

SUPREME COURT OF APPEALS OF WEST VIRGINIA

In re: Flood Litigation, 216 W. Va. 534

607 S.E.2d 863 (2004) · No. No. 31688 · Decided December 9, 2004

SUMMARY

The Supreme Court of Appeals of West Virginia addressed certified questions arising from lawsuits concerning flooding in southern West Virginia on July 8, 2001. The court held that plaintiffs could pursue claims based on unreasonable use of land, negligence, and interference with riparian rights, while rejecting strict liability for the defendants' natural-resource extraction activities and declining to resolve the nuisance question on the stipulated facts. The court also concluded that state-law claims were not preempted merely because the activities complied with federal law and permits.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Maynard; Judge Clawges, sitting by temporary assignment; Justice McGraw, disqualified and did not participate
JURISDICTION	West Virginia
DECIDED	December 9, 2004
DOCKET	No. 31688
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Appeals of West Virginia reviewed certified questions of law from the Flood Litigation Panel arising from motions for judgment on the pleadings in consolidated litigation concerning flooding allegedly connected to defendants' extraction and removal of natural resources.
STANDARD OF REVIEW	De novo review applies to questions of law answered and certified by a circuit court.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Plaintiffs and appellants in the July 8, 2001 flood litigation v. Defendants and appellees, including coal companies, timbering companies, landowners, lessors, railroads, and gas companies

TOPICS

negligence

nuisance

strict liability

real estate

appellate procedure

PRACTICE AREAS

torts

real estate

environmental law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether adjacent and non-adjacent plaintiffs may pursue an unreasonable-use-of-land claim under the balancing test in *Morris Associates, Inc. v. Priddy*.
2. Whether plaintiffs may pursue negligence claims based on defendants' use of their land.
3. Whether natural-resource extraction or conditions resulting from it constitute abnormally dangerous activities subject to strict liability.
4. Whether riparian owners may pursue claims based on increased stream flow and flooding of their land.
5. Whether federal law preempts state-law claims for flood damages when natural-resource extraction complied with federal law and permits.
6. Whether regulatory compliance is evidence in negligence or unreasonable-use actions.
7. How causation and damages should be allocated when an unusual, unforeseeable rainfall event combines with actionable conduct.

HOLDINGS

1. Both adjacent and non-adjacent plaintiffs may state a cognizable cause of action for unreasonable use of land under the balancing test adopted in *Morris Associates, Inc. v. Priddy*; reasonableness is ordinarily a factual question for the jury.
2. A jury determining whether a landowner acted reasonably under the *Morris* rule should generally consider all relevant circumstances, including the amount and foreseeability of harm and the purpose or motive of the landowner.
3. The court did not answer the nuisance certified question because the stipulated facts were insufficiently precise and undisputed, but held that West Virginia nuisance law does not categorically exclude claims involving surface-water diversion or require repeated or continuous interference.
4. Plaintiffs may state cognizable negligence claims based on defendants' use of their land.
5. Natural-resource extraction activities and ancillary conditions alleged in this litigation are not categorically abnormally dangerous, and defendants are not strictly liable on the stipulated facts.
6. Riparian plaintiffs whose property borders or contains a stream in the affected watersheds may state claims for interference with riparian rights when flooding substantially increases the stream's natural flow or causes water to overflow and stand on their land.
7. Federal law does not preempt the plaintiffs' state-law claims for flood damages under the facts presented, even where extraction complied with federal law and federal permits.

8. Compliance with applicable state and federal regulations is competent evidence in negligence and unreasonable-use claims when the injury is of the type the regulations were intended to prevent, but compliance does not establish due care, create a presumption of due care, or eliminate liability.
9. When an unusual and unforeseeable rainfall event combines with actionable conduct, a defendant is liable only for damage fairly attributable to its conduct if the defendant proves by clear and convincing evidence the character and measure of damage that was unforeseeable, solely caused by the rainfall event, and not fairly attributable to the defendant. If the defendant cannot make that showing, it bears the entire liability.

