

SUPREME COURT OF THE STATE OF OREGON

Yeatts v. Polygon Northwest Co.

360 Or 170 (2016) · No. S062977 · Decided August 4, 2016

SUMMARY

The Oregon Supreme Court reviewed claims arising from a construction worker's fall from a third-floor worksite against the general contractor under Oregon's Employer Liability Law and common-law negligence. The court held that the plaintiff presented sufficient evidence to proceed on the theory that the contractor retained the right to control the risk-producing activity, but not on common enterprise or actual-control theories. It affirmed the dismissal of the negligence claim and remanded the retained-control ELL claim for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of Oregon
WRITING FOR THE COURT	Brewer, J.; Balmer, Chief Justice; Kistler, J.; Walters, J.; Landau, J.; Baldwin, J.
JURISDICTION	Oregon
DECIDED	August 4, 2016
DOCKET	S062977
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought review of the Oregon Court of Appeals' affirmance of summary judgment for the general contractor on claims under Oregon's Employer Liability Law and for common-law negligence.
STANDARD OF REVIEW	On summary judgment, the court views the evidence and all reasonable inferences in the light most favorable to the nonmoving party and determines whether a genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published, precedential Oregon Supreme Court decision.
PARTIES	Arthur Yeatts, Nancy Doty, Inc., Special Fiduciary for Arthur Yeatts, Matthew Whitman v. Polygon Northwest Company

TOPICS

construction law

negligence

duty of care

standard of care

torts

PRACTICE AREAS

construction law

torts

personal injury

negligence

QUESTIONS PRESENTED

1. Whether plaintiff presented sufficient evidence that Polygon and Wood Mechanix were engaged in a common enterprise under Oregon's Employer Liability Law.
2. Whether plaintiff presented sufficient evidence that Polygon actually controlled the manner or method of the risk-producing framing work.
3. Whether Polygon retained a right to control the risk-producing activity under the Employer Liability Law, sufficient to create a triable issue of fact.
4. Whether Polygon owed plaintiff a common-law duty to discover, warn against, or avoid unknown dangerous conditions involving fall protection for framing work performed by an expert subcontractor.

HOLDINGS

1. Polygon and Wood Mechanix were not engaged in a common enterprise with respect to the risk-producing activity because there was no evidence that Polygon's employees or equipment participated in the framing work or in designing, assembling, or maintaining the failed guardrail.
2. Plaintiff did not present sufficient evidence that Polygon actually controlled the manner or method of the framing work at a dangerous height.
3. Polygon's contractual retention of the right to require additional safety measures and to inspect the worksite in its entirety was sufficient evidence that Polygon retained the right to control the risk-producing activity, precluding summary judgment on that specification of plaintiff's ELL claim.
4. The court disavowed Wilson to the extent it required a plaintiff to show that the defendant's retained right to control a risk-producing activity created an additional risk by causing the direct employer to be less diligent.
5. Polygon had no common-law duty to plaintiff to discover, warn against, or avoid unknown dangerous conditions relating to fall protection for the framing work because Polygon relied on Wood Mechanix's expertise and knowledge regarding the design, construction, and maintenance of the guardrails.

KEY QUOTATIONS

"Oregon's ELL imposes liability on "all owners, contractors or subcontractors and other persons having charge of, or responsibility for" work involving a risk or danger." (179)

"To the contrary, such an inspection right creates an additional opportunity to avoid jobsite injury, even if the subcontractor has an undiminished incentive to diligently inspect its own work." (190)

"We disavow that holding to the extent that it requires a plaintiff to show that a defendant's right to control a risk-producing activity created an additional risk of danger to the plaintiff by causing the plaintiff's direct employer to be less diligent." (192)

“Under those circumstances, Polygon did not have a common-law duty to Wood Mechanix’s employees, including plaintiff, to discover, warn against, or avoid unknown dangerous conditions relating to fall protection for the framing work.” (196)

FACTUAL BACKGROUND

Polygon was the general contractor for a townhome development and contracted with Wood Mechanix, plaintiff's direct employer, to perform framing work. Wood Mechanix was primarily responsible for designing, assembling, and maintaining fall-protection guardrails, but Polygon's contract allowed it to require additional safety measures and its safety plan allowed its superintendents to inspect the entire worksite. Plaintiff fell approximately 19 feet from the third floor when he leaned against a guardrail that gave way.

PROCEDURAL HISTORY

The Clackamas County Circuit Court granted Polygon summary judgment on both claims. The Oregon Court of Appeals affirmed. The Oregon Supreme Court affirmed in part and reversed in part, holding that plaintiff presented sufficient evidence to proceed on the retained-right-to-control specification of the ELL claim, while affirming summary judgment on the remaining ELL specifications and the negligence claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Clackamas County Circuit Court for further proceedings on the retained-right-to-control specification of plaintiff's ELL claim. The summary judgment rulings on the common-enterprise and actual-control specifications and on the common-law negligence claim remain affirmed.

CASES CITED

- Jones v. General Motors Corp., 325 Or 404, 420, 939 P2d 608 (1997)
- Wilson v. P.G.E. Co., 252 Or 385, 391-98, 448 P2d 562 (1968)
- Woodbury v. CH2M Hill, Inc., 335 Or 154, 160-63, 61 P3d 918 (2003)
- Thomas v. Foglio, 225 Or 540, 549, 385 P2d 1066 (1961)
- Sacher v. Bohemia, Inc., 302 Or 477, 485-87, 731 P2d 434 (1987)
- Boothby v. D.R. Johnson Lumber Co., 341 Or 35, 41, 43-46, 137 P3d 699 (2006)
- Cortez v. Nacco Materials Handling Group, 356 Or 254, 274-77, 337 P3d 111 (2014)
- Farmers Ins. Co. v. Mowry, 350 Or 686, 692-93, 261 P3d 1 (2011)
- G.L. v. Kaiser Foundation Hospitals, Inc., 306 Or 54, 59, 757 P2d 1347 (1988)
- PGE v. Bureau of Labor and Industries, 317 Or 606, 610-11, 859 P2d 1143 (1993)
- State v. Gaines, 346 Or 160, 171-72, 206 P3d 1042 (2009)
- Saylor v. Enterprise Electric Co., 106 Or 421, 425-28, 212 P 477 (1923)

- *Wienke v. Ochoco Lumber Co.*, 276 Or 1159, 1167-68, 588 P2d 319 (1976)
- *Fazzolari v. Portland School Dist. No. 1J*, 303 Or 1, 17, 734 P2d 1326 (1987)
- *Yowell v. General Tire & Rubber*, 260 Or 319, 324-26, 490 P2d 145 (1971)
- *Howard v. Foster & Kleiser Co.*, 217 Or 516, 533, 332 P2d 621 (1958), reh'g denied, 217 Or 516, 342 P2d 780 (1959)
- *Fromme v. Lang & Co.*, 131 Or 501, 505, 281 P 120 (1929)
- *Kuhns v. Standard Oil Co.*, 257 Or 482, 485-90, 494, 478 P2d 396 (1971)
- *Macomber v. Cox*, 249 Or 61, 65 & n 3, 435 P2d 462 (1968)
- *Feldewerth v. Great Eastern Oil Co.*, 149 SW2d 410, 413 (Mo Ct App 1941)
- *Palenscar v. Michael J. Bobb, Inc.*, 439 Pa 101, 105, 266 A2d 478 (1970)

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