

SUPREME COURT OF WYOMING

Black v. William Insulation Co., Inc.

141 P.3d 123 (Wyo. 2006) · No. No. 05-249 · Decided August 29, 2006

SUMMARY

The Wyoming Supreme Court affirmed summary judgment for William Insulation Company in a wrongful-death action arising from an employee's fatigued-driving accident during his commute. The court held that, under the circumstances, the employer's conduct was not a substantial factor in causing the employee's fatigue and therefore did not create a foreseeable risk giving rise to a duty to the decedent. The court also declined to consider a negligent misrepresentation claim that had not been pleaded or ruled on by the district court.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Hill, Justice; Voigt, C.J.; Golden, J.; Hill, J.; Kite, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	August 29, 2006
DOCKET	No. 05-249
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the district court's summary judgment for the employer in a wrongful-death action and challenged the dismissal of a negligent-misrepresentation claim.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standards and using the same materials as the district court, viewing the record in the light most favorable to the opposing party and giving that party the benefit of all favorable inferences. The grant of summary judgment on a question of law is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Peggy Ann Cook Black, individually and as personal representative of the estate of Richard Black, deceased v. William Insulation Company, Inc.

TOPICS

wrongful death

negligence

duty of care

proximate cause

summary judgment

PRACTICE AREAS

torts

wrongful death

negligence

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether an employer owes a duty of care to members of the traveling public for injuries caused by an off-duty employee who becomes fatigued while commuting in a personal vehicle.
2. Whether the district court erred in granting summary judgment on the alleged negligent-misrepresentation claim based on the project manager's statement that employees could not ride buses provided by the general contractor.

HOLDINGS

1. Under the circumstances, William Insulation Company did not owe a duty to the decedent because the employee's work was not shown to be a substantial factor contributing to his fatigue, and the accident was not a foreseeable consequence of the employer's conduct or omissions.
2. The court declined to consider the negligent-misrepresentation claim because Black did not plead it and the district court did not rule on it; issues raised for the first time on appeal generally will not be considered.

KEY QUOTATIONS

"Under the circumstances of this case, the defendant employer did not owe a duty to the plaintiff's decedent."
(141 P.3d at 132)

"There is no evidence that WIC had notice that Ibarra-Viernes was fatigued on the day of the accident." (141 P.3d at 130)

"Under these circumstances, it cannot be said that his employment was the substantial factor in contributing to Ibarra-Viernes's fatigue." (141 P.3d at 131)

FACTUAL BACKGROUND

David Ibarra-Viernes worked for William Insulation Company, Inc. at a remote Wyoming plant approximately ninety miles from his home. He worked a regular ten-hour shift, commuted from Evanston, received a daily subsistence payment that could have been used for lodging closer to the plant, and also worked a second job at night. After driving coworkers home from the plant, he fell asleep at the wheel, crossed the center line, and collided with a vehicle carrying Richard Black, who died. The employer had no evidence-based notice that Ibarra-Viernes was fatigued on the day of the accident.

PROCEDURAL HISTORY

Peggy Ann Cook Black filed a wrongful-death action against William Insulation Company, Inc., alleging that the employer negligently caused an employee to become fatigued and thereby endangered the traveling public. The

district court granted the employer's motion for summary judgment, concluding that it owed no duty to the decedent. On appeal, the Wyoming Supreme Court affirmed and declined to consider the negligent-misrepresentation issue because it had not been pleaded or ruled on below.

DISPOSITION

affirmed

CASES CITED

- Burnett v. Imerys Marble, Inc., 2005 WY 82, ¶ 10, 116 P.3d 460, 462 (Wyo. 2005)
- Act I, LLC v. Davis, 2002 WY 183, ¶ 9, 60 P.3d 145, 148 (Wyo. 2002)
- Bevan v. Fix, 2002 WY 43, ¶ 46, 42 P.3d 1013, 1027 (Wyo. 2002)
- Bowen v. Smith, 838 P.2d 186, 198 (Wyo. 1992) (Brown, J., concurring)
- Andersen v. Two Dot Ranch, Inc., 2002 WY 105, ¶ 44, 49 P.3d 1011, 1024 (Wyo. 2002)
- Gates v. Richardson, 719 P.2d 193, 195-96 (Wyo. 1986)
- Hamilton v. Natrona County Educ. Ass'n, 901 P.2d 381, 384 (Wyo. 1995)
- Thomas By Thomas v. South Cheyenne Water and Sewer Dist., 702 P.2d 1303, 1307 (Wyo. 1985)
- Mostert v. CBL & Assoc., 741 P.2d 1090, 1093 (Wyo. 1987)
- Killian v. Caza Drilling, Inc., 2006 WY 42, ¶¶ 8, 20, 131 P.3d 975, 979-80, 985 (Wyo. 2006)
- Tarasoff v. Regents of University of California, 551 P.2d 334, 342 (Cal. 1976)
- Van Devander v. Heller Electric Co., Inc., 405 F.2d 1108, 1109 (D.C. Cir. 1968)
- Robertson v. LeMaster, 301 S.E.2d 563, 568-69 (W. Va. 1983)
- Faverty v. McDonald's Restaurants of Oregon, Inc., 892 P.2d 703, 705 (Or. App. 1995)
- Depew v. Crocodile Enterprises, Inc., 73 Cal. Rptr. 2d 673, 679 (Cal. App. 1998)
- RT Communications, Inc. v. State Board of Equalization, 11 P.3d 915, 927 (Wyo. 2000)
- Birt v. Wells Fargo Home Mortgage, Inc., 2003 WY 102, ¶ 43, 75 P.3d 640, 657 (Wyo. 2003)
- Yates v. Yates, 2003 WY 161, ¶¶ 18-20, 81 P.3d 184, 190 (Wyo. 2003)
- Lemos v. Madden, 28 Wyo. 1, 200 P. 791, 793-94 (1921)
- Natural Gas Processing Co. v. Hull, 886 P.2d 1181, 1186 (Wyo. 1994)
- Turcq v. Shanahan, 950 P.2d 47, 51 (Wyo. 1997)
- Bettencourt v. Pride Well Service, Inc., 735 P.2d 722, 726 (Wyo. 1987)
- Stephenson v. Pacific Power & Light Co., 779 P.2d 1169, 1178 (Wyo. 1989)
- McClellan v. Tottenhoff, 666 P.2d 408, 414 (Wyo. 1983)
- Caterpillar Tractor Co. v. Donahue, 674 P.2d 1276, 1280 (Wyo. 1983)
- Cunis v. Brennan, 308 N.E.2d 617, 619 (Ill. 1974)