

SUPREME COURT OF NEBRASKA

Gall v. Great Western Sugar Co., 219 Neb. 354

363 N.W.2d 373 (1985) · No. No. 83-636 · Decided March 1, 1985

SUMMARY

The Nebraska Supreme Court affirmed dismissal of Debby Gall’s claims against Great Western Sugar Company and Hunt International Resources Corporation arising from telephone calls concerning her husband’s employment and workers’ compensation benefits. The court held that the alleged conduct did not constitute intentional infliction of emotional distress and that Great Western owed Gall no special duty of fair and good faith dealing. A dissent concluded that the evidence created a jury question concerning whether the conduct was outrageous and caused severe emotional distress.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Caporale, Justice; Krivosha, C.J.; Boslaugh, J.; Hastings, J.; Caporale, J.; Shanahan, J.; Grant, J.
JURISDICTION	Nebraska
DECIDED	March 1, 1985
DOCKET	No. 83-636
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order sustaining Great Western's motion for summary judgment, sustaining Hunt International's special appearance, and dismissing the action against both defendants.
STANDARD OF REVIEW	Summary judgment is reviewed by determining whether the record shows no genuine issue of material fact or ultimate inference and whether the moving party is entitled to judgment as a matter of law. The evidence is viewed most favorably to the nonmoving party, and the moving party bears the initial burden of demonstrating entitlement to judgment.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Debby Gall v. Great Western Sugar Company, Hunt International Resources Corporation

TOPICS

intentional infliction of emotional distress

summary judgment

personal injury

civil procedure

insurance

PRACTICE AREAS

Torts

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Insurance

QUESTIONS PRESENTED

1. Whether the evidence created a genuine issue of material fact on Debby's claim for intentional infliction of emotional distress against Great Western.
2. Whether Great Western owed Debby a special duty to deal fairly and in good faith.
3. Whether the trial court's dismissal of the claim against Hunt International could be affirmed without deciding whether the special appearance was properly sustained.

HOLDINGS

1. A plaintiff asserting intentional infliction of emotional distress must prove intentional or reckless conduct, conduct that is extreme and outrageous beyond all possible bounds of decency, and emotional distress so severe that no reasonable person should be expected to endure it.
2. The evidence established as a matter of law that Great Western's conduct was not intentional or reckless, was not extreme or outrageous, and did not cause distress of the requisite severity; therefore, Great Western was entitled to summary judgment.
3. Great Western owed Debby no special duty to deal fairly or in good faith because she was not its insured and had no legal relationship with the company.
4. The dismissal against Hunt International was proper because the same allegations and evidence applied to it and necessarily required dismissal; consequently, the court did not need to decide whether the special appearance was correctly sustained.

KEY QUOTATIONS

"The foregoing cases establish the following to be the elements of a cause of action based upon the intentional infliction of emotional distress: (1) That there has been intentional or reckless conduct; (2) That the conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized community; and (3) That the conduct caused emotional distress so severe that no reasonable person should be expected to endure it." (376-377)

"One has no liability where he has done no more than insist upon his legal rights in a permissible way, even though he is well aware that such insistence is certain to cause emotional distress." (378)

FACTUAL BACKGROUND

Debby Gall's husband, Carl, suffered a serious workplace injury while employed by Great Western Sugar Company. Great Western claims agent Elizabeth Voyles called Debby at work regarding Carl's possible return to work, warning that he could be fired and lose insurance if he refused an available job. Debby experienced hives,

headaches, nervousness, crying, fatigue, weight loss, and difficulty working, but received no special medical treatment and ultimately obtained pregnancy and delivery coverage through her own employer. Debby had no employment, insurance, or other contractual relationship with Great Western.

PROCEDURAL HISTORY

Debby Gall sued Great Western Sugar Company and Hunt International Resources Corporation for intentional infliction of emotional distress and breach of a claimed duty of fair and good-faith dealing arising from telephone calls concerning her husband's employment and workers' compensation benefits. The trial court granted summary judgment to Great Western, sustained Hunt International's special appearance, and dismissed the action. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Witherspoon v. Sides Constr. Co., 219 Neb. 117, 362 N.W.2d 35 (1985)
- LaSalle Extension University v. Fogarty, 126 Neb. 457, 253 N.W. 424 (1934)
- Paasch v. Brown, 193 Neb. 368, 227 N.W.2d 402 (1975)
- Davis v. Texaco, Inc., 210 Neb. 67, 313 N.W.2d 221 (1981)
- Hassing v. Wortman, 214 Neb. 154, 333 N.W.2d 765 (1983)
- Mindt v. Shavers, 214 Neb. 786, 337 N.W.2d 97 (1983)
- Fournell v. Usher Pest Control Co., 208 Neb. 684, 305 N.W.2d 605 (1981)
- Olson v. Union Fire Ins. Co., 174 Neb. 375, 118 N.W.2d 318 (1962)
- Hadenfeldt v. State Farm Mut. Auto. Ins. Co., 195 Neb. 578, 239 N.W.2d 499 (1976)
- Nerud v. Haybuster Mfg., 215 Neb. 604, 340 N.W.2d 369 (1983)
- Fletcher v. Western National Life Ins. Co., 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (1970)
- Robertson v. Travelers Insurance Co., 100 Ill. App. 3d 845, 56 Ill. Dec. 222, 427 N.E.2d 302 (1981)
- Eckenrode v. Life of American Insurance Co., 470 F.2d 1 (7th Cir. 1972)