

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Palmer v. Krueger

Palmer v. Krueger, 897 F.2d 1529 (10th Cir. 1990) · Decided March 5, 1990

SUMMARY

In this diversity wrongful death action arising from an airplane crash, the Tenth Circuit affirmed the district court's judgment for defendants, addressing multiple jury instruction challenges under Oklahoma law. The court held that while the assumption of risk instruction was erroneous, it was harmless error given the weak evidence of causation, and that the unavoidable accident, contributory negligence, and sudden emergency instructions were not reversible error. The court further held that res ipsa loquitur was properly denied because the cause of the crash remained unknown, and that the trial court did not abuse its discretion in excluding evidence of insurance and post-accident safety communiques as cumulative or prejudicial. Key topics include diversity jurisdiction, jury instructions on negligence defenses, harmless error analysis, res ipsa loquitur, and evidentiary rulings under Rules 403 and 411.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Henley; Anderson; Logan
JURISDICTION	Federal
DECIDED	March 5, 1990
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the district court denying a motion for a new trial after a jury verdict for defendants in a wrongful death action.
STANDARD OF REVIEW	Jury instructions: abuse of discretion for matters within trial court's discretion, plain error for unpreserved objections; evidentiary rulings: abuse of discretion; overall judgment: harmless error standard.
PRECEDENTIAL VALUE	Published
PARTIES	Debra Renee Palmer v. Richard R. Krueger, executor of the estate of William Ryan Krueger; Beech Aircraft Corporation

TOPICS

- torts
- personal injury
- products liability
- appellate procedure
- evidence

PRACTICE AREAS

Wrongful Death

Aviation Law

Products Liability

Negligence

QUESTIONS PRESENTED

1. Whether the district court erred in giving jury instructions on unavoidable accident, assumption of risk, contributory negligence, and sudden emergency.
2. Whether the district court erred in refusing to give a res ipsa loquitur instruction.
3. Whether the district court erred in refusing to allow cross-examination and rebuttal evidence regarding the source of tension between the families.
4. Whether the district court erred in refusing to allow evidence that Beech had knowledge of other aircraft door opening incidents.

HOLDINGS

1. The district court did not abuse its discretion in giving the unavoidable accident instruction; the issue was tried by consent and there was some evidence of lack of control.
2. It was error to give the assumption of risk instruction because there was no evidence that Mrs. Krueger consented to harm or was aware of any particular danger, but the error was harmless.
3. The instruction was not plain error because there was some evidence (ownership of the airplane) to support a finding of lack of due care.
4. The instruction was not plain error because there was evidence to support a sudden emergency, particularly in connection with the products liability claim against Beech.
5. The district court properly denied the res ipsa loquitur instruction because the cause of the accident was unknown and plaintiff failed to establish what caused the accident.
6. The district court did not abuse its discretion in refusing to allow the cross-examination because it would have injected the issue of insurance liability, and the probative value was outweighed by the potential for prejudice.
7. The district court properly excluded the evidence as cumulative and potentially prejudicial under Rule 403 because notice was not in dispute.

KEY QUOTATIONS

“An unavoidable accident is one which occurs without negligence on the part of any person. If you find from the evidence in this case that the accident was unavoidable, then your verdict should be for the defendants.” (1533)

“A person assumes the risk of injury resulting from the negligence of another if he or she voluntarily and unreasonably exposes himself or herself to injury with knowledge and appreciation of the danger and the risk involved.” (1534)

“Under the law of Oklahoma, the 'touchstone' of the assumption of risk defense in a negligence action is 'consent to harm and not heedlessness or indifference.'” (1534)

“Res ipsa loquitur cannot be invoked until, as a preliminary proposition, a plaintiff establishes what caused the accident.” (1536)

“Res ipsa loquitur is used where the plaintiff cannot prove negligence, and the defendant can rebut it because of his particular situation.” (1537)

FACTUAL BACKGROUND

On July 1, 1983, Virginia Krueger and her husband Bill took off from an airport in Enid, Oklahoma, in their Beech Bonanza A-36 airplane. Less than two minutes after takeoff, Bill Krueger radioed he would return for landing. The plane disappeared behind trees in an apparent nosedive and crashed, killing both occupants and destroying the airplane. The cause of the crash was never conclusively established; plaintiff's expert testified the airplane door may have been open, but other mechanical possibilities were suggested. The lawsuit was a dispute between siblings by marriage over the wrongful death of Virginia Krueger.

PROCEDURAL HISTORY

Plaintiff originally filed a wrongful death action in Oklahoma state court against Krueger; Krueger joined Beech by third-party petition. Plaintiff dismissed and refiled in federal court. After a jury trial, verdict was entered for defendants. Plaintiff moved for a new trial, which was denied, and she appealed.

DISPOSITION

affirmed

CASES CITED

- Farrell v. Klein Tools, Inc., 866 F.2d 1294 (10th Cir. 1989)
- Furr v. AT&T Technologies, Inc., 824 F.2d 1537 (10th Cir. 1987)
- Wheeler v. John Deere Co., 862 F.2d 1404 (10th Cir. 1988)
- Patty Precision Prods. v. Brown & Sharpe Mfg., 846 F.2d 1247 (10th Cir. 1988)
- Big Horn Coal Co. v. Commonwealth Edison Co., 852 F.2d 1259 (10th Cir. 1988)
- Hardin v. Manitowoc-Forsythe Corp., 691 F.2d 449 (10th Cir. 1982)
- Ankney v. Hall, 764 P.2d 153 (Okla. 1988)
- Hayward v. Ginn, 306 P.2d 320 (Okla. 1957)
- Teague v. United Truck Serv., 499 P.2d 380 (Okla. 1972)
- Thomas v. Holliday, 764 P.2d 165 (Okla. 1988)
- Briscoe v. Oklahoma Natural Gas Co., 509 P.2d 126 (Okla. 1973)
- S.H. Kress & Co. v. Maddox, 203 P.2d 706 (Okla. 1949)
- Fiedler v. McKea Corp., 605 F.2d 542 (10th Cir. 1979)
- United States v. Coppola, 486 F.2d 882 (10th Cir. 1973)
- Tuttle v. City of Oklahoma City, 728 F.2d 456 (10th Cir. 1984)
- Mitchell v. Hicks, 471 P.2d 447 (Okla. 1970)

- Stevens v. Barnard, 512 F.2d 876 (10th Cir. 1975)
- Collins v. N-Ren Corp., 604 F.2d 659 (10th Cir. 1979)
- Federal Ins. Co. v. United States, 538 F.2d 300 (10th Cir. 1976)
- National Union Fire Ins. Co. v. Elliott, 298 P.2d 448 (Okla. 1956)
- St. John's Hosp. & School of Nursing v. Chapman, 434 P.2d 160 (Okla. 1967)
- Bragg v. Foretravel, Inc., 652 F.2d 39 (10th Cir. 1981)
- United States v. Parker, 604 F.2d 1327 (10th Cir. 1979)
- Rigby v. Beech Aircraft Co., 548 F.2d 288 (10th Cir. 1977)