

SUPREME COURT OF WASHINGTON

Stout v. Warren

176 Wash. 2d 263 (2012) · Decided December 20, 2012

SUMMARY

The Washington Supreme Court holds that fugitive defendant apprehension is not an abnormally dangerous activity but does pose a peculiar risk of physical harm under Restatement (Second) of Torts §§ 416 and 427. A bail bond company may therefore be vicariously liable for the negligence of its independent contractor bail bond recovery agent. The court rejects a rule barring recovery by a third party who knowingly participated in or contributed to the circumstances leading to the apprehension, leaving assumption of risk and comparative fault for consideration under established tort doctrines.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Stephens, J.; Madsen, C.J.; Chambers, J.; Fairhurst, J.; González, J.; Johnson, J.; Owens, J.; Wiggins, J.
JURISDICTION	Washington
DECIDED	December 20, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Stout sought discretionary review of the Court of Appeals' affirmance of summary judgment dismissing his vicarious-liability claims against the owners of CJ Johnson Bail Bonds.
STANDARD OF REVIEW	Summary judgment is reviewed de novo; the appellate court engages in the same inquiry as the trial court and views facts and reasonable inferences in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Larry Stout v. CJ Johnson Bail Bonds, CJ Johnson, Michael Golden, Carl Warren

TOPICS

vicarious liability

torts

summary judgment

appellate procedure

comparative fault

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether fugitive defendant apprehension is an abnormally dangerous activity supporting vicarious liability under Restatement (Second) of Torts § 427A.
2. Whether fugitive defendant apprehension poses a peculiar risk of physical harm supporting vicarious liability under Restatement (Second) of Torts §§ 416 and 427.
3. Whether a third-party plaintiff who triggered or knowingly participated in the apprehension effort, or who knew of its risks, is barred from asserting peculiar-risk vicarious liability.
4. Whether the employee limitation recognized in *Epperly* and *Tauscher* extends to nonemployee third parties.

HOLDINGS

1. Fugitive defendant apprehension is not an abnormally dangerous activity under the Restatement (Second) of Torts § 520 factors.
2. Fugitive defendant apprehension is an activity that poses a peculiar risk of physical harm, making a bail bond company vicariously liable for negligence by its independent contractor bail bond recovery agent when the applicable elements are established.
3. There is no exception to vicarious liability for inherently dangerous or peculiar-risk activities based on a third-party plaintiff's knowledge of the danger, voluntary conduct, or alleged participation in the activity.

KEY QUOTATIONS

"In order for vicarious liability to apply under these sections, (1) the activity itself must pose a risk of physical harm absent special or reasonable precautions (i.e., the risk must be inherent to the activity); (2) the risk must "differ[] from the common risks to which persons in general are commonly subjected," id. § 416 cmt. d (i.e., the risk must be "peculiar" or "special"); (3) the principal must know or have reason to know of the risk; and (4) the harm must arise from the contractor's negligence with respect to the risk that is inherent in the activity" (273)

"We reject this rule, which amounts to a mistakenly applied theory of assumption of risk." (275)

"But, innocence is not a precondition to asserting a tort claim, even one based on vicarious liability." (279-280)

"We hold that he may assert a cause of action based on vicarious liability against CJ Johnson." (280)

FACTUAL BACKGROUND

CJ Johnson Bail Bonds posted bail for Stout, who later failed to appear and became subject to a bench warrant. CJ Johnson contracted with CCSR to secure Stout's physical custody, and CCSR's Michael Golden contacted Carl Warren to apprehend him. Warren pursued Stout in a vehicle at high speed, rammed Stout's car into a tree, and caused injuries resulting in the amputation of one of Stout's legs.

PROCEDURAL HISTORY

After Stout was injured during an attempted apprehension by an independent contractor bail bond recovery agent, he sued the agent, the contractor, and the owners of CJ Johnson Bail Bonds. The trial court granted summary judgment to the Johnson defendants, ruling that fugitive recovery was not an inherently dangerous occupation giving rise to vicarious liability. The Court of Appeals affirmed on the alternative ground that a plaintiff who triggered and knowingly participated in the dangerous activity could not invoke vicarious liability. The Washington Supreme Court granted discretionary review and reversed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals' decision was reversed. On remand, issues not resolved by the trial court, including Warren's scope of employment, intentional conduct, joint and several liability, and possible assumption of risk or comparative fault, remain for consideration.

CASES CITED

- Stout v. Johnson, 159 Wn. App. 344, 356, 244 P.3d 1039 (2011)
- Nivens v. 7-11 Hoagy's Corner, 133 Wn.2d 192, 197, 943 P.2d 286 (1997)
- Kelley v. Centennial Contractors Enters., Inc., 169 Wn.2d 381, 386, 236 P.3d 197 (2010)
- Hickie v. Whitney Farms, Inc., 107 Wn. App. 934, 937, 29 P.3d 50 (2001), aff'd, 148 Wn.2d 911, 64 P.3d 1244 (2003)
- Sea Farms, Inc. v. Foster & Marshall Realty, Inc., 42 Wn. App. 308, 314, 711 P.2d 1049 (1985)
- Epperly v. City of Seattle, 65 Wn.2d 777, 781-83, 399 P.2d 591 (1965)
- Anderson v. Marathon Petroleum Co., 801 F.2d 936, 939-40 (7th Cir. 1986)
- New Meadows Holding Co. v. Wash. Water Power Co., 102 Wn.2d 495, 501-02, 504, 687 P.2d 212 (1984) (Pearson, J., concurring)
- Crosby v. Cox Aircraft Co. of Wash., 109 Wn.2d 581, 587, 746 P.2d 1198 (1987)
- Hayes v. Goldstein, 120 Ohio App. 3d 116, 120, 697 N.E.2d 224 (1997)
- State v. Portnoy, 43 Wn. App. 455, 458-59, 466-67, 718 P.2d 805 (1986)
- Tauscher v. Puget Sound Power & Light Co., 96 Wn.2d 274, 277-82, 635 P.2d 426 (1981)
- Tincani v. Inland Empire Zoological Soc'y, 124 Wn.2d 121, 143 & n.8, 875 P.2d 621 (1994)