

SUPREME COURT OF THE STATE OF DELAWARE

Reed v. Asbestos Corporation Limited

No. 387, 2016 (Del. Feb. 6, 2017) · No. No. 387, 2016 · Decided February 6, 2017

SUMMARY

The Delaware Supreme Court affirmed summary judgment for five defendants in a take-home asbestos exposure action. The Court held that the plaintiffs failed to provide non-speculative evidence placing the decedent's relatives in sufficient proximity to the defendants' asbestos products, and, as to Bayer Cropscience, failed to establish that the products were friable when used.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Leo E. Strine, Jr., Chief Justice; Valihura, Justice; Seitz, Justice
JURISDICTION	Delaware
DECIDED	February 6, 2017
DOCKET	No. 387, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed Superior Court orders granting summary judgment to five defendants in a take-home asbestos exposure action.
STANDARD OF REVIEW	Summary judgment is proper when the record contains no evidence from which a jury could reasonably infer a necessary fact without resort to speculation, conjecture, or guess.
PRECEDENTIAL VALUE	published
PARTIES	Wayne R. Reed, individually and as the executor of the estate of Barbara Reed, deceased, Amy Rhodes, Courtney Reed v. Asbestos Corporation Limited, Bayer Cropscience, Inc., Charles A. Wagner Co., Inc., Nosroc Corporation, County Insulation Company

TOPICS

[summary judgment](#) [evidence](#) [personal injury](#) [torts](#) [appellate procedure](#)

PRACTICE AREAS

[civil procedure](#) [asbestos litigation](#) [torts](#) [evidence](#)

QUESTIONS PRESENTED

1. Whether summary judgment was proper where plaintiffs lacked evidence placing the decedent's alleged exposure sources in specific proximity to the defendants' asbestos products at the time of use.
2. Whether summary judgment was proper against Bayer Cropscience where plaintiffs also lacked evidence that Bayer's products were friable at the relevant time.

HOLDINGS

1. Summary judgment was proper because plaintiffs produced no evidence from which a jury could reasonably infer, without speculation, that Barbara Reed's father or former husband was in specific proximity to the defendants' products when those products were being used.
2. Summary judgment was proper because plaintiffs produced no evidence from which a jury could reasonably infer, without speculation, that Barbara Reed's father was in specific proximity to Bayer's products at a time when those products were friable.

KEY QUOTATIONS

“The presumption afforded the non-moving party in the summary judgment analysis is not absolute.” (at 2)

“The Court must decline to draw an inference for the non-moving party if the record is devoid of facts upon which the inference reasonably can be based.” (at 2)

“Where there is no precedent fact, there can be no inference; an inference cannot flow from the nonexistence of a fact, or from a complete absence of evidence as to the particular fact.” (at 2)

“To defeat summary judgment in a case where the plaintiff himself is not able to establish exposure, a co-worker must be able to place the plaintiff in the vicinity of a specific location on the defendant’s property, at a specific time, where friable asbestos is present.” (at 2)

FACTUAL BACKGROUND

Barbara Reed died of pleural mesothelioma after filing a take-home asbestos exposure action with her husband, Wayne Reed. Her daughters were later added as plaintiffs. Plaintiffs alleged exposure through Barbara Reed's father and former husband, but did not produce evidence placing either person in specific proximity to the defendants' products at the relevant times. For Bayer Cropscience, plaintiffs also failed to show that the products were friable when Barbara Reed's father was allegedly near them.

PROCEDURAL HISTORY

The Superior Court of Delaware granted summary judgment in favor of the remaining defendants. The Supreme Court affirmed the Superior Court's July 6, 2016 judgment, concluding that plaintiffs lacked evidence permitting a jury to infer without speculation that the decedent's father or former husband was in specific proximity to the defendants' asbestos products when the products were being used or, for Bayer, when they were friable.

