

SUPREME COURT OF SOUTH DAKOTA

Glover v. Krambeck

2007 SD 11 (2007) · No. Nos. 23921, 23986 · Decided January 17, 2007

SUMMARY

The Supreme Court of South Dakota consolidated two appeals arising from a single automobile accident. It affirmed the denial of Jerity Krambeck's motion for relief from a dismissal under SDCL 15-6-60(b), but reversed the dismissal of her separate personal-injury action on res judicata grounds. The court held that cross-claims for contribution and indemnity are permissive and did not preclude Krambeck's later substantive personal-injury claim.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Erickson, Circuit Judge; Gilbertson, Chief Justice; Meierhenry, Justice; Konen-kamp, Justice; Zinter, Justice; Sabers, Justice, disqualified
JURISDICTION	South Dakota
DECIDED	January 17, 2007
DOCKET	Nos. 23921, 23986
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from two circuit court proceedings arising from the same automobile accident. The Supreme Court reviewed the denial of relief from a Meade County dismissal with prejudice and the Butte County dismissal of a subsequent personal-injury action on res judicata grounds.
STANDARD OF REVIEW	Denial of relief under SDCL 15-6-60(b) is reviewed for abuse of discretion. Applicability of res judicata is reviewed de novo.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Jerity E. Krambeck, Jerry A. Krambeck v. Joshua Macer

TOPICS

res judicata

motions to dismiss

civil procedure

appellate procedure

negligence

PRACTICE AREAS

civil procedure

appellate procedure

torts

insurance

QUESTIONS PRESENTED

1. Whether the Meade County circuit court abused its discretion by denying Krambeck relief from the dismissal with prejudice under SDCL 15-6-60(b)(1) based on mistake, inadvertence, or excusable neglect.
2. Whether the Butte County circuit court erred by dismissing Krambeck's later personal-injury action under the doctrine of res judicata because she could have asserted the claim as a cross-claim in the earlier Meade County action.

HOLDINGS

1. The trial court did not abuse its discretion in denying Krambeck relief from the Meade County dismissal with prejudice because the circumstances did not constitute the exceptional circumstances required for relief under SDCL 15-6-60(b).
2. The dismissal of Krambeck's Butte County personal-injury action on res judicata grounds was erroneous because a cross-claim under SDCL 15-6-13(g) is permissive, not compulsory, and Krambeck was not required to assert her personal-injury claim in the earlier Meade County action.

KEY QUOTATIONS

“A motion under SDCL 15-6-60(b) can be granted only when exceptional circumstances exist.” (§ 10)

“A cross-claim, under this rule, is always permissive and never compulsory.” (§ 22)

“Therefore, Krambeck was not required to make a claim for her own injuries in the Meade County lawsuit commenced by Glover. Krambeck’s subsequent lawsuit was not barred.” (§ 22)

FACTUAL BACKGROUND

On October 9, 2000, Jerity Krambeck was driving a vehicle on I-90 when passenger Joshua Macer grabbed the steering wheel, causing the vehicle to leave the roadway and roll over; Leah Glover was also a passenger. Glover sued Krambeck and Macer in Meade County, while Krambeck and her father separately sued Macer in Butte County for personal injury and vehicle damage. Krambeck knew of both lawsuits but did not ensure that the attorneys handling them communicated. The Meade County case was settled and dismissed with prejudice before Macer sought dismissal of the Butte County action as barred by res judicata.

PROCEDURAL HISTORY

Leah Glover sued Jerity Krambeck and Joshua Macer in Meade County for injuries arising from the accident. Krambeck and Macer asserted cross-claims for contribution and indemnity, and the Meade County action was settled and dismissed with prejudice. Separately, Krambeck and her father sued Macer in Butte County for personal injury and property damage. After learning of the Meade County dismissal, Macer moved to dismiss the Butte County action on res judicata grounds; Krambeck moved for relief from the Meade County judgment

under SDCL 15-6-60(b). The Meade County court denied relief, and the Butte County court dismissed the later action.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The denial of relief from the Meade County dismissal is affirmed. The Butte County dismissal based on res judicata is reversed, and the case is remanded for further proceedings.

CASES CITED

- Lowe v. Schwartz, 2006 SD 48, ¶ 8, 716 N.W.2d 777, 779
- Walsh v. Larsen, 2005 SD 104, ¶ 6, 705 N.W.2d 638, 641
- Schwartz v. Palachuk, 1999 SD 100, ¶ 16, 597 N.W.2d 442, 446
- Hrachovec v. Kaarup, 516 N.W.2d 309, 311 (S.D. 1994)
- Dacy v. Gors, 471 N.W.2d 576, 580 (S.D. 1991)
- Interest of D.G., 2004 SD 54, ¶ 7, 679 N.W.2d 497, 500
- Reaser v. Reaser, 2004 SD 116, ¶ 16, 688 N.W.2d 429, 434
- Divich v. Divich, 2002 SD 24, ¶ 8, 640 N.W.2d 758, 760
- Rogers v. Rogers, 351 N.W.2d 129 (S.D. 1984)
- Clarke v. Clarke, 423 N.W.2d 818, 821 (S.D. 1988)
- Wells v. Wells, 2005 SD 67, ¶ 11, 698 N.W.2d 504, 507
- Barnes v. Matzner, 2003 SD 42, ¶ 16, 661 N.W.2d 372, 377
- Black Hills Jewelry Mfg. v. Felco Jewel Ind., 336 N.W.2d 153, 157 (S.D. 1983)
- Hemme v. Bharti, 183 S.W.3d 593 (Mo. 2006)
- Sioux Enterprises, Minnesota v. Tri-State Refining Co., 456 N.W.2d 774, 778 (S.D. 1990)
- Earle M. Jorgenson Co. v. T.I. United States, Ltd., 133 F.R.D. 472, 475 n.10 (E.D. Pa. 1991)
- Kane v. Magna Mixer Co., 71 F.3d 555, 562-563 (6th Cir. 1995)
- Augustin v. Mughal, 521 F.2d 1215 (8th Cir. 1975)
- Kirkcaldy v. Richmond County Board of Education, 212 F.R.D. 289 (M.D.N.C. 2002)
- Rainbow Management Group, Ltd. v. Atlantis Submarines Hawaii, L.P., 158 F.R.D. 656, 660 (D. Haw. 1994)
- Hall v. General Motors Corp., 647 F.2d 175, 184, 207 U.S. App. D.C. 350, 359 n.38 (D.C. Cir. 1981)
- Chicago Freight Car Leasing Co. v. Martin Marietta Corp., 66 F.R.D. 400 (N.D. Ill. 1975)
- Hartford Accident & Indemnity Co. v. Levitt & Sons, Inc., 24 F.R.D. 230 (E.D. Pa. 1959)