

SUPREME COURT OF THE STATE OF MONTANA

Kostelecky v. Peas in a Pod LLC

2022 MT 195 · No. DA 21-0217 · Decided October 11, 2022

SUMMARY

The Montana Supreme Court reviewed a summary judgment ruling in favor of a daycare and its operators on negligence-based tort, breach of contract, and Montana Consumer Protection Act claims arising from an infant’s subdural hematomas. The Court held that the plaintiffs lacked sufficient non-speculative evidence establishing medical causation or showing that any defendant caused the alleged injury while the child was in daycare. The Court affirmed the District Court’s judgment.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Dirk M. Sandefur; Chief Justice Mike McGrath; Justice Laurie McKinnon; Justice Ingrid Gustafson; Justice Jim Rice
JURISDICTION	Montana
DECIDED	October 11, 2022
DOCKET	DA 21-0217
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from the Montana Eighteenth Judicial District Court’s April 2021 judgment granting defendants summary judgment on negligence-based tort, breach of contract, and Montana Consumer Protection Act claims.
STANDARD OF REVIEW	Summary judgment is reviewed de novo for conformance with Montana Rule of Civil Procedure 56. Whether a genuine issue of material fact exists and whether a party is entitled to judgment as a matter of law are reviewed de novo for correctness. An evidentiary ruling excluding expert testimony underlying summary judgment is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Julie Kostelecky, Jason Kostelecky v. Peas in a Pod LLC, Lacey Allen, Erica Williams, Jane and John Does 1-10

TOPICS

summary judgment

negligence

breach of contract

consumer protection

civil procedure

PRACTICE AREAS

civil procedure

torts

contracts

consumer protection

evidence

QUESTIONS PRESENTED

1. Whether the District Court properly granted summary judgment on the causation element of the plaintiffs' negligence-based tort claims.
2. Whether the District Court properly granted partial summary judgment on the plaintiffs' breach of contract claim.
3. Whether the District Court properly granted partial summary judgment on the plaintiffs' Montana Consumer Protection Act claim.

HOLDINGS

1. Summary judgment was proper because the plaintiffs failed to present competent, non-speculative evidence that any particular negligent act or omission by defendants was a cause-in-fact of the child's subdural hematomas.
2. Summary judgment was proper because the plaintiffs pursued on appeal a new and unpled contract theory concerning a prepaid February 2017 daycare fee rather than the pleaded theory that defendants' failure to provide safe and legally compliant childcare caused the child's injury.
3. Summary judgment was proper because the plaintiffs did not establish that the alleged licensing-related misrepresentations or omissions caused an ascertainable financial loss, and their appellate theory concerning an unrefunded February 2017 payment was an unpled theory.

KEY QUOTATIONS

“Consequently, expert medical opinion that a specified occurrence, conduct, or mechanism of injury, disease, or other medical condition could, may, or might have possibly caused or contributed to, or is the suspected or assumed cause or contributing cause of, the injury, disease, or medical condition at issue is neither competent nor relevant proof of causation of that matter.” (¶ 23)

“The conspicuous missing link in the causative chain remains the manifest lack of a non-speculative evidentiary basis upon which the finder of fact could reasonably conclude, on a more probable than not basis, that S.M.K. would not have suffered or been subjected to the head trauma that most likely caused her subdural hematomas but for some particular negligent act or omission by Allen, Williams, or other Peas in a Pod personnel.” (¶ 39)

FACTUAL BACKGROUND

The defendants operated a licensed childcare facility where the Kosteleckys' infant daughter attended daycare. In December 2016 and January 2017, the child developed symptoms and was diagnosed with bilateral subdural hematomas requiring surgery and a temporary drainage shunt. Medical evidence established that some form of

trauma was the most likely cause, but the treating neurosurgeon could not identify the particular mechanism, source, timing, or perpetrator, and the child ultimately recovered fully. The plaintiffs offered no non-speculative evidence connecting a particular act or omission by defendants or daycare personnel to the trauma.

PROCEDURAL HISTORY

The Kosteleckys filed suit in November 2018 alleging that defendants' daycare operations caused their child's subdural hematomas and asserting negligence-based tort, contract, and Montana Consumer Protection Act claims. After discovery, defendants moved for summary judgment and partial summary judgment. The District Court granted judgment to defendants on all asserted claims, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Dick Anderson Constr., Inc. v. Monroe Prop. Co., 2011 MT 138, 361 Mont. 30, 255 P.3d 1257
- Busta v. Columbus Hosp. Corp., 276 Mont. 342, 916 P.2d 122 (1996)
- Beehler v. E. Radiological Assocs., P.C., 2012 MT 260, 367 Mont. 21, 289 P.3d 131
- Nelson v. Mont. Power Co., 256 Mont. 409, 847 P.2d 284 (1993)
- Hinkle v. Shepard Sch. Dist., 2004 MT 175, 322 Mont. 80, 93 P.3d 1239
- McClue v. Safeco Ins. Co. of Ill., 2015 MT 222, 380 Mont. 204, 354 P.3d 604
- In re C.K., 2017 MT 69, 387 Mont. 127, 391 P.3d 735
- Mt. W. Bank, N.A. v. Glacier Kitchens, Inc., 2012 MT 132, 365 Mont. 276, 281 P.3d 600
- Tin Cup Cty. Water & Sewer Dist. v. Garden City Plumbing & Heating, Inc., 2008 MT 434, 347 Mont. 468, 200 P.3d 60
- Puryer v. HSBC Bank USA, N.A., 2018 MT 124, 391 Mont. 361, 419 P.3d 105
- Jacobson v. Bayview Loan Servicing, LLC, 2016 MT 101, 383 Mont. 257, 371 P.3d 397
- Anderson v. ReconTrust Co., N.A., 2017 MT 313, 390 Mont. 12, 407 P.3d 692
- Rohrer v. Knudson, 2009 MT 35, 349 Mont. 197, 203 P.3d 759
- Folsom v. Mont. Pub. Employees Ass'n, Inc., 2017 MT 204, 388 Mont. 307, 400 P.3d 706
- Schumacher v. Murray Hosp., 58 Mont. 447, 193 P. 397 (1920)