

SUPREME COURT OF MISSISSIPPI

K.R. Borries, Individually, d/b/a K.R. Borries Construction Company
v. Grand Casino of Mississippi, Inc. Biloxi

187 So. 3d 1042 (Miss. 2016) · No. No. 2013-CA-01274-SCT · Decided March 31, 2016

SUMMARY

The Supreme Court of Mississippi reversed summary judgment for Grand Casino in a negligence action arising from casino barges breaking loose during Hurricane Katrina and damaging a construction site. The court held that competing expert opinions created a genuine dispute over whether the casino negligently moored its barges and whether the harm was foreseeable. It also held that the Act of God defense could not support summary judgment because reasonable care might have prevented the damage.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Justice Beam; Chief Justice Waller; Presiding Justice Dickinson; Presiding Justice Randolph; Justice Lamar; Justice Kitchens; Justice King; Justice Coleman; Justice Maxwell
JURISDICTION	Mississippi
DECIDED	March 31, 2016
DOCKET	No. 2013-CA-01274-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Borries appealed the Harrison County Circuit Court's grant of Grand Casino's motion for summary judgment and denial of Borries's motion to reconsider or alter or amend the judgment.
STANDARD OF REVIEW	De novo review applies to a trial court's grant of summary judgment. Summary judgment is proper only when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Mississippi
PARTIES	K.R. Borries, individually, d/b/a K.R. Borries Construction Company v. Grand Casino of Mississippi, Inc. Biloxi

TOPICS

negligence duty of care standard of care summary judgment civil procedure

PRACTICE AREAS

negligence premises and property damage construction law civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in granting summary judgment on the issue of whether Grand Casino breached its duty to take reasonable precautions to protect nearby property owners, despite conflicting expert testimony.
2. Whether the circuit court erred in applying the Act of God defense at the summary-judgment stage.

HOLDINGS

1. Summary judgment was improper because the competing expert affidavits created a genuine dispute of material fact regarding whether Grand Casino took reasonable measures to prevent foreseeable harm to nearby property owners.
2. Grand Casino was not entitled to summary judgment on the Act of God defense because the evidence created a genuine issue regarding whether reasonable care could have prevented the damage.

KEY QUOTATIONS

“compliance with [the] Gaming Commission regulations does not automatically shield it from liability.” (§15)

“These differing opinions establish a “battle of the experts.” Because a genuine dispute of material fact exists regarding Grand Casino’s duty, the trial court’s decision is reversed.” (§24)

“No one is liable for an injury proximately caused by an act of God, which is an injury due directly and exclusively to natural causes without human intervention, and which could not have been prevented by the exercise of reasonable care and foresight.” (§25)

FACTUAL BACKGROUND

Grand Casino operated floating gambling barges on the Mississippi Gulf Coast. In 1999, it moored the additional eight-million-pound Lady Luck barge to the Grand Casino barge, and neither barge remained secured during Hurricane Katrina on August 29, 2005. The barges broke loose and allegedly collided with the Schooner Pier, which was under construction by Borries Construction. The parties submitted conflicting expert testimony about the adequacy of the mooring system, the foreseeability of storm surges based on Hurricane Camille, and whether the system complied with applicable Gaming Commission requirements.

PROCEDURAL HISTORY

After Hurricane Katrina damaged the Schooner Pier and surrounding structures, Borries sued Grand Casino for negligence and gross negligence. The circuit court granted Grand Casino summary judgment, reasoning that the

casino complied with Mississippi Gaming Commission requirements and that Hurricane Katrina was an unforeseeable Act of God. The Mississippi Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Harrison County Circuit Court for proceedings consistent with the opinion.

CASES CITED

- Davis v. Hoss, 869 So. 2d 397, 401 (Miss. 2004)
- Williamson ex rel. Williamson v. Keith, 786 So. 2d 390, 393 (Miss. 2001)
- Heigle v. Heigle, 771 So. 2d 341, 345 (Miss. 2000)
- Tucker v. Hinds County, 558 So. 2d 869, 872 (Miss. 1990)
- Richmond v. Benchmark Constr. Corp., 692 So. 2d 60, 61 (Miss. 1997)
- Rein v. Benchmark Constr. Co., 865 So. 2d 1134, 1143 (Miss. 2004)
- Eli Inv., LLC v. Silver Slipper Casino Venture, LLC, 118 So. 3d 151 (Miss. 2013)
- Bay Point High & Dry, LLC v. New Palace Casino, LLC, 46 So. 3d 821, 824-25 (Miss. Ct. App. 2010)
- Foldes v. Hancock Bank, 554 So. 2d 319, 321 (Miss. 1989)
- City of Jackson v. Brummett, 224 Miss. 501, 80 So. 2d 827, 829 (1955)
- McFarland v. Entergy Miss., Inc., 919 So. 2d 894, 904 (Miss. 2006)
- Skandia Ins. Co. v. Star Shipping, 173 F. Supp. 2d 1228, 1239 (S.D. Ala. 2001)
- City of Hattiesburg v. Hillman, 222 Miss. 443, 76 So. 2d 368, 370 (1954)