

SUPREME COURT OF WYOMING

Richard J. Amos, Jr., Wrongful Death Personal Representative of
Taylor J. Amos Lysager v. Lincoln County School District No. 2 and
Lincoln County Board of County Commissioners, for the County of
Lincoln, Wyoming

2015 WY 115 (Wyo. 2015) · No. S-14-0283 · Decided August 21, 2015

SUMMARY

The Wyoming Supreme Court reviewed a wrongful-death action arising from the death of a child injured by an unsecured lunchroom bench at a former school building. The court dismissed the appeal concerning Lincoln County's dismissal without prejudice because that order was not final and appealable. It reversed summary judgment for the school district, concluding that reasonable minds could differ regarding breach of the duty of reasonable care and proximate cause.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	HILL, Justice; BURKE, C.J.; HILL, J.; KITE, J.; DAVIS, J.; FOX, J.
JURISDICTION	Wyoming
DECIDED	August 21, 2015
DOCKET	S-14-0283
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from orders granting summary judgment to Lincoln County School District No. 2 and dismissing Lincoln County without prejudice based on an affidavit of noninvolvement.
STANDARD OF REVIEW	Summary judgment is reviewed de novo in the same light as the district court, using the same materials and applying the same standards. Summary judgment is proper only when no genuine issue of material fact exists and the prevailing party is entitled to judgment as a matter of law. Facts are viewed in the light most favorable to the nonmoving party, which receives the benefit of all favorable inferences. Finality and appealability of an order are reviewed under Wyoming Rules of Appellate Procedure 1.05 and Wyoming Rule of Civil Procedure 54(b).

PRECEDENTIAL VALUE	Published state supreme court precedent
PARTIES	Richard J. Amos, Jr., wrongful death personal representative of Taylor J. Amos Lysager, deceased v. Lincoln County School District No. 2, Lincoln County Board of County Commissioners, for the County of Lincoln, Wyoming

TOPICS

wrongful death negligence premises liability summary judgment final judgment rule

PRACTICE AREAS

Torts Civil Procedure Appellate Procedure Municipal Law

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment to the School District on the issues of breach of the duty of reasonable care and proximate cause.
2. Whether the district court's order dismissing Lincoln County without prejudice was a final appealable order.

HOLDINGS

1. Summary judgment was improper because reasonable minds could differ on whether the School District breached its duty of ordinary and reasonable care by turning over the building without warning the Community Group about the dangers of mishandling or improperly storing the benches and tables and without restricting access to the securing keys.
2. Summary judgment was improper because reasonable minds could differ on whether the School District's alleged failure to warn or restrict access was a proximate cause of the accident and whether the improperly stored bench was a superseding intervening cause.
3. The appeal from the order dismissing Lincoln County without prejudice was dismissed because the order was not a final appealable order.

KEY QUOTATIONS

"We thus agree with Plaintiff that these are questions that are properly submitted to the jury rather than resolved on summary judgment." (¶ 19)

"As with the question of breach of duty, the question of proximate cause is one "reserved for the trier of fact's determination unless the evidence is such that reasonable minds could not disagree."" (¶ 29)

"In the absence of a Rule 54(b) certification, the order dismissing Plaintiff's complaint against Lincoln County without prejudice is not a final appealable order." (¶ 36)

FACTUAL BACKGROUND

Five-year-old Taylor Lysager attended a community basketball game at the former Metcalf School building in Etna, Wyoming. A heavy lunchroom bench had been removed from its wall mount and left propped against a wall in a storage room, where it fell on Taylor and caused a fatal head injury. The School District owned the building but had turned it over to a Community Group without a written use agreement, safety instructions, a walkthrough identifying hazards, or restrictions on access to the keys securing the benches and tables. Evidence showed that the benches were dangerous when improperly stored and that another child had previously been injured by a falling table or bench.

PROCEDURAL HISTORY

The personal representative filed a wrongful death action against the School District, the Town of Thayne, and Lincoln County. The district court dismissed Lincoln County without prejudice after it filed an affidavit of noninvolvement. The court later granted the School District's renewed motion for summary judgment on breach and proximate cause and certified that judgment under Wyoming Rule of Civil Procedure 54(b). The Wyoming Supreme Court reversed the summary judgment and dismissed the appeal from the non-prejudicial dismissal of Lincoln County because that order was not final and appealable.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order granting summary judgment to Lincoln County School District No. 2 is reversed, and the negligence claims against the School District may proceed. The appeal from the order dismissing Lincoln County without prejudice is dismissed; the opinion does not direct reinstatement of Lincoln County.

