

SUPREME COURT OF NORTH DAKOTA

Groleau v. Bjornson Oil Co., Inc., 2004 ND 55

676 N.W.2d 763 (2004) · No. No. 20030171 · Decided March 23, 2004

SUMMARY

The Supreme Court of North Dakota affirmed summary judgment dismissing Betty Groleau's premises-liability claims against Amoco because Amoco did not control the gas station premises. The court reversed summary judgment for Bjornson Oil, holding that genuine issues of material fact existed concerning whether the elevated gas-pump island was open and obvious under the surrounding circumstances. The case was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Kapsner, Justice; Gerald W. Vande Walle, Chief Justice; Dale V. Sandstrom, Justice; William A. Neumann