

## SUPREME COURT OF KENTUCKY

# Presnell Construction Managers, Inc. v. EH Construction, LLC

134 S.W.3d 575 (Ky. 2004) · No. 2000-SC-0571-DG · Decided May 20, 2004

### SUMMARY

The Kentucky Supreme Court adopted Restatement (Second) of Torts § 552 as the standard for negligent misrepresentation claims in Kentucky. It held that a contractor could pursue a tort claim for economic losses based on alleged faulty information and guidance supplied by a construction manager, despite the absence of contractual privity. The court upheld dismissal of the negligent supervision claim because it was not independent of the construction manager's contractual duties.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                          |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Kentucky                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Keller, J.; Graves, J.; and all other members of the Court                                                                                                                                                                                                                               |
| JURISDICTION          | Kentucky                                                                                                                                                                                                                                                                                 |
| DECIDED               | May 20, 2004                                                                                                                                                                                                                                                                             |
| DOCKET                | 2000-SC-0571-DG                                                                                                                                                                                                                                                                          |
| DISPOSITION           | vacated                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Presnell sought discretionary review of the Kentucky Court of Appeals' reversal of the trial court's summary judgment dismissing EH Construction's tort claims. The Supreme Court affirmed the Court of Appeals and vacated the trial court's summary judgment dismissing the complaint. |
| STANDARD OF REVIEW    | The court reviewed the dismissal treated as summary judgment and whether EH's complaint stated an actionable tort claim. The court considered the legal duty and sufficiency-of-the-pleading issues de novo.                                                                             |
| PRECEDENTIAL VALUE    | Published and precedential Kentucky Supreme Court opinion                                                                                                                                                                                                                                |
| PARTIES               | Presnell Construction Managers, Inc. v. EH Construction, LLC                                                                                                                                                                                                                             |

### TOPICS

[negligence](#)[construction law](#)[commercial litigation](#)[torts](#)[contracts](#)

## PRACTICE AREAS

torts

construction law

contracts

commercial litigation

## QUESTIONS PRESENTED

1. Whether a party lacking contractual privity may maintain a tort action against a construction manager for purely economic losses when the alleged tort is based on an independent duty.
2. Whether Kentucky should adopt Restatement (Second) of Torts § 552 as the governing standard for negligent misrepresentation.
3. Whether EH's allegations that Presnell supplied faulty information and guidance sufficiently stated a negligent misrepresentation claim.
4. Whether EH's negligent supervision claim articulated a duty independent of Presnell's contractual duties.

## HOLDINGS

1. Kentucky adopts Restatement (Second) of Torts § 552 as the governing standard for negligent misrepresentation claims.
2. Lack of contractual privity did not bar EH's tort claim because negligent misrepresentation under § 552 imposes an independent duty separate from contractual duties.
3. EH's allegation that Presnell supplied faulty information and guidance to project contractors was sufficient at the pleading stage to state a negligent misrepresentation claim.
4. EH's negligent supervision claim did not articulate a duty independent of Presnell's contractual duties and was properly dismissed.

## KEY QUOTATIONS

*“Because we find § 552 to be consistent with Kentucky case law, we join the majority of jurisdictions and hereby adopt § 552's standards for negligent misrepresentation claims in this jurisdiction.” (582)*

*“Therefore, we agree with the Court of Appeals's conclusion that EH could maintain a tort action for negligent misrepresentation against Presnell under the pleadings in this case and the limited facts developed to this point.” (582-583)*

## FACTUAL BACKGROUND

DeLor hired Presnell as construction manager for the renovation of a commercial building and separately hired EH to perform general-trades work. The contracts disclaimed any contractual relationship between Presnell and EH and identified Presnell as DeLor's agent. EH alleged that Presnell improperly staged and coordinated the project, supplied faulty information and guidance, and caused EH to redo completed work, resulting in purely economic losses. EH sued Presnell for negligent misrepresentation and negligent supervision, but the trial court dismissed the claims for lack of a duty independent of Presnell's contract with DeLor.

## PROCEDURAL HISTORY

EH sued Presnell, among others, after a construction project, asserting negligent misrepresentation and negligent supervision claims for economic losses allegedly caused by Presnell's coordination and supervision of the project. The trial court treated Presnell's motion to dismiss as a motion for summary judgment because matters outside the pleadings were considered, and granted judgment to Presnell on the ground that Presnell owed duties only to the project owner, DeLor. The Court of Appeals reversed and remanded, holding that EH could pursue a tort claim under Restatement (Second) of Torts § 552. The Supreme Court granted discretionary review, affirmed the Court of Appeals, and vacated the trial court's summary judgment.

## DISPOSITION

vacated

## REMAND INSTRUCTIONS

The case was remanded to the trial court for further proceedings on EH's negligent misrepresentation claim. EH's negligent supervision claim remained dismissed.

## CASES CITED

- Seigle v. Jasper, 867 S.W.2d 476 (Ky. App. 1993)
- Morton v. Bank of the Bluegrass and Trust Co., 18 S.W.3d 353 (Ky. App. 1999)
- Chernick v. Fasig-Tipton Kentucky, Inc., 703 S.W.2d 885 (Ky. App. 1986)
- Ingram Industries, Inc. v. Nowicki, 527 F. Supp. 683 (E.D. Ky. 1981)
- John Martin Co. v. Morse/Diesel, Inc., 819 S.W.2d 428 (Tenn. 1991)
- Penco, Inc. v. Detrex Chemical Industries, Inc., 672 S.W.2d 948 (Ky. App. 1984)
- Tabler v. Wallace, 704 S.W.2d 179 (Ky. 1985)
- C.D. Herme, Inc. v. R.C. Tway Co., 294 S.W.2d 534 (Ky. 1956)
- Sexton v. Taylor County, 692 S.W.2d 808 (Ky. App. 1985)
- King v. National Industries, Inc., 512 F.2d 29 (6th Cir. 1975)
- B & C Construction Co. v. Grain Handling Corp., 521 S.W.2d 98 (Tex. Civ. App. 1975)
- Johnson v. Lohre, 508 S.W.2d 785 (Ky. 1974)
- Craft v. Simmons, 777 S.W.2d 618 (Ky. App. 1989)
- Crescent Grocery Co. v. Vick, 240 S.W. 388 (Ky. 1922)
- Investors Heritage Life Insurance Co. v. Colson, 717 S.W.2d 840 (Ky. App. 1986)
- Miller's Bottled Gas, Inc. v. Borg-Warner Corp., 955 F.2d 1043 (6th Cir. 1992)
- Scheck Mechanical Corp. v. Borden, Inc., 186 F. Supp. 2d 724 (W.D. Ky. 2001)
- Goldman Services Mechanical Contracting, Inc. v. Citizens Bank & Trust Co. of Paducah, 812 F. Supp. 738 (W.D. Ky. 1992)
- Seely v. White Motor Co., 403 P.2d 145 (Cal. 1965)
- East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858 (1986)
- Real Estate Marketing, Inc. v. Franz, 885 S.W.2d 921 (Ky. 1994)

- Falcon Coal Co. v. Clark Equipment Co., 802 S.W.2d 947 (Ky. App. 1990)
- Town of Alma v. Azco Construction, Inc., 10 P.3d 1256 (Colo. 2000)

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