

SUPREME COURT OF NEBRASKA

Cerny v. Cedar Bluffs Junior/Senior Public School

267 Neb. 958 (2004) · Decided May 7, 2004

SUMMARY

The Nebraska Supreme Court affirmed the dismissal of Brent Cerny’s personal injury action against Cedar Bluffs Junior and Senior High School under the Political Subdivisions Tort Claims Act. The court held that the applicable standard of care was that of a reasonably prudent person holding a Nebraska teaching certificate with a coaching endorsement. It concluded that the district court’s findings that the coaches evaluated Cerny appropriately and did not act negligently were supported by the evidence and were not clearly wrong.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Connolly; Gerrard; Hendry; Lerman; McCormack; Miller; Stephan; Wright
JURISDICTION	Nebraska
DECIDED	May 7, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's judgment after a second bench trial on remand, finding no negligence by the School and dismissing Cerny's personal injury petition under the Political Subdivisions Tort Claims Act.
STANDARD OF REVIEW	In an action under the Political Subdivisions Tort Claims Act, the trial court's findings are reviewed for clear error. The evidence is viewed in the light most favorable to the successful party, controverted facts are resolved in that party's favor, and the appellate court does not reweigh the evidence.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Brent Cerny v. Cedar Bluffs Junior/Senior Public School

TOPICS

- standard of care
- negligence
- personal injury
- municipal liability
- appellate procedure

PRACTICE AREAS

negligence

personal injury

municipal liability

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court improperly considered and credited the testimony of the School's expert witness regarding the conduct required by the applicable standard of care.
2. Whether the district court correctly determined what conduct was required of a reasonably prudent person holding a Nebraska teaching certificate with a coaching endorsement when a player sustains a possible head injury.
3. Whether the district court clearly erred in finding that the coaches' evaluation of Cerny and decision to allow him to reenter the game conformed to the applicable standard of care.
4. Whether the district court clearly erred in finding that the School was not negligent.

HOLDINGS

1. The district court, as the fact finder, was entitled to determine the weight to be given to the qualified expert's testimony, and the appellate court would not reweigh that evidence.
2. The applicable standard of care was that of a reasonably prudent person holding a Nebraska teaching certificate with a coaching endorsement.
3. The district court's findings that the coaches evaluated Cerny at intervals, assessed his symptoms, and reasonably permitted him to reenter the game were supported by the evidence and were not clearly wrong.
4. The School was not negligent because its coaches' conduct comported with the applicable standard of care.

KEY QUOTATIONS

“Under the law-of-the-case doctrine, the applicable standard of care that the School’s coaches were required to meet in this case has been conclusively established.” (at 967)

“The district court’s findings that the coaches’ conduct met the standard of care and that the School was not negligent are supported by evidence and are not clearly wrong.” (at 970)

FACTUAL BACKGROUND

During a September 15, 1995, high school football game, Brent Cerny fell while attempting a tackle and struck his head. He reported or displayed symptoms including dizziness, fuzziness, disorientation, shortness of breath, and tingling, although the evidence conflicted regarding the symptoms he experienced and communicated. After observing Cerny and determining that his symptoms had resolved, the coaches allowed him to return to the game. Cerny was allegedly injured again during a contact tackling drill at practice on September 19, and medical experts testified that the second blow caused his traumatic brain injury and resulting sequelae.

PROCEDURAL HISTORY

Cerny sued Cedar Bluffs Junior/Senior Public School under the Political Subdivisions Tort Claims Act, alleging that the School's football coaches negligently failed to prevent him from returning to play after a possible concussion. The district court initially found no negligence and dismissed the petition. In Cerny I, the Nebraska Supreme Court held that the district court applied the wrong standard of care and improperly discounted expert testimony, reversed, and remanded for a new trial. After the second bench trial, the district court found that the coaches' conduct satisfied the applicable standard of care and again dismissed the petition. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Cerny v. Cedar Bluffs Jr/Sr. Pub. Sch., 262 Neb. 66, 628 N.W.2d 697 (2001)
- Estate of McElwee v. Omaha Transit Auth., 266 Neb. 317, 664 N.W.2d 461 (2003)
- Skinner v. Ogallala Pub. Sch. Dist. No. 1, 262 Neb. 387, 631 N.W.2d 510 (2001)
- Hawkins v. City of Omaha, 261 Neb. 943, 627 N.W.2d 118 (2001)
- Anderson/Couvillon v. Nebraska Dept. of Soc. Servs., 253 Neb. 813, 572 N.W.2d 362 (1998)
- City of LaVista v. Andersen, 240 Neb. 3, 480 N.W.2d 185 (1992)
- Houston v. Metrovision, Inc., ante p. 730, 677 N.W.2d 139 (2004)