

SUPREME COURT OF NEW HAMPSHIRE

Palmer v. Nan King Restaurant, Inc.

147 N.H. 681 (2002) · Decided May 7, 2002

SUMMARY

The New Hampshire Supreme Court affirmed summary judgment against the plaintiff’s negligence and products-liability claims seeking damages for emotional distress after she bit into a used bandage in restaurant food. The court held that, under New Hampshire negligence law, emotional-distress recovery requires objectively verifiable physical symptoms, which the plaintiff had not shown. The court remanded for consideration of the plaintiff’s separate breach-of-warranty claim.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Nadeau, J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	May 7, 2002
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed the Superior Court's grant of summary judgment to the defendant on claims arising from eating food containing a used bandage.
STANDARD OF REVIEW	Summary judgment is reviewed by examining the affidavits and other evidence, and all properly drawn inferences, in the light most favorable to the nonmoving party. Summary judgment is affirmed when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. The trial court's application of law to the facts is reviewed de novo.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Georgia Palmer v. Nan King Restaurant, Inc.

TOPICS

- negligence
- negligent infliction of emotional distress
- products liability
- summary judgment
- breach of contract

PRACTICE AREAS

torts

civil procedure

contracts

QUESTIONS PRESENTED

1. Whether New Hampshire law permits recovery for emotional distress under a traditional negligence theory without proof of resulting physical injury or physical symptoms.
2. Whether the physical impact of biting into a used bandage eliminates the requirement to prove physical injury or physical symptoms for an emotional-distress claim based on negligence.
3. Whether the plaintiff's evidence of anxiety and emotional distress established the physical manifestation required for recovery.
4. Whether the same physical-injury requirement applies to the plaintiff's negligence-based products-liability claim.
5. Whether summary judgment could be affirmed on the breach-of-warranty claim when the trial court had not specifically addressed that claim.

HOLDINGS

1. A plaintiff seeking damages for emotional distress under a traditional negligence theory must demonstrate that physical injury resulted from the distress, including objectively verifiable physical symptoms; anxiety and emotional upset alone are insufficient.
2. Physical impact does not eliminate the requirement of proving physical injury or physical symptoms when the plaintiff seeks recovery for emotional distress under a traditional negligence theory rather than for personal injury.
3. Descriptions of the plaintiff as concerned, distressed, anxious, and emotionally distraught, together with an opinion that she suffered true emotional distress, did not establish the objectively verifiable physical symptoms required for recovery.
4. A products-liability claim based on the defendant's negligent conduct requires proof of the elements of the underlying negligence claim, including the physical-injury requirement applicable to emotional-distress damages.
5. The court could not affirm summary judgment on the breach-of-warranty claim because the trial court had not specifically addressed that claim.

KEY QUOTATIONS

“before a plaintiff can recover damages for emotional distress pursuant to a negligence cause of action, he or she must prove that physical injury resulted therefrom.” (683)

“Therefore, regardless of physical impact, in order to recover for emotional distress under a traditional negligence theory, the plaintiff must demonstrate physical symptoms of her distress.” (684)

“Accordingly we remand for the limited purpose of consideration of the plaintiffs breach of warranty claim.” (685)

FACTUAL BACKGROUND

On April 25, 1997, Palmer purchased take-out food from Nan King Restaurant and bit into a used bandage while eating it. She experienced physical and mental revulsion and extreme anxiety that she might have contracted an infectious disease, but tests for HIV and hepatitis were negative. Her physician described her as anxious and emotionally distraught, but the record contained no additional claim of physical injury or objectively verifiable physical symptoms resulting from the anxiety.

PROCEDURAL HISTORY

Palmer sued Nan King Restaurant, Inc., alleging negligence, products liability, and breach of warranty after biting into a used bandage in take-out food. The Superior Court granted summary judgment to the defendant on November 15, 2000, concluding that Palmer had not shown a physical injury accompanying her emotional distress, and denied reconsideration on December 13, 2000. The Supreme Court of New Hampshire affirmed the judgment in part and remanded for consideration of the breach-of-warranty claim, which the trial court had not specifically addressed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for the limited purpose of considering the plaintiff's breach-of-warranty claim under RSA 382-A:2-715.

CASES CITED

- Del Norte, Inc. v. Provencher, 142 N.H. 535, 537 (1997)
- N.E. Tel. & Tel. Co. v. City of Franklin, 141 N.H. 449, 452 (1996)
- Chiuchiolo v. New England Wholesale Tailors, 84 N.H. 329, 334, 337-338 (1930)
- Thorpe v. State, 133 N.H. 299, 303-304 (1990)
- Corso v. Merrill, 119 N.H. 647, 652-653 (1979)
- Kenney v. Wong Len, 81 N.H. 427, 433 (1925)