SUPREME COURT OF WISCONSIN

American Family Mutual Insurance Company v. Golke

319 Wis. 2d 397 (Wis. 2009) · No. 2006AP3003 · Decided July 15, 2009

SUMMARY

The Wisconsin Supreme Court reviewed dismissal of an insurer's negligence action as a sanction for spoliation of evidence arising from a residential fire allegedly caused by negligent roof repairs. The court held that a party may discharge its duty to preserve relevant evidence by providing reasonable notice of a possible claim, its basis, the relevant evidence, and a reasonable opportunity to inspect it; first-class mailing may suffice to provide such notice. It further held that dismissal for spoliation requires egregious conduct and reversed and remanded the judgment of dismissal.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Michael J. Gableman; Ann Walsh Bradley; Annette K. Ziegler; Patience D. Roggensack; N. Patrick Crooks; Shirley S. Abrahamson; David T. Prosser
JURISDICTION	Wisconsin
DECIDED	July 15, 2009
DOCKET	2006AP3003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	American Family appealed a circuit court judgment dismissing its negligence and subrogation claims as a sanction for spoliation of evidence. The court of appeals certified questions concerning the duty to preserve evidence, adequacy of notice, and the standard for dismissal sanctions. The Wisconsin Supreme Court accepted the certified appeal.
STANDARD OF REVIEW	The imposition of spoliation sanctions is reviewed for an erroneous exercise of discretion. Whether the lower court applied the correct legal standard is reviewed de novo.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; binding precedent in Wisconsin.
PARTIES	American Family Mutual Insurance Company v. David Golke, Joseph Golke, Charles Golke, Golke Brothers Roofing and Siding LLC,

Indiana Insurance Company

TOPICS

evidence · sanctions · civil procedure · insurance · subrogation

PRACTICE AREAS

Evidence · Civil procedure · Insurance law · Subrogation · Construction law

QUESTIONS PRESENTED

1. When does a party or potential litigant discharge its duty to preserve evidence relevant to a potential legal claim?
2. Can sufficient notice of impending destruction of evidence be effectuated by first-class mail?
3. When is dismissal an appropriate sanction for spoliation of evidence?

HOLDINGS

1. A party or potential litigant with a legitimate reason to destroy evidence discharges its duty to preserve relevant evidence within its control by providing reasonable notice of a possible claim, the basis for that claim, the existence of evidence relevant to the claim, and a reasonable opportunity to inspect the evidence.
2. Notice sufficient to discharge the duty to preserve evidence may be effectuated by first-class mail. Proof of mailing creates a rebuttable presumption that the letter was received; mere failure to remember receiving it does not rebut the presumption.
3. Dismissal as a spoliation sanction is appropriate only when the party controlling the evidence acted egregiously, meaning through a conscious attempt to affect the outcome of litigation or a flagrant, knowing disregard of the judicial process. Lesser sanctions may be appropriate for non-egregious violations of the preservation duty.

KEY QUOTATIONS

> *"We hold, therefore, that a party or potential litigant with a legitimate reason to destroy evidence discharges its duty to preserve relevant evidence within its control by providing the opposing party or potential litigant: (1) reasonable notice of a possible claim; (2) the basis for that claim; (3) the existence of evidence relevant to the claim; and (4) reasonable opportunity to inspect that evidence."* (768 N.W.2d at 737-38)

> *"We affirm that dismissal as a sanction for spoliation is appropriate only when the party in control of the evidence acted egregiously in destroying that evidence. Egregious behavior is "a conscious attempt to affect the outcome of the litigation or a flagrant, knowing disregard of the judicial process.""* (768 N.W.2d at 740-41)

> *"Because American Family discharged its duty to preserve evidence and no sanctions are appropriate, the judgment of the circuit court is reversed, and the cause is remanded to the circuit court for trial on the merits."* (768 N.W.2d at 744)

FACTUAL BACKGROUND

A fire damaged the Ronaldsons' insured home after the Golke brothers had performed roof repairs there. American Family investigated and concluded that negligent roof work reduced the clearance between a chimney and combustible roof materials, causing the fire. American Family mailed the Golkes notice of a potential claim and an opportunity to inspect the fire scene before demolition, but no defendant arranged an inspection, and the physical roof and chimney evidence was destroyed. American Family retained photographs and drawings and later sued the Golkes and their insurers for damages.

PROCEDURAL HISTORY

After a bench trial concerning spoliation and notice, the Waupaca County Circuit Court dismissed American Family's claims against the Golkes and Indiana Insurance for failure to preserve physical evidence from a fire scene. American Family appealed, and the court of appeals certified questions to the Wisconsin Supreme Court. The Supreme Court reversed and remanded for trial on the merits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the circuit court judgments dismissing American Family's claims and remand for trial on the merits and further proceedings consistent with the opinion.

CASES CITED

- State v. Stoehr, 134 Wis. 2d 66, 70, 396 N.W.2d 177 (1986)
- City of Stoughton v. Thomasson Lumber Co., 2004 WI App 6, ¶ 38, 269 Wis. 2d 339, 675 N.W.2d 487
- Garfoot v. Fireman's Fund Insurance Co., 228 Wis. 2d 707, 717, 723-24, 599 N.W.2d 411 (Ct. App. 1999)
- Sentry Insurance v. Royal Insurance Co. of America, 196 Wis. 2d 907, 918, 539 N.W.2d 911 (Ct. App. 1995)
- Estate of Neumann v. Neumann, 2001 WI App 61, ¶¶ 80-81, 242 Wis. 2d 205, 626 N.W.2d 821
- Insurance Co. of North America v. Cease Electric, Inc., 2004 WI App 15, ¶ 16, 269 Wis. 2d 286, 674 N.W.2d 886
- Allstate Insurance Co. v. Hamilton Beach/Proctor Silex, Inc., 473 F.3d 450, 457-58 (2d Cir. 2007)
- Hoffman v. Ford Motor Co., 587 N.W.2d 66, 68, 70-72 (Minn. Ct. App. 1998)
- State ex rel. Flores v. State, 183 Wis. 2d 587, 612-13, 516 N.W.2d 362 (1994)
- Milwaukee Constructors II v. Milwaukee Metropolitan Sewerage District, 177 Wis. 2d 523, 529-30, 533, 538, 502 N.W.2d 881 (Ct. App. 1993)
- Mansfield v. Smith, 88 Wis. 2d 575, 588, 277 N.W.2d 740 (1979)
- State v. Kemp, 106 Wis. 2d 697, 709, 318 N.W.2d 13 (1982)