

SUPREME COURT OF OREGON

Stella A. Charles, personal representative for the Estate of Kenneth Charles v. Andres Palomo, Jr., 347 Or. 695

227 P.3d 737 (2010) · No. SC S057493; CA A133122; CC 04C17458 · Decided February 19, 2010

SUMMARY

The Oregon Supreme Court held that ORCP 58 B(6) entitles a plaintiff in a jury trial to make both an initial closing argument and a rebuttal argument, unless the parties submit the case without argument. The court further held that the plaintiff preserved the issue by requesting rebuttal and that the denial substantially affected the plaintiff's rights. The court reversed the Court of Appeals and the circuit court judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Balmer, J.
JURISDICTION	Oregon
DECIDED	February 19, 2010
DOCKET	SC S057493; CA A133122; CC 04C17458
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought review of the Oregon Court of Appeals' affirmance of a defense judgment in a negligence action after the trial court denied plaintiff an opportunity to present rebuttal closing argument.
STANDARD OF REVIEW	Whether an issue was preserved for appellate review is determined practically, by asking whether the preservation policies of judicial efficiency, record development, and procedural fairness were satisfied. Trial error warrants reversal under ORS 19.415(2) when it substantially affects a party's rights.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Oregon; precedential.
PARTIES	Stella A. Charles, personal representative for the Estate of Kenneth Charles v. Andres Palomo, Jr.

TOPICS

[appellate procedure](#)[preservation of error](#)[civil procedure](#)[statutory interpretation](#)[negligence](#)

PRACTICE AREAS

civil procedure

appellate procedure

torts

QUESTIONS PRESENTED

1. Whether plaintiff preserved for appellate review his claim that the trial court erred by denying him a rebuttal closing argument.
2. Whether ORCP 58 B(6) entitles a plaintiff who presents an initial closing argument to a rebuttal closing argument after the defendant's closing argument.
3. Whether denial of the rebuttal argument substantially affected plaintiff's rights so as to require reversal.

HOLDINGS

1. Plaintiff preserved the issue for appellate review by requesting rebuttal at the close of argument, thereby informing the trial court of the claimed right and the alleged error; he was not required to repeat the objection after the court ruled against him.
2. When the plaintiff does not waive closing argument and the defendant argues to the jury, ORCP 58 B(6) entitles the plaintiff to both an initial closing argument and a rebuttal closing argument.
3. The denial of plaintiff's rebuttal closing argument substantially affected plaintiff's rights and required reversal of the judgment.

KEY QUOTATIONS

"When the evidence is concluded, unless the case is submitted by both sides to the jury without argument, the plaintiff shall commence and conclude the argument to the jury. The plaintiff may waive the opening argument, and if the defendant then argues the case to the jury, the plaintiff shall have the right to reply to the argument of the defendant, but not otherwise." (at 742)

"The first sentence of ORCP 58 B(6) demonstrates that plaintiffs are entitled to rebut defendants' closing arguments." (at 742)

"When a plaintiff does not waive the initial closing argument, the first sentence applies, and the plaintiff is entitled to both commence and conclude closing arguments." (at 743)

"Given the importance and persuasive value of closing arguments, as well as the particular missed opportunities in this case, we conclude that the denial of rebuttal argument substantially affected plaintiff's rights." (at 744)

FACTUAL BACKGROUND

Plaintiff and defendant were involved in a nighttime automobile collision during heavy rain. Plaintiff testified that he was slowing his truck after observing an accident ahead and that defendant rear-ended him; defendant testified that plaintiff's truck was stalled without visible lights and that defendant could not avoid the collision. After plaintiff presented an initial closing argument and defendant presented his closing argument, the trial court denied plaintiff's request for rebuttal, and the jury returned a verdict for defendant.

PROCEDURAL HISTORY

After a jury returned a verdict for defendant, the circuit court entered judgment for defendant. Plaintiff moved for a new trial, arguing that denial of rebuttal closing argument was error; the motion was deemed denied under ORCP 64 F, although the court addressed the merits and preservation. The Court of Appeals affirmed, holding that plaintiff had not preserved the issue and declining to review it as plain error. The Oregon Supreme Court allowed review, reversed the Court of Appeals and the circuit court, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the circuit court for further proceedings after reversal of the trial judgment.

CASES CITED

- Charles v. Palomo, 227 Or. App. 335, 206 P.3d 200 (2009)
- State v. Parkins, 346 Or. 333, 340-41, 211 P.3d 262 (2009)
- State v. Wyatt, 331 Or. 335, 343, 15 P.3d 22 (2000)
- State v. Hitz, 307 Or. 183, 187-88, 766 P.2d 373 (1988)
- State v. Fanus, 336 Or. 63, 83, 79 P.3d 847 (2003)
- State v. Stevens, 311 Or. 119, 147-48, 806 P.2d 92 (1991)
- State v. McNeely, 330 Or. 457, 468, 8 P.3d 212 (2000)
- Ireland v. Mitchell, 226 Or. 286, 295, 359 P.2d 894 (1961)