

SUPREME COURT OF SOUTH DAKOTA

Janis v. Nash Finch Co., 2010 SD 27

780 N.W.2d 497 (S.D. 2010) · No. No. 25261 · Decided March 17, 2010

SUMMARY

The Supreme Court of South Dakota held that a supermarket owed a business invitee a duty to exercise reasonable or ordinary care to keep its premises reasonably safe. The court rejected the trial court's use of the absence of prior similar incidents as determinative of foreseeability, concluding that foreseeability depends on all surrounding facts and circumstances. It reversed the grant of summary judgment and remanded for further proceedings, including a jury determination of breach.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Severson, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Zinter, Justice
JURISDICTION	South Dakota
DECIDED	March 17, 2010
DOCKET	No. 25261
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed the grant of summary judgment to the defendant in a premises-liability negligence action.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the moving party demonstrated the absence of any genuine issue of material fact and entitlement to judgment as a matter of law, viewing the evidence most favorably to the nonmoving party. The existence of a duty and foreseeability when defining the boundaries of a duty are questions of law reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Francis Janis v. Nash Finch Company d/b/a Prairie Market

TOPICS

premises liability

duty of care

negligence

summary judgment

standard of review

PRACTICE AREAS

premises liability

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QUESTIONS PRESENTED

1. Whether the absence of prior similar incidents made the risk of harm unforeseeable as a matter of law.
2. Whether Prairie Market owed Janis, a business invitee, a duty of reasonable or ordinary care to keep its premises reasonably safe.
3. Whether summary judgment was proper on the ground that Prairie Market owed no duty.

HOLDINGS

1. The absence of prior similar incidents is not determinative of foreseeability. Foreseeability must be assessed from all the surrounding facts and circumstances existing at the time of the injury.
2. Because the risk of harm was foreseeable, Prairie Market owed Janis, a business invitee, a duty to use reasonable or ordinary care to make its premises reasonably safe.
3. Summary judgment was improper because the trial court applied an incorrect legal standard to foreseeability, and whether Prairie Market breached its duty was a question of fact for the jury.

KEY QUOTATIONS

“Foreseeability, rather than knowledge, however, is the touchstone of the existence of the duty of reasonable or ordinary care.” (503)

“The facts and circumstances of this case demonstrate that the risk of harm was foreseeable.” (504)

“A landowner owes a duty of reasonable or ordinary care to entrants on his property only when all the surrounding facts and circumstances, including the knowledge he possesses, indicate that the risk of harm was foreseeable.” (505)

“The question of whether [Prairie Market] met its duty to use reasonable care ... is a question of fact for a properly instructed jury, not a question of law for summary judgment.” (505)

FACTUAL BACKGROUND

Francis Janis entered Prairie Market as a business invitee on a very cold, windy January morning. A commercial rug immediately inside a frequently opened sliding door slid beneath him, causing him to fall; he then felt a patch of ice hidden under the rug. The store's head cashier observed the displaced rug and ice patch, and warning signs and ice melt were placed near the door later that day. The record did not establish how the ice formed, and there was no evidence of prior similar falls at the premises.

PROCEDURAL HISTORY

Janis sued Nash Finch Company after slipping and falling on a rug covering ice inside the entrance to Prairie Market. After discovery, the circuit court granted Prairie Market summary judgment, concluding that the risk

was not foreseeable because there had been no prior similar incidents and that the defendant therefore owed no duty. The Supreme Court of South Dakota reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must proceed consistently with the holding that foreseeability is determined from all surrounding facts and circumstances. The question whether Prairie Market breached its duty to use reasonable care is for a properly instructed jury.

CASES CITED

- Dykstra v. Page Holding Co., 2009 SD 38, 766 N.W.2d 491
- Pierce v. City of Belle Fourche, 2001 SD 41, 624 N.W.2d 353
- Peterson v. Spink Elec. Coop., Inc., 1998 SD 60, 578 N.W.2d 589
- Rowland v. Log Cabin, Inc., 2003 SD 20, 658 N.W.2d 76
- Pettry v. Rapid City Area Sch. Dist., 2001 SD 88, 630 N.W.2d 705
- Stone v. Von Eye Farms, 2007 SD 115, 741 N.W.2d 767
- Poelstra v. Basin Elec. Power Coop., 1996 SD 36, 545 N.W.2d 823
- Erickson v. Lavielle, 368 N.W.2d 624 (S.D. 1985)
- Small v. McKennan Hosp., 403 N.W.2d 410 (S.D. 1987)
- Barger for Wares v. Cox, 372 N.W.2d 161 (S.D. 1985)
- Andrushchenko v. Silchuk, 2008 SD 8, 744 N.W.2d 850
- Musch v. H-D Elec. Coop., Inc., 460 N.W.2d 149 (S.D. 1990)
- Small v. McKennan Hosp., 437 N.W.2d 194 (S.D. 1989)
- Mitchell v. Ankney, 396 N.W.2d 312 (S.D. 1986)
- Stenholtz v. Modica, 264 N.W.2d 514 (S.D. 1978)
- Norris v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co., 74 S.D. 271, 51 N.W.2d 792 (1952)
- Parker v. Casa Del Rey-Rapid City, Inc., 2002 SD 29, 641 N.W.2d 112
- Kryger v. Dokken, 386 N.W.2d 481 (S.D. 1986)
- Luke v. Deal, 2005 SD 6, 692 N.W.2d 165
- Luther v. City of Winner, 2004 SD 1, 674 N.W.2d 339
- Clausen v. Aberdeen Grain Inspection, Inc., 1999 SD 66, 594 N.W.2d 718
- Smith ex rel. Ross v. Lagow Constr. & Dev. Co., 2002 SD 37, 642 N.W.2d 187
- Bland v. Davison County, 507 N.W.2d 80 (S.D. 1993)
- Ward v. LaCreek Elec. Ass'n, 83 S.D. 584, 163 N.W.2d 344 (1968)
- Johnson v. Straight's, Inc., 288 N.W.2d 325 (S.D. 1980)

- Isaacs v. Huntington Mem'l Hosp., 38 Cal. 3d 112, 695 P.2d 653 (1985)
- Nicholas v. Tri-State Fair & Sales Ass'n, 82 S.D. 450, 148 N.W.2d 183 (1967)
- Palsgraf v. Long Island R.R. Co., 248 N.Y. 339, 162 N.E. 99 (1928)
- Mortenson v. Braley, 349 N.W.2d 444 (S.D. 1984)

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