CASES CITED

- Merrill v. Jansma, 2004 WY 26, ¶ 39, 86 P.3d 270, 287 (Wyo. 2004)
- Gayhart v. Goody, 2004 WY 112, ¶ 11, 98 P.3d 164, 168 (Wyo. 2004)
- Cook v. Shoshone First Bank, 2006 WY 13, ¶ 12, 126 P.3d 886, 889 (Wyo. 2006)
- Uinta County v. Pennington, 2012 WY 129, ¶ 11, 286 P.3d 138, 141-42 (Wyo. 2012)
- Throckmartin v. Century 21 Top Realty, 2010 WY 23, ¶ 12, 226 P.3d 793, 798 (Wyo. 2010)
- Boehm v. Cody Cntry. Chamber of Commerce, 748 P.2d 704, 710 (Wyo. 1987)
- England v. Simmons, 728 P.2d 1137, 1140-41 (Wyo. 1986)
- Caballo Coal Co. v. Fidelity Exploration & Production Co., 2011 WY 108, ¶ 12, 246 P.3d 867, 871 (Wyo. 2011)
- Erpelding v. Lisek, 2003 WY 80, ¶ 10, 71 P.3d 754, 757 (Wyo. 2003)
- Allmaras v. Mudge, 820 P.2d 533, 536 (Wyo. 1991)
- MacKrell v. Bell H2S Safety, 795 P.2d 776, 779 (Wyo. 1990)
- Johnson v. Dale C., 2015 WY 42, ¶¶ 12-15, 345 P.3d 883, 886-87 (Wyo. 2015)
- Halvorson v. Sweetwater County School District No. 1, 2015 WY 18, ¶ 9, 342 P.3d 395, 398 (Wyo. 2015)

- Collings v. Lords, 2009 WY 135, ¶ 6, 218 P.3d 654, 656-57 (Wyo. 2009)
- Jackson Hole Mountain Resort Corp. v. Rohrman, 2006 WY 156, ¶ 8, 150 P.3d 167, 170 (Wyo. 2006)
- Templar v. Tongate, 71 Wyo. 148, 255 P.2d 223, 230 (Wyo. 1953)
- Johnson v. Reiger, 2004 WY 83, ¶ 23, 93 P.3d 992, 999 (Wyo. 2004)
- Lee v. LPP Mortgage Ltd., 2003 WY 92, ¶ 20, 74 P.3d 152, 160 (Wyo. 2003)
- Jones v. Chevron U.S.A., 718 P.2d 890, 897 (Wyo. 1986)
- Roussalis v. Wyoming Medical Center, Inc., 4 P.3d 209, 229 (Wyo. 2000)
- Bettencourt v. Pride Well Service, 735 P.2d 722, 726 (Wyo. 1987)
- Foote v. Simek, 2006 WY 96, ¶ 22, 139 P.3d 455, 463-64 (Wyo. 2006)
- Lemos v. Madden, 28 Wyo. 1, 200 P. 791, 793-94 (Wyo. 1921)
- Robertson v. TWP, Inc., 656 P.2d 547 (Wyo. 1983)
- Kopriva v. Union Pacific Railroad Co., 592 P.2d 711 (Wyo. 1979)
- McClellan v. Tottenhoff, 666 P.2d 408 (Wyo. 1983)
- Chrysler Corporation v. Todorovich, 580 P.2d 1123 (Wyo. 1978)
- Phelps v. Woodward Construction Co., 66 Wyo. 33, 204 P.2d 179 (Wyo. 1949)
- Gilliland v. Rhoads, 539 P.2d 1221 (Wyo. 1975)
- Fagan v. Summers, 498 P.2d 1227 (Wyo. 1972)
- Tyler v. Jensen, 75 Wyo. 249, 295 P.2d 742 (Wyo. 1956)
- Killian v. Caza Drilling, Inc., 2006 WY 42, ¶ 20, 131 P.3d 975, 985 (Wyo. 2006)
- Duncan v. Town of Jackson, 903 P.2d 548, 553 (Wyo. 1995)
- Stone v. Stone, 842 P.2d 545, 548 (Wyo. 1992)
- In re Big Horn River System, 803 P.2d 61, 66 (Wyo. 1990)
- Hoback Ranches, Inc. v. Urroz, 622 P.2d 948 (Wyo. 1981)
- Public Service Commission v. Lower Valley Power and Light, Inc., 608 P.2d 660 (Wyo. 1980)
- Mobley v. McCormick, 40 F.3d 337, 339 (10th Cir. 1994)

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