

SUPREME COURT OF SOUTH DAKOTA

Carlson v. The Construction Company

Carlson, 2009 SD 6 (S.D. 2009) · No. Nos. 24787, 24802-a-JKK · Decided February 4, 2009

SUMMARY

The South Dakota Supreme Court affirmed a jury verdict for a general contractor in a premises liability action involving sheetrock that fell on an employee's foot at a construction site. The court held that the evidence created a factual dispute regarding negligent storage and that the trial court properly denied a directed verdict. It also held that the plaintiff's proposed instruction concerning compliance with local custom was an incorrect statement of law and that the jury instructions, considered as a whole, were adequate.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Konenkamp, Justice; Gilbertson, Chief Justice; Zinter, Justice; Meierhenry, Justice; Sabers, Retired Justice
JURISDICTION	South Dakota
DECIDED	February 4, 2009
DOCKET	Nos. 24787, 24802-a-JKK
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a jury returned a verdict for the general contractor in Carlson's premises-liability action, Carlson appealed the denial of her motion for a directed verdict on negligence and the refusal to give her requested jury instruction concerning industry custom.
STANDARD OF REVIEW	The denial of a directed-verdict motion is reviewed for abuse of discretion, with evidence viewed in the light most favorable to the nonmoving party. A trial court's decision to grant or deny a particular jury instruction is generally reviewed for abuse of discretion, but whether the instructions as a whole correctly state the law is reviewed de novo. Incorrect, misleading, conflicting, or confusing instructions constitute reversible error only when erroneous and prejudicial.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Caryn Carlson v. The Construction Company

TOPICS

premises liability

construction law

negligence

motion for directed verdict

jury instructions

PRACTICE AREAS

premises liability

negligence

construction law

civil procedure

jury instructions

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying Carlson's motion for a directed verdict on the issue of negligence.
2. Whether the circuit court erred by refusing Carlson's requested instruction that compliance with local custom is not compliance with the reasonable-person standard.
3. Whether the circuit court had a duty to modify or rewrite Carlson's substantively incorrect requested jury instruction.

HOLDINGS

1. The circuit court properly denied Carlson's motion for a directed verdict because the evidence presented a factual dispute about whether the sheetrock was negligently stored and whether Carlson's actions caused it to fall.
2. The requested instruction was properly rejected because it incorrectly stated that compliance with local custom is not compliance with the reasonable-person standard; the reasonable-person standard is determined from the evidence and is for the jury to decide.
3. South Dakota trial judges have no duty to modify or rewrite a party's substantively incorrect requested jury instruction in a civil case, although minor typographical errors in an otherwise correct instruction should not alone justify refusal.

KEY QUOTATIONS

“Based on our review of these cases and South Dakota law, we also decline to impose a duty on a judge to modify or rewrite a party's substantively incorrect requested instruction in a civil case.” (§16)

“Based on the evidence presented, it was within the jury's province to determine whether it was reasonable for the Company to store sheetrock as it did.” (§17)

FACTUAL BACKGROUND

Caryn Carlson, an employee of an insulation business, was working at a home constructed by The Construction Company when a 110-pound sheet of sheetrock fell on her foot. The sheetrock had been stacked on its long edge against an interior wall stud. Carlson alleged that the Company negligently stored the sheetrock despite manufacturer instructions, OSHA standards, and a prior sheetrock accident at the worksite. The Company presented evidence that storing sheetrock on edge was customary and could be safe, and that Carlson may have pulled the sheetrock while looking for an outlet.

PROCEDURAL HISTORY

Carlson sued The Construction Company after sheetrock fell on her foot at a construction site. The case was tried to a jury, which returned a verdict for the Company. The circuit court denied Carlson's motion for a directed verdict and rejected her proposed instruction regarding local custom and the reasonable-person standard. The South Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Garland v. Rossknecht, 2001 SD 42, ¶16, 624 NW2d 700, 704
- United States and Hartzell Propeller, Inc. v. South Dakota, 1999 SD 94, ¶7, 598 NW2d 208, 211
- Jurens v. Lorenz Mfg. Co., 1998 SD 49, ¶5, 578 NW2d 151, 153
- Zacher v. Budd Co., 396 NW2d 122, 133-34 (SD 1986)
- Kuper v. Lincoln-Union Elec. Co., 1996 SD 145, ¶32, 557 NW2d 748, 758
- Bauman v. Auch, 539 NW2d 320, 323 (SD 1995)
- Lord v. Hy-Vee Food Stores, 2006 SD 70, ¶17, 720 NW2d 443, 449
- First Premier Bank v. Kolcraft Enter., Inc., 2004 SD 92, ¶40, 686 NW2d 430, 448
- Luke v. Deal, 2005 SD 6, ¶11, 692 NW2d 165, 168
- Parker v. Casa Del Rey-Rapid City, Inc., 2002 SD 29, ¶5, 641 NW2d 112, 115
- State v. Frazier, 2001 SD 19, ¶35, 622 NW2d 246, 259
- Papke v. Harbert, 2007 SD 87, ¶13, 738 NW2d 510, 515
- Ballard v. Happy Jack's Supper Club, 425 NW2d 385, 387-88 (SD 1988)
- Garhart ex rel. Tinsman v. Columbia/Healthone, L.L.C., 95 P3d 571, 587 (Colo. 2004)
- Hansen v. State Farm Mut. Auto. Ins. Co., 957 P2d 1380, 1384-85 (Colo. 1998)
- Downs v. Powell, 108 SE2d 715, 718 (Ga. 1959)
- Cua v. Ramos, 433 NE2d 745, 749 (Ind. 1982)
- Duncan v. Strating, 99 NW2d 559, 660 (Mich. 1959)
- Winnett v. City of Portland, 847 P2d 902, 908 (Or. Ct. App. 1993)
- Beglau v. Albertus, 536 P2d 1251 (Or. 1975)
- Honsinger v. Egan, 585 SE2d 597, 601 (Va. 2003)
- Dahlgren v. United States, 553 F2d 434, 440 (5th Cir. 1977)
- Emery v. Northern Pac. R.R. Co., 407 F2d 109, 112 n.3 (8th Cir. 1969)
- Chavez v. Sears, Roebuck & Co., 525 F2d 827, 830 (10th Cir. 1975)