

SUPREME COURT OF NEBRASKA

Hradecky v. State, 264 Neb. 771

652 N.W.2d 277 (2002) · No. Nos. S-01-582, S-01-583 · Decided October 18, 2002

SUMMARY

The Nebraska Supreme Court reviewed consolidated personal injury actions arising from a snowplow collision on Interstate 80. The court upheld Laura Hradecky's \$35,000 recovery against the State, the apportionment of liability and contribution against Bernard Hradecky, and the denial of Bernard's separate claim based on comparative negligence. It also held that Laura lacked standing to challenge the jury trial of the State's third-party contribution claim and that sufficient evidence supported submitting Bernard's gross negligence to the jury.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stephan, J.; Hendry, C.J.; Connolly, J.; Gerrard, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	October 18, 2002
DOCKET	Nos. S-01-582, S-01-583
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Hradeckys separately appealed judgments entered after consolidated bench and jury proceedings in their State Tort Claims Act negligence actions. Laura appealed the judgment awarding her damages against the State while imposing 80 percent of fault on Bernard through the State's third-party contribution claim. Bernard appealed the judgment denying his personal injury claim because his negligence exceeded that of the State, and cross-appealed the submission of gross negligence to the jury.
STANDARD OF REVIEW	Findings of fact in a State Tort Claims Act proceeding are reviewed for clear error. The amount of damages will not be disturbed if supported by the evidence and reasonably related to the elements of damages proved. A ruling on a motion to sever a third-party claim is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Bernard Hradecky, Laura Hradecky v. State of Nebraska

TOPICS

negligence

personal injury

third party practice

standing

civil procedure

PRACTICE AREAS

torts

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QUESTIONS PRESENTED

1. Whether Laura had standing to challenge the State's use of a jury to decide factual issues in its third-party contribution claim against Bernard.
2. Whether the district court abused its discretion by refusing to sever or separately try the State's third-party claim.
3. Whether the district court improperly used the jury as an advisory jury or accepted the jury's verdict in deciding the Hradeckys' personal injury claims.
4. Whether alleged cumulative trial errors required reversal or a new trial.
5. Whether Laura's \$35,000 damages award was inadequate.
6. Whether the evidence was sufficient to submit Bernard's gross negligence to the jury.
7. Whether the district court erred in denying Bernard's motion for a new trial or in finding that his negligence barred recovery on his personal injury claim.

HOLDINGS

1. Laura lacked standing to challenge whether the State had a right to a jury trial on its third-party contribution claim because that claim involved only the rights and interests of the State and Bernard, not Laura's claim against the State.
2. A motion to sever a third-party claim under Neb. Rev. Stat. § 25-331 is committed to the trial court's discretion and is reviewed for abuse of discretion. The district court did not abuse its discretion by trying the third-party factual issues before a jury while deciding the Hradeckys' claims without a jury.
3. The district court did not improperly treat the jury as an advisory jury or use the jury's verdict to decide Laura's or Bernard's separate personal injury claims.
4. The court declined to decide whether the cumulative-error doctrine could apply generally in a civil case because, even assuming it could, the record provided no basis for applying it here.
5. The \$35,000 damages award was supported by the evidence and reasonably related to the damages proved; therefore, the district court properly denied Laura's motion for a new trial based on inadequate damages.
6. The evidence was sufficient to submit gross negligence to the jury. A person who intentionally and deliberately enters a closed roadway and continues driving in near-zero visibility may be found to have

acted without even slight care, even while driving slowly and using headlights.

7. The district court properly found that Bernard's negligence was greater than the State's and barred his recovery under Nebraska's comparative-negligence statute, and it properly denied his motion for a new trial.

KEY QUOTATIONS

*“The third-party claim thus involved the rights and interests of only the State and Bernard, not those of Laura.” (*284)*

*“We therefore conclude that a motion to sever a third-party claim pursuant to § 25-331 is addressed to the discretion of the trial court, and an order granting or denying such motion is reviewed by an appellate court for abuse of discretion.” (*285)*

*“One who intentionally and deliberately enters a closed roadway and continues to drive on such roadway in near zero visibility can reasonably be found to be exhibiting the absence of even slight care, even if the person drives slowly and with his or her headlights on.” (*287)*

FACTUAL BACKGROUND

On February 25, 1998, a State snowplow struck the vehicle Bernard Hradecky was driving on Interstate 80, injuring Bernard and Laura, who was a passenger. The evidence conflicted about whether Bernard entered the interstate before or after the access gates were closed, but the district court found that he entered despite clear notice that the road was closed and continued driving in deteriorating, near-zero-visibility conditions. The district court found the State negligent, found Bernard grossly negligent for purposes of Laura's claim and negligent to a greater degree than the State for purposes of his own claim, and awarded Laura \$35,000 in damages.

PROCEDURAL HISTORY

After the State Claims Board denied their claims, Bernard and Laura filed separate negligence actions against Nebraska under the State Tort Claims Act. The district court granted the Hradeckys partial summary judgment on the State's negligence, denied the State's summary-judgment motions, allowed the State to file a third-party contribution claim against Bernard, and consolidated the cases for trial. The court tried the Hradeckys' claims and damages issues without a jury and submitted disputed factual issues in the third-party claim to a jury. Laura obtained a \$35,000 judgment, with liability apportioned 20 percent to the State and 80 percent to Bernard; Bernard recovered nothing because his negligence was greater than the State's. The district court denied the motions for new trial, and the Nebraska Supreme Court affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- Meyer v. State, 264 Neb. 545, 650 N.W.2d 459 (2002)

- Goodenow v. State, 259 Neb. 375, 610 N.W.2d 19 (2000)
- Woollen v. State, 256 Neb. 865, 593 N.W.2d 729 (1999)
- State on Behalf of Hopkins v. Batt, 253 Neb. 852, 573 N.W.2d 425 (1998)
- In re Adoption of Baby Girl H., 262 Neb. 775, 635 N.W.2d 256 (2001)
- In re Estate of Dickie, 261 Neb. 533, 623 N.W.2d 666 (2001)
- Chambers v. Lautenbaugh, 263 Neb. 920, 644 N.W.2d 540 (2002)
- Miller v. City of Omaha, 260 Neb. 507, 618 N.W.2d 628 (2000)
- Hawkes v. Lewis, 255 Neb. 447, 586 N.W.2d 430 (1998)
- Slaymaker v. Breyer, 258 Neb. 942, 607 N.W.2d 506 (2000)
- Church of the Holy Spirit v. Bevco, Inc., 215 Neb. 299, 338 N.W.2d 601 (1983)
- Employers Reins. Corp. v. Santee Pub. Sch. Dist. No. C-5, 231 Neb. 744, 438 N.W.2d 124 (1989)
- Life Investors Ins. Co. v. Citizens Nat. Bank, 223 Neb. 663, 392 N.W.2d 771 (1986)
- Swenson v. Suhl, 19 F.R.D. 517 (D. Neb. 1956)
- Beach v. Smith, 298 S.C. 424, 380 S.E.2d 869 (S.C. App. 1989)
- Wamsley v. State, 171 Neb. 197, 106 N.W.2d 22 (1960)
- Skinner v. Ogallala Pub. Sch. Dist. No. 1, 262 Neb. 387, 631 N.W.2d 510 (2001)
- Youngs v. Potter, 237 Neb. 583, 467 N.W.2d 49 (1991)
- Carlson v. Waddle, 223 Neb. 671, 392 N.W.2d 777 (1986)

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