

SUPREME COURT OF INDIANA

Merritt v. Evansville-Vanderburgh School Corp.

765 N.E.2d 1232 (Ind. 2002) · No. No. 82S01-0102-CV-98 · Decided April 5, 2002

SUMMARY

The Indiana Supreme Court held that a party waives a claim based on the denial of a challenge for cause when the party had an available peremptory challenge but did not use it to remove the challenged juror. Merritt had sufficient peremptory challenges to remove the jurors at issue but did not do so, and the court therefore affirmed the trial court's judgment without reaching the merits of the alleged juror bias.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Shepard, Chief Justice; Dickson, Justice; Sullivan, Justice; Boehm, Justice; Rucker, Justice
JURISDICTION	Indiana
DECIDED	April 5, 2002
DOCKET	No. 82S01-0102-CV-98
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from a defense verdict in a negligence action, arguing that the trial court improperly denied their challenges for cause to prospective jurors. The Indiana Supreme Court granted transfer to decide whether the claim was waived when plaintiffs did not use an available peremptory challenge to remove one of the challenged jurors.
STANDARD OF REVIEW	A trial court's ruling on a challenge for cause is reviewed for abuse of discretion and will be sustained unless it is illogical or arbitrary. The court did not reach the merits of the challenges because the claim was waived.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Nina Merritt, individually and as next friend and natural mother of Kristin Alexander, Kristin Alexander, individually v. Evansville-Vanderburgh School Corporation

TOPICS

preservation of error

waiver

appellate procedure

civil procedure

standard of review

PRACTICE AREAS

civil procedure

appellate procedure

jury selection

QUESTIONS PRESENTED

1. Whether a party waives a claim that the trial court improperly denied a challenge for cause by failing to use an available peremptory challenge to remove the challenged juror.
2. What showing is required under Indiana law to preserve and obtain a new trial based on the denial of a challenge for cause.

HOLDINGS

1. A claim of error arising from the denial of a challenge for cause is waived unless the appellant uses available peremptory challenges to remove the challenged juror or jurors.
2. An appellant must show that an objectionable juror served because the appellant used a peremptory challenge to cure an erroneous denial of a challenge for cause and that the appellant was unable to remove another objectionable juror because the appellant exhausted the available peremptory challenges.

KEY QUOTATIONS

“As for when such a complaining party is entitled to seek a new trial, a claim of error arising from denial of a challenge for cause is waived unless the appellant used any remaining peremptory challenges to remove the challenged juror or jurors.” (1235)

“you must use any available peremptories to correct erroneous denials of challenges for cause.” (1237)

“If on appeal you then prove both the erroneous denial and that you were unable to strike another objectionable juror because you exhausted your peremptories, you are entitled to a new trial, full stop.” (1237)

“She did not do so, and the claim is waived.” (1238)

FACTUAL BACKGROUND

Six-year-old Kristin Alexander fractured her arm after falling from monkey bars on the Vogel Elementary School playground. Merritt alleged that Evansville-Vanderburgh School Corporation negligently failed to maintain an adequate protective surface. During voir dire, Merritt challenged three prospective jurors for cause because they knew the school's trial representative or worked for the school system; the trial court denied the challenges. Merritt used peremptory challenges to remove two of those jurors and another juror, but allowed Susan Harp, one of the challenged jurors, to serve as jury foreperson.

PROCEDURAL HISTORY

Kristin Alexander and Nina Merritt sued Evansville-Vanderburgh School Corporation after Alexander fractured her arm on a school playground. The jury returned a verdict for EVSC. The Indiana Court of Appeals reversed on the ground that two employee-related prospective jurors were impliedly biased or biased as a matter of law. The Indiana Supreme Court granted transfer and held that the challenge-for-cause claim was waived because Merritt did not use available peremptory challenges to remove the jurors.

DISPOSITION

affirmed

CASES CITED

- Woolston v. State, 453 N.E.2d 965 (Ind. 1983)
- Haak v. State, 275 Ind. 415, 417 N.E.2d 321 (1981)
- Robinson v. State, 453 N.E.2d 280 (Ind. 1983)
- Merritt v. Evansville-Vanderburgh Sch. Corp., 735 N.E.2d 269 (Ind. Ct. App. 2000)
- Edmonson v. Leesville Concrete Co., 500 U.S. 614, 620 (1991)
- Ross v. Oklahoma, 487 U.S. 81 (1988)
- United States v. Martinez-Salazar, 528 U.S. 304 (2000)
- Thompson v. Altheimer & Gray, 248 F.3d 621 (7th Cir. 2001)
- McDonald v. State, 172 Ind. 393, 88 N.E. 673 (1909)
- Grooms v. State, 269 Ind. 212, 379 N.E.2d 458 (1978)
- Block v. State, 100 Ind. 357 (1885)
- Berkman v. State, 459 N.E.2d 44 (Ind. Ct. App. 1984)
- United States v. Martinez-Salazar, 528 U.S. 304, 319 (2000) (Scalia, J., concurring in judgment)
- State v. DiFrisco, 137 N.J. 434, 645 A.2d 734, 753 n. 1 (1994)
- Andrews v. State, 283 Ark. 297, 675 S.W.2d 636, 638 (1984)
- Gootee v. Clevinger, 778 So. 2d 1005, 1009-10 (Fla. Dist. Ct. App. 2000)
- Johnson v. State, 43 S.W.3d 1, 7 (Tex. Crim. App. 2001)
- People v. Macrander, 828 P.2d 234, 244 (Colo. 1992)
- Hart v. State, 265 Ind. 145, 352 N.E.2d 712, 717 (1976)
- Christensen v. Sears, Roebuck & Co., 565 N.E.2d 1103, 1105-07 (Ind. Ct. App. 1991)
- Snodgrass v. Hunt, 15 Ind. 274 (1860)
- Lund v. State, 264 Ind. 428, 345 N.E.2d 826, 829 (1976)