KEY QUOTATIONS

“Accordingly, we decline to answer questions 1.a. and 1.b.” (216 W. Va. 541)

“Such compliance, however, does not give rise to a presumption that the landowner acted reasonably or without negligence or liability to others in his or her extraction and removal activities.” (216 W. Va. 548)

“However, in such a case, a defendant has the burden to show by clear and convincing evidence the character and measure of damages that are not the defendant's responsibility; and if the defendant cannot do so, then the defendant bears the entire liability.” (216 W. Va. 549-550)

FACTUAL BACKGROUND

On July 8, 2001, unusually heavy rain caused flooding in several southern West Virginia counties, resulting in property damage, personal injury, and death. Plaintiffs alleged that coal, timber, oil, and gas operations and other land disturbances altered natural drainage and increased peak surface-water flows. They asserted theories including unreasonable use of land, negligence, nuisance, interference with riparian rights, strict liability, and wrongful death.

PROCEDURAL HISTORY

After the July 8, 2001 floods, hundreds of plaintiffs filed actions in several southern West Virginia counties against numerous defendants. The Chief Justice referred the matters to a Flood Litigation Panel, which determined that the cases involved differing factual patterns but common legal issues and certified questions under West Virginia Rule of Civil Procedure 12(c), West Virginia Code § 58-5-2, and *Bass v. Coltelli*. The Supreme Court reformulated several questions, answered the certified questions as specified, and returned the matters for further proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

The Flood Litigation Panel and any trial court should apply the announced legal rules to the facts as further developed, including determining whether nuisance claims lie and applying the regulatory-compliance and causation-and-damages standards.

CASES CITED

- Bass v. Coltelli, 192 W. Va. 516, 453 S.E.2d 350 (1994)
- Gallapoo v. Wal-Mart Stores, Inc., 197 W. Va. 172, 475 S.E.2d 172 (1996)
- Morris Associates, Inc. v. Priddy, 181 W. Va. 588, 383 S.E.2d 770 (1989)
- Hendricks v. Stalnaker, 181 W. Va. 31, 380 S.E.2d 198 (1989)
- Jordan v. City of Benwood, 42 W. Va. 312, 26 S.E. 266 (1896)
- Page Motor Co., Inc. v. Baker, 182 Conn. 484, 438 A.2d 739 (1980)
- Collins v. Wickland, 251 Minn. 419, 88 N.W.2d 83 (1958)
- Keys v. Romley, 64 Cal. 2d 396, 412 P.2d 529, 50 Cal. Rptr. 273 (1966)
- Rick v. Worden, 369 N.W.2d 15 (Minn. Ct. App. 1985)
- Mahoney v. Walter, 157 W. Va. 882, 205 S.E.2d 692 (1974)
- Sewell v. Gregory, 179 W. Va. 585, 371 S.E.2d 82 (1988)
- Peneschi v. National Steel Corp. v. Koppers Co., Inc., 170 W. Va. 511, 295 S.E.2d 1 (1982)
- Bowers v. Wurzburg, 207 W. Va. 28, 528 S.E.2d 475 (1999)
- Snyder v. Callaghan, 168 W. Va. 265, 284 S.E.2d 241 (1981)
- Roberts v. Martin, 72 W. Va. 92, 77 S.E. 535 (1913)
- McCausland v. Jarrell, 136 W. Va. 569, 68 S.E.2d 729 (1951)
- Hartley Marine Corp. v. Mierke, 196 W. Va. 669, 474 S.E.2d 599 (1996)
- Chevy Chase Bank v. McCamant, 204 W. Va. 295, 512 S.E.2d 217 (1998)
- Gade v. National Solid Wastes Management Ass'n, 505 U.S. 88, 112 S. Ct. 2374, 120 L. Ed. 2d 73 (1992)
- Miller v. Warren, 182 W. Va. 560, 390 S.E.2d 207 (1990)
- State ex rel. Summers v. Sims, 142 W. Va. 640, 97 S.E.2d 295 (1957)
- Atkinson v. Chesapeake & O. Ry. Co., 74 W. Va. 633, 82 S.E. 502 (1914)
- Adkins v. City of Hinton, 149 W. Va. 613, 142 S.E.2d 889 (1965)
- Williams v. Columbus Producing Co., 80 W. Va. 683, 93 S.E. 809 (1917)
- Riddle v. Baltimore & O.R. Co., 137 W. Va. 733, 73 S.E.2d 793 (1952)
- Kincaid v. Mangum, 189 W. Va. 404, 432 S.E.2d 74 (1993)

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