

SUPREME COURT OF SOUTH CAROLINA

Bray v. Marathon Corp., 356 S.C. 111

588 S.E.2d 93 (2003) · No. No. 25733 · Decided October 13, 2003

SUMMARY

The Supreme Court of South Carolina held that a person operating a defective trash compactor may pursue strict liability and negligence claims for physical injuries arising from emotional trauma after witnessing a coworker’s death. The court concluded that the bystander limitations in Kinard did not bar the strict liability claim and that the negligence claim could also proceed because the operator was a foreseeable direct victim; the warranty claims remained abandoned.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Moore; Chief Justice Toal; Justice Waller; Justice Burnett; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	October 13, 2003
DOCKET	No. 25733
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Supreme Court of South Carolina granted certiorari to review the Court of Appeals' partial affirmance and partial reversal of summary judgment in a products-liability action.
STANDARD OF REVIEW	Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court opinion; binding precedent in South Carolina.
PARTIES	Marathon Corporation, American Refuse Systems, Inc. v. Marilyn Bray, Allan Bray

TOPICS

- products liability
- strict liability
- negligence
- summary judgment
- appellate procedure

PRACTICE AREAS

products liability torts civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the bystander limitations recognized in *Kinard v. Augusta Sash & Door Co.* applied to Marilyn Bray's strict-liability products claim.
2. Whether Bray's alleged physical injuries resulting from emotional trauma were sufficient to create a genuine issue of fact on proximate cause for her strict-liability claim.
3. Whether the trial court properly granted summary judgment on Bray's negligence-based products-liability claim because she was not a foreseeable direct victim under the bystander analysis.
4. Whether the warranty claims were abandoned because Bray did not present an argument concerning them on appeal.

HOLDINGS

1. The *Kinard* bystander analysis does not apply to a strict-liability products claim brought by a person who used the defective product. A user of a defective product is a primary and direct victim of the product defect rather than a mere bystander, regardless of the user's relationship to the person injured or killed.
2. Bray's alleged physical injuries arising from emotional trauma could constitute physical harm, and the record presented a genuine issue of material fact as to whether the compactor incident was the proximate cause of that harm.
3. A plaintiff treated as a direct and foreseeable victim because she used the product for strict-liability purposes must also be treated as a direct and foreseeable victim for a negligence-based products-liability claim arising from the same incident. The trial court therefore improperly granted summary judgment on Bray's negligence claim.
4. The warranty claims were abandoned because Bray did not present an argument concerning them on appeal.

KEY QUOTATIONS

"A user of a defective product is not a mere bystander but a primary and direct victim of the product defect." (117)

"It is too fine a distinction to say Bray is a user and therefore a foreseeable plaintiff under a strict liability theory, but that she is not a "direct victim" and not a foreseeable plaintiff under a negligence cause of action." (119)

FACTUAL BACKGROUND

Marilyn Bray operated a Ram Jet Trash Compactor manufactured by Marathon while her coworker, Baron Blackmon, was inside it. When Bray pressed the start button, the ram moved toward Blackmon and pinned him; Blackmon later died from his injuries. Bray alleged that witnessing the incident caused serious and permanent

physical injuries through emotional trauma. An engineering report indicated defects in the compactor's manufacture and design.

PROCEDURAL HISTORY

The trial court granted Marathon summary judgment on all claims, concluding Marilyn Bray was not in direct danger and could not recover as a bystander because she and the deceased were not closely related. The Court of Appeals affirmed summary judgment on negligence, reversed summary judgment on strict liability, and deemed the warranty claims abandoned. The Supreme Court affirmed the strict-liability ruling, reversed the negligence ruling, and affirmed abandonment of the warranty claims.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The negligence claim was reinstated after reversal of summary judgment; the opinion does not state additional specific remand instructions.

CASES CITED

- Bray v. Marathon Corp., 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001)
- Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985)
- Curcio v. Caterpillar, Inc., 344 S.C. 266, 543 S.E.2d 264 (Ct. App. 2001)
- Kately v. Wilkinson, 148 Cal. App. 3d 576, 195 Cal. Rptr. 902 (1983)
- Gnirk v. Ford Motor Co., 572 F. Supp. 1201 (D.S.D. 1983)
- Small v. Pioneer Machinery, Inc., 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997)
- Livingston v. Noland Corp., 293 S.C. 521, 362 S.E.2d 16 (1987)
- Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002)
- Spaugh v. Atlantic Coast Line R. Co., 158 S.C. 25, 155 S.E. 145 (1930)
- Mack v. South-Bound R. Co., 52 S.C. 323, 29 S.E. 905 (1898)
- Bragg v. Hi-Ranger, Inc., 319 S.C. 531, 462 S.E.2d 321 (Ct. App. 1995)
- First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994)
- Barnwell v. Barber-Colman Co., 301 S.C. 534, 393 S.E.2d 162 (1990)
- Schall v. Sturm, Ruger Co., Inc., 278 S.C. 646, 300 S.E.2d 735 (1983)