

NORTH DAKOTA SUPREME COURT

State of North Dakota, by and through the North Dakota Department of Corrections and Rehabilitation and the North Dakota Youth Correctional Center v. Honorable Bruce Haskell, Judge of the District Court, South Central Judicial District, and Delmar Markel

State ex rel. North Dakota Department of Corrections & Rehabilitation v. Haskell, 2017 ND 252 (2017) · No. 20170293 · Decided October 17, 2017

SUMMARY

The North Dakota Supreme Court granted the State’s petition for a supervisory writ and directed the district court to dismiss Delmar Markel’s negligence claim against the North Dakota Department of Corrections and Rehabilitation. The Court held that the Workers Safety and Insurance Act barred the claim because Markel had not shown an intentional act undertaken with a conscious purpose to inflict injury, and it denied Markel’s cross-petition concerning his constructive and retaliatory discharge claim.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Daniel J. Crothers; Lisa Fair McEvers; Jon J. Jensen; Jerod E. Tufte; Gerald W. VandeWalle, Chief Justice
JURISDICTION	North Dakota
DECIDED	October 17, 2017
DOCKET	20170293
DISPOSITION	writ_granted
PROCEDURAL POSTURE	The State petitioned for a supervisory writ directing the district court to vacate its order denying the State's motion for summary judgment on Markel's negligence claim. Markel cross-petitioned for a supervisory writ concerning the dismissal of his constructive and retaliatory discharge claim.

STANDARD OF REVIEW	Supervisory jurisdiction is discretionary and is exercised rarely and cautiously to rectify errors and prevent injustice in extraordinary cases when there is no adequate alternative remedy. The Supreme Court reviewed the district court's legal conclusion concerning workers' compensation immunity and the intentional-act exception.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	State of North Dakota, by and through the North Dakota Department of Corrections and Rehabilitation and the North Dakota Youth Correctional Center v. Honorable Bruce Haskell, Judge of the District Court, South Central Judicial District, Delmar Markel

TOPICS

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QUESTIONS PRESENTED

1. Whether the North Dakota Supreme Court should exercise supervisory jurisdiction to review the denial of the State's motion for summary judgment or dismissal when the State claimed statutory workers' compensation immunity and no adequate alternative remedy existed.
2. Whether Markel's negligence allegations and supporting evidence established an intentional act done with the conscious purpose of inflicting injury, thereby satisfying the statutory exception to workers' compensation immunity.
3. Whether the Supreme Court should exercise supervisory jurisdiction to review dismissal of Markel's constructive and retaliatory discharge claim when an appeal was available after resolution of the negligence claim.

HOLDINGS

1. The Court exercised original supervisory jurisdiction because the State asserted statutory immunity from suit and otherwise would have to fully litigate the action before obtaining review, while extensive discovery would be required.
2. Markel failed to allege and support facts showing that the State engaged in an intentional act with the conscious purpose of inflicting his injuries. His negligence claim therefore fell outside the statutory exception, and the State was immune from the civil claim.
3. The Court declined to exercise supervisory jurisdiction over the discharge claim because Markel did not establish the absence of an adequate alternative remedy, and the dismissal could be reviewed on appeal after resolution of the negligence claim.

KEY QUOTATIONS

“sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for those personal injuries and all jurisdiction of the courts of the state over those causes are abolished except as is otherwise provided in this title.” (¶ 4)

“We exercise our authority to issue supervisory writs rarely and cautiously, and only to rectify errors and prevent injustice in extraordinary cases in which there is no adequate alternative remedy.” (¶ 8)

“what is being tested here is not the degree of gravity or depravity of the employer’s conduct, but rather the narrow issue of the intentional versus the accidental quality of the precise event producing injury.” (¶ 11)

FACTUAL BACKGROUND

Delmar Markel worked at the North Dakota Youth Correctional Center on December 9, 2012, when several inmates escaped from locked rooms and injured him. He alleged that faulty cell locks allowed the escape and asserted a negligence claim against the State. He also asserted constructive and retaliatory discharge, but the district court dismissed that claim for failure to pursue available administrative remedies.

PROCEDURAL HISTORY

Markel sued the State after being injured by escaping inmates, asserting negligence and constructive and retaliatory discharge. The district court dismissed the discharge claim for failure to exhaust administrative remedies but denied the State's motions to dismiss the negligence claim. The North Dakota Supreme Court exercised original supervisory jurisdiction, granted the State's petition, denied Markel's cross-petition, and directed dismissal of the negligence claim.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court was directed to vacate its order denying the State's motion to dismiss and enter an order dismissing Markel's negligence complaint. The Court declined to vacate the dismissal of the constructive and retaliatory discharge claim.

CASES CITED

- Zimmerman v. Valdak Corp., 1997 ND 203, ¶ 21, 570 N.W.2d 204
- Bartholomay v. Plains Grain & Agronomy, LLC, 2016 ND 138, ¶¶ 9-12, 16, 881 N.W.2d 249
- Roe v. Rothe-Seeger, 2000 ND 63, ¶ 5, 608 N.W.2d 289
- Mitchell v. Sanborn, 536 N.W.2d 678, 683 (N.D. 1995)
- Hellman v. Thiele, 413 N.W.2d 321, 329 (N.D. 1987)
- State ex rel. Roseland v. Herauf, 2012 ND 151, ¶ 3, 819 N.W.2d 546

- State ex rel. Harris v. Lee, 2010 ND 88, ¶ 6, 782 N.W.2d 626
- State v. Holte, 2001 ND 133, ¶ 5, 631 N.W.2d 595

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