patrick M. Brady, J., granted American Family summary judgment, concluding that public policy precluded recovery. Fandrey appealed, and the court of appeals certified questions to the Wisconsin Supreme Court.

DISPOSITION

affirmed

CASES CITED

- Rockweit v. Senecal, 197 Wis. 2d 409, 425, 541 N.W.2d 742 (1995)
- Borgins v. Falk Co., 147 Wis. 327, 133 N.W. 209 (1911)
- Meunier v. Ogurek, 140 Wis. 2d 782, 412 N.W.2d 155 (Ct. App. 1987)
- Morden v. Continental A.G., 2000 WI 51, 235 Wis. 2d 325, 611 N.W.2d 659
- Morgan v. Pennsylvania General Insurance Co., 87 Wis. 2d 723, 735-38, 275 N.W.2d 660 (1979)
- Blashaski v. Classified Risk Insurance Corp., 48 Wis. 2d 169, 174-75, 179 N.W.2d 924 (1970)
- Pfeifer v. Standard Gateway Theater, Inc., 262 Wis. 229, 237-38, 55 N.W.2d 29 (1952)
- Sanem v. Home Insurance Co., 119 Wis. 2d 530, 537-58, 350 N.W.2d 89 (1984)
- Alvarado v. Sersch, 2003 WI 55, 262 Wis. 2d 74, 662 N.W.2d 350
- World Wide Prosthetic Supply, Inc. v. Mikulsky, 2002 WI 26, 251 Wis. 2d 45, 640 N.W.2d 764
- Miller v. Wal-Mart Stores, Inc., 219 Wis. 2d 250, 261, 580 N.W.2d 233 (1998)
- Kempfer v. Automated Finishing, Inc., 211 Wis. 2d 100, 119, 564 N.W.2d 692 (1997)
- Brockmeyer v. Dun & Bradstreet, 113 Wis. 2d 561, 575, 335 N.W.2d 834 (1983)
- Beacon Bowl, Inc. v. Wisconsin Electric Power Co., 176 Wis. 2d 740, 760-66, 501 N.W.2d 788 (1993)
- Bowen v. Lumbermens Mutual Casualty Co., 183 Wis. 2d 627, 654, 517 N.W.2d 432 (1994)
- Rieck v. Medical Protective Co., 64 Wis. 2d 514, 517-18, 219 N.W.2d 242 (1974)
- Physicians Plus Insurance Corp. v. Theresa Mutual Insurance Co., 2002 WI 80, 254 Wis. 2d 77, 646 N.W.2d 777
- Fondell v. Lucky Stores, Inc., 85 Wis. 2d 220, 227, 230-31, 270 N.W.2d 205 (1978)
- Krause v. Veterans of Foreign Wars Post No. 6498, 9 Wis. 2d 547, 552, 101 N.W.2d 645 (1960)
- Becker v. State Farm Mutual Automobile Insurance Co., 141 Wis. 2d 804, 807-08, 815-17, 416 N.W.2d 906 (Ct. App. 1987)
- State v. Foley, 153 Wis. 2d 748, 752, 451 N.W.2d 796 (Ct. App. 1990)

- Zimmerman v. Wisconsin Electric Power Co., 38 Wis. 2d 626, 633-34, 157 N.W.2d 648 (1968)
- State v. Olson, 175 Wis. 2d 628, 641, 498 N.W.2d 661 (1993)
- Fuchsgruber v. Custom Accessories, Inc., 2001 WI 81, ¶ 9, 244 Wis. 2d 758, 628 N.W.2d 833
- Kraemer Bros. Inc. v. United States Fire Insurance Co., 89 Wis. 2d 555, 566-67, 278 N.W.2d 857 (1979)