

SUPREME COURT OF OKLAHOMA

Hayward v. St. Louis & S. F. R. Co., 196 Okla. 576

166 P.2d 774 (1946) · Decided February 19, 1946

SUMMARY

The Oklahoma Supreme Court affirmed judgments for a railway company in an overflow damage action involving flooding of the plaintiff's property. The court held that the plaintiff could not challenge a jury instruction concerning unprecedented rainfall and the act of God defense because he had neither objected to the instruction nor requested a more specific one.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Gibson, C.J.; Hurst, V.C.J.; Riley, J.; Bayless, J.; Welch, J.; Corn, J.; Davison, J.
JURISDICTION	Oklahoma
DECIDED	February 19, 1946
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a judgment for defendants entered after a trial de novo in the district court following an adverse judgment in the city court.
STANDARD OF REVIEW	The court declined to review the claimed instructional error because it was not preserved in the trial court.
PRECEDENTIAL VALUE	Published opinion; precedential value under Oklahoma law.
PARTIES	E.K. Hayward v. St. Louis San Francisco Railway Company, Trustees of St. Louis San Francisco Railway Company

TOPICS

- preservation of error
- appellate procedure
- negligence
- proximate cause
- torts

PRACTICE AREAS

- torts
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court could review the alleged defect in the jury instruction concerning the railway's liability when unprecedented floods or rainfall combined with the railway's alleged negligence to cause the damage.
2. Whether the judgment for the defendants should be affirmed.

HOLDINGS

1. An appellate court will not consider an alleged defect in a jury instruction when the record does not show that the appellant excepted to the instruction, otherwise called the defect to the trial court's attention, or requested a more definite or specific instruction on the issue.

KEY QUOTATIONS

"Under this state of the record we cannot consider this alleged error." (577)

FACTUAL BACKGROUND

Hayward owned two apartment houses on lots in Muskogee adjacent to the railway's elevated roadbed and tracks. Natural drainage flowed southeast across the property, but the railway constructed a roadbed, ditch, embankments, and culverts to manage water flow. During unusually heavy rainfall and flooding in 1943, water backed up onto Hayward's lots and into the apartment houses, damaging floors and furniture. The railway contended that it had provided adequate drainage for ordinary rains and floods and that the unprecedented rainfall was the sole cause of the damage.

PROCEDURAL HISTORY

Hayward brought an overflow-damage action in the city court of Muskogee, where defendants obtained a verdict and judgment. Hayward appealed to the district court, which tried the case de novo and again entered judgment for defendants. He then appealed to the Supreme Court of Oklahoma, arguing that the jury instruction concerning unprecedented floods and rainfall was inaccurate and incomplete. The Supreme Court affirmed because the alleged instructional error was not preserved by exception or request for a more specific instruction.

DISPOSITION

affirmed

CASES CITED

- Watson v. Doss, 151 Okla. 132, 3 P.2d 159
- Meyer v. White, 79 Okla. 257, 192 P. 801
- Norman v. Lambert, 64 Okla. 238, 167 P. 213