

NORTH DAKOTA SUPREME COURT

Moseng v. Frey

822 N.W.2d 464 (N.D. 2012) · Decided October 23, 2012

SUMMARY

The North Dakota Supreme Court affirmed dismissal of Karl Moseng’s negligence and negligent infliction of emotional distress claims against Lynn Frey and Hartland Mutual Insurance Company. The court held that the claims were legally insufficient because they were disguised alienation-of-affections claims based on marital infidelity, and North Dakota law abolishes such claims.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Crothers; Gerald W. Vande Walle; Mary Muehlen Maring; Carol Ronning Kapsner; Dale V. Sandstrom
JURISDICTION	North Dakota
DECIDED	October 23, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court judgment granting motions to dismiss under N.D.R.Civ.P. 12(b)(6).
STANDARD OF REVIEW	A motion to dismiss under N.D.R.Civ.P. 12(b)(6) tests the legal sufficiency of the statement of the claim presented in the complaint. The complaint is construed in the light most favorable to the plaintiff, taking as true the well-pleaded allegations. Dismissal is proper only if it is disclosed with certainty the impossibility of proving a claim upon which relief can be granted.
PRECEDENTIAL VALUE	Published
PARTIES	Karl Moseng v. Lynn Frey, Hartland Mutual Insurance Company

TOPICS

- negligence
- negligent infliction of emotional distress
- torts
- motions to dismiss
- civil procedure
- family law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred in granting the motions to dismiss Karl Moseng's claims for negligence and negligent infliction of emotional distress because the claims were legally insufficient as masked alienation of affections claims.

HOLDINGS

1. Karl Moseng's claims are legally insufficient because they are disguised claims for alienation of affections, which have been abolished by N.D.C.C. § 14-02-06.

KEY QUOTATIONS

“All civil claims for relief for breach of promise to marry, alienation of affection, criminal conversation, and seduction are abolished.” (466)

“What is precluded, however, is the refitting of the abolished actions into other forms. One cannot sue to recover for injuries arising from 'defilement of the marriage bed' or from an interference with the marriage by simply casting the defendant's conduct as a breach of contract, or negligence, or some other intentional tort. It is that kind of sham that the case law prevents.” (467)

“Allowing recovery for damages relating to the alienation of a spouse's affections would defeat the legislature's stated purpose in abolishing the heart balm actions.” (467)

“By abolishing these common law torts, the Legislature has registered its intent to preclude recovery for emotional distress resulting from adultery.” (467)

FACTUAL BACKGROUND

Karl Moseng and his wife Vicki Moseng were employed by Hartland Mutual Insurance Company. Lynn Frey was Vicki Moseng's supervisor from 1985 to 2008. Karl Moseng alleged Frey used his supervisory position to arrange sexual liaisons with Vicki from 1988 through 1991, including sending Karl on geographically distant employment tasks to facilitate the liaisons. Karl Moseng also alleged Frey and Hartland concealed the affair. He brought claims of negligence and negligent infliction of emotional distress against Frey and Hartland.

PROCEDURAL HISTORY

The district court dismissed Karl Moseng's complaint with prejudice on March 2, 2012. Moseng appealed.

DISPOSITION

affirmed

CASES CITED

- Hale v. State, 2012 ND 148, 818 N.W.2d 684

- Ziegelmann v. DaimlerChrysler Corp., 2002 ND 134, 649 N.W.2d 556
- Gasper v. Lighthouse, Inc., 73 Md. App. 367, 533 A.2d 1358 (1987)
- R.E.R. v. J.G., 552 N.W.2d 27 (Minn. Ct. App. 1996)
- Quinn v. Walsh, 49 Mass. App. Ct. 696, 732 N.E.2d 330 (2000)

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