DISPOSITION

affirmed

CASES CITED

- In re Asbestos Litig., 2012 WL 1408982, at *2 (Del. Super. Apr. 2, 2012)
- In re Asbestos Litig., 2007 WL 1651968, at *17 (Del. Super. May 31, 2007)
- Gannett Co. v. Kanaga, 750 A.2d 1174, 1188 (Del. 2000)
- Timblin v. Kent Gen. Hosp. (Inc.), 640 A.2d 1021, 1026 (Del. 1994)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE IN RE ASBESTOS LITIGATION
§ § No. 387, 2016 WAYNE R. REED, INDIVIDUALLY and AS § THE EXECUTOR OF THE
ESTATE OF § Court Below: Superior Court BARBARA REED, DECEASED, and AMY § of the
State of Delaware RHODES and COURTNEY REED, AS § SURVIVING CHILDREN, § C.A.
No. 13C-11-188 § Plaintiffs Below § Appellants, § § v. § § ASBESTOS CORPORATION
LIMITED, § BAYER CROPSCIENCE, INC., CHARLES § A. WAGNER CO., INC., NOSROC §
CORPORATION, and COUNTY § INSULATION COMPANY, § § Defendants Below, §
Appellees. § Submitted: January 25, 2017 Decided: February 6, 2017 Before STRINE, Chief
Justice; VALIHURA and SEITZ, Justices.

ORDER (1) This is an appeal from the Superior Court's orders granting summary judgment in favor of the five remaining defendants in a take-home asbestos exposure action. As to Nosroc Corporation, County Insulation Company, Asbestos Corporation Limited, and Charles Wagner Company, Inc., although the Superior Court relied in part on an issue that those defendants did not fairly put in contest— whether there was evidence of friability—the plaintiffs¹ did not produce evidence from which a jury could reasonably infer, without speculation,² that Barbara Reed's father and former husband were in specific proximity to the products at issue at the time they were being used.

Thus, the Superior Court was correct to grant summary judgment.³ (2) The final defendant, Bayer Cropscience, Inc., properly raised the issue of friability. The plaintiffs failed to produce evidence from which a jury could reasonably infer, without speculation, that Barbara Reed's father was in specific proximity to the products distributed by Bayer at a time when they were friable, 1 Barbara Reed and her husband, Wayne Reed, were the original plaintiffs in this case.

After this suit was filed, Barbara Reed died of pleural mesothelioma. Reed's daughters were then added as plaintiffs to this litigation. 2 "The presumption afforded the non-moving party in the summary judgment analysis is not absolute.

The Court must decline to draw an inference for the non-moving party if the record is devoid of facts upon which the inference reasonably can be based. Where there is no precedent fact, there can be no inference; an inference cannot flow from the nonexistence of a fact, or from a complete absence of evidence as to the particular fact. Nor can an inference be based on surmise, speculation, conjecture, or guess, or on imagination or supposition.” *In re Asbestos Litig.*, 2012 WL 1408982, at *2 (Del.

Super. Apr. 2, 2012) (quoting *In re Asbestos Litig.*, 2007 WL 1651968, at *17 (Del. Super. May 31, 2007)); see also *Gannett Co. v. Kanaga*, 750 A.2d 1174, 1188 (Del. 2000) (“While the plaintiff is entitled to the benefit of reasonable inferences from established facts, the jury cannot supply any omission by speculation or conjecture.”); *Timblin v. Kent Gen. Hosp.*

(Inc.), 640 A.2d 1021, 1026 (Del. 1994) (“While a jury may draw inferences from the facts of a case, those inferences may not be based upon speculation.”). 3 “To defeat summary judgment in a case where the plaintiff himself is not able to establish exposure, a co-worker must be able to place the plaintiff in the vicinity of a specific location on the defendant’s property, at a specific time, where friable asbestos is present.” 2007 WL 1651968, at *20.

2 and thus, the Superior Court’s ruling was proper. Therefore, we affirm its judgment of July 6, 2016.4 NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is hereby AFFIRMED. BY THE COURT: /s/ Leo E. Strine, Jr. Chief Justice 4 *Reed v. Nosroc Corp., et al.*, C.A. No. N13C-11-188 (Del. Super. July 6, 2016) (ORDER) (granting summary judgment in four separate orders).