

SUPREME COURT OF VIRGINIA

Kimble v. Carey

691 S.E.2d 790 (Va. 2010) · No. Record No. 090947 · Decided April 15, 2010

SUMMARY

The Supreme Court of Virginia considered a rescue doctrine case arising from injuries sustained by Avalon Kimble while attempting to assist Charles Carey after his vehicle caught fire. The court held that the trial court properly denied amendment of the complaint and excluded evidence of Carey's intoxication because the degree of his negligence was immaterial to the rescue doctrine. However, the court held that whether Kimble acted with rash or reckless disregard for her own safety was a jury question, reversed the motion to strike, and remanded.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Leroy F. Millette, Jr.; Hassell, C.J.; Keenan, J.; Koontz, J.; Lemons, J.; Goodwyn, J.; Millette, J.; Lacy, S.J.
JURISDICTION	Virginia
DECIDED	April 15, 2010
DOCKET	Record No. 090947
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a circuit court judgment that denied leave to amend the complaint, excluded evidence of the victim's intoxication, and granted the defendant's motion to strike the plaintiff's evidence on the ground that the rescuer was contributorily negligent as a matter of law.
STANDARD OF REVIEW	The denial of leave to amend and the exclusion of evidence are reviewed for abuse of discretion. A motion to strike is reviewed under the rule that contributory negligence is generally a jury question and becomes a question of law only when reasonable minds could not differ.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the Supreme Court of Virginia.
PARTIES	Avalon Kimble v. Charles Anthony Carey

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QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying Kimble leave to amend her complaint to allege willful or wanton conduct and seek punitive damages.
2. Whether the circuit court abused its discretion by excluding evidence of Carey's intoxication.
3. Whether Kimble's conduct during the rescue attempt was rash or reckless as a matter of law, making her contributorily negligent and barring recovery under the rescue doctrine.

HOLDINGS

1. Under the rescue doctrine, the rescuer's right to recover turns on whether the rescuer acted with rash or reckless disregard for personal safety; the degree of the victim's negligence in creating the peril does not alter that standard.
2. The circuit court did not abuse its discretion in denying Kimble leave to amend because Carey's alleged willful or wanton conduct was immaterial and irrelevant under the rescue doctrine.
3. The circuit court did not abuse its discretion by excluding evidence of Carey's intoxication because the victim's degree of negligence was immaterial and irrelevant to the rescue doctrine analysis.
4. The issue whether Kimble's conduct rose to the level of rash or reckless disregard for her own safety was for the jury because reasonable minds could differ.

KEY QUOTATIONS

“A rescuer is justified in exposing himself [or herself] to danger, in a manner that would deprive him [or her] of a recovery for his [or her] injuries under other circumstances, if the peril threatening the victim is imminent and real, not merely imaginary or speculative, and the rescuer has not rashly or recklessly disregarded all consideration for his [or her] own safety.” (at 793-794)

“It makes no difference to rescue doctrine analysis whether the victim was guilty of simple negligence, gross negligence, or willful or wanton conduct in creating his or her peril, because the rescuer's right to recover for injuries sustained during the rescue attempt rises or falls with the determination whether the rescuer acted rashly or recklessly.” (at 795)

“We hold that under the facts of this case, reasonable minds could differ on the issue of weighing Kimble's conduct.” (at 797)

FACTUAL BACKGROUND

On a dark night, Charles Carey rear-ended a construction truck on Interstate 64 and became trapped in his burning vehicle. Avalon Kimble stopped, crossed the highway to assist Carey, and was struck by a vehicle

traveling approximately sixty-five miles per hour while she stood in an eastbound lane. Carey had a blood alcohol concentration of 0.15 percent and pleaded guilty to driving under the influence, but the circuit court excluded evidence of his intoxication.

PROCEDURAL HISTORY

Kimble sued Carey, alleging that Carey's negligence created the peril that prompted her rescue attempt and proximately caused her injuries. The circuit court denied Kimble's motion to amend to allege willful or wanton conduct and seek punitive damages, excluded evidence of Carey's intoxication, and struck Kimble's evidence after concluding that her rescue attempt was rash or reckless as a matter of law. The Supreme Court of Virginia affirmed the amendment and evidentiary rulings, reversed the judgment striking the evidence, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the circuit court for further proceedings consistent with the opinion, including submission to the jury of whether Kimble's rescue conduct was rash or reckless.

CASES CITED

- Rascher v. Friend, 279 Va. 370, 689 S.E.2d 661 (2010)
- Green v. Ingram, 269 Va. 281, 608 S.E.2d 917 (2005)
- Commonwealth v. Millsaps, 232 Va. 502, 352 S.E.2d 311 (1987)
- Southern Ry. Co. v. Baptist, 114 Va. 723, 77 S.E. 477 (1913)
- Lassiter v. Warinner, 235 Va. 274, 368 S.E.2d 258 (1988)
- Roanoke Hospital Ass'n v. Hayes, 204 Va. 703, 133 S.E.2d 559 (1963)
- Andrews v. Appalachian Electric Power Co., 192 Va. 150, 63 S.E.2d 750 (1951)
- Wright v. Atlantic Coast Line R.R. Co., 110 Va. 670, 66 S.E. 848 (1910)
- Kole v. City of Chesapeake, 247 Va. 51, 439 S.E.2d 405 (1994)
- Ogunde v. Prison Health Servs., Inc., 274 Va. 55, 645 S.E.2d 520 (2007)
- Norfolk and Portsmouth Belt Line R.R. Co. v. Wilson, 276 Va. 739, 667 S.E.2d 735 (2008)
- Riverside Hospital v. Johnson, 272 Va. 518, 636 S.E.2d 416 (2006)
- Griffin v. Shively, 227 Va. 317, 315 S.E.2d 210 (1984)

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