

SUPREME COURT OF NEBRASKA

Stonacek v. City of Lincoln

279 Neb. 869 (Neb. 2010) · No. Nos. S-09-230, S-09-231, S-09-232 · Decided May 14, 2010

SUMMARY

The Nebraska Supreme Court considered consolidated negligence actions brought by homeowners whose homes flooded in the Cardwell Woods development near Lincoln, Nebraska. The court held that the flood plain management statutes and regulations did not create a private tort duty, and that the homeowners' claim concerning the city's failure to provide flood-elevation information was barred by the Political Subdivisions Tort Claims Act's misrepresentation exception. The court reversed the district court's decisions and remanded with directions to dismiss the complaints.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.
JURISDICTION	Nebraska
DECIDED	May 14, 2010
DOCKET	Nos. S-09-230, S-09-231, S-09-232
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City of Lincoln appealed consolidated judgments entered after a liability and damages trial in which the Lancaster County District Court found the city liable for negligence arising from flood-elevation information and awarded damages to three homeowner couples.
STANDARD OF REVIEW	The meaning of a statute is reviewed de novo. Factual findings in an action under the Political Subdivisions Tort Claims Act are not disturbed unless clearly wrong, and the evidence is viewed in the light most favorable to the successful party. A ruling on a motion for new trial is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion of the Nebraska Supreme Court
PARTIES	City of Lincoln v. Troy and Shari Stonacek, Bradley E. and Jennifer K. Sheaff, George and Lori Bristol

TOPICS

municipal liability

negligence

duty of care

statutory interpretation

administrative law

PRACTICE AREAS

municipal liability

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QUESTIONS PRESENTED

1. Whether the dismissal of two permit-based negligence claims under the permit exception to the Political Subdivisions Tort Claims Act required dismissal of all five negligence claims.
2. Whether Nebraska's flood-plain-management statutes and Department of Natural Resources regulations created a tort duty and private cause of action in favor of the homeowners.
3. Whether the homeowners' claim that the city failed to advise them of accurate flood-elevation information was a misrepresentation claim barred by the Political Subdivisions Tort Claims Act.
4. Whether the district court abused its discretion by denying the city's consolidated motion for new trial.

HOLDINGS

1. The permit exception barred claims based on issuing or failing to require permits or permit-related approvals, but it did not automatically bar the separate claims alleging failure to provide flood information or failure to comply with flood-plain-management requirements.
2. Neb. Rev. Stat. § 31-1019 and 258 Neb. Admin. Code, chapter 1, did not create a tort duty owed by the city to the homeowners or a private civil cause of action for the alleged failure to maintain or provide accurate flood-plain information.
3. The homeowners' claim that the city failed to advise them of accurate flood-elevation information was a claim based on misrepresentation and was barred by the misrepresentation exception to the Political Subdivisions Tort Claims Act.
4. The district court abused its discretion by denying the city's consolidated motion for new trial because all five negligence claims should have been dismissed.

KEY QUOTATIONS

“If there is no legal duty, there is no actionable negligence.” (909)

“Because the gravamen of claim (a) alleging a failure to advise involves the improper communicating of the flood plain information relevant to appellees' properties, the claim is based on a misrepresentation.” (912)

“All five claims of negligence should have been dismissed.” (913)

FACTUAL BACKGROUND

The homeowners purchased and built homes in the Cardwell Woods development near a tributary of the Cardwell Branch stream. The city provided them, directly or through their builders, with FEMA flood-map information showing a base flood elevation of 1,201 feet, although a 1997 Department of Natural Resources map showed elevations ranging from 1,206 to 1,209 feet. The homeowners built basements at elevations below or

near the higher elevations and later experienced flooding. The city had possessed or had access to the Department map but did not provide it to the homeowners.

PROCEDURAL HISTORY

The homeowners sued the developer, engineer, real estate broker, realty company, and City of Lincoln after their homes flooded. The claims against the noncity defendants were resolved by settlement, and the three cases were consolidated. The district court dismissed two permit-based negligence claims under the Political Subdivisions Tort Claims Act but found the city liable on the remaining claims, later awarded damages, and denied the city's motion for new trial. The Nebraska Supreme Court reversed, vacated the judgments, and remanded with directions to dismiss the complaints.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the judgments entered in favor of the homeowners and dismiss all three complaints.

CASES CITED

- Kuhn v. Wells Fargo Bank of Neb., 278 Neb. 428, 771 N.W.2d 103 (2009)
- Cerny v. Cedar Bluffs Jr./Sr. Pub. Sch., 267 Neb. 958, 679 N.W.2d 198 (2004)
- Poppe v. Siefker, 274 Neb. 1, 735 N.W.2d 784 (2007)
- Rohde v. City of Ogallala, 273 Neb. 689, 731 N.W.2d 898 (2007)
- Claypool v. Hibberd, 261 Neb. 818, 626 N.W.2d 539 (2001)
- Fimple v. Archer Ballroom Co., 150 Neb. 681, 35 N.W.2d 680 (1949)
- United States v. Neustadt, 366 U.S. 696, 81 S. Ct. 1294, 6 L. Ed. 2d 614 (1961)
- Gibson v. Evansville Vanderburgh Bldg., 725 N.E.2d 949 (Ind. App. 2000)
- Muniz-Rivera v. United States, 326 F.3d 8 (1st Cir. 2003)
- Block v. Neal, 460 U.S. 289, 103 S. Ct. 1089, 75 L. Ed. 2d 67 (1983)
- Wickersham v. State, 218 Neb. 175, 354 N.W.2d 134 (1984)
- D.K. Buskirk & Sons v. State, 252 Neb. 84, 560 N.W.2d 462 (1997)
- Guild v. United States, 685 F.2d 324 (9th Cir. 1982)
- Rich Products Corp. v. United States, 804 F. Supp. 1270 (E.D. Cal. 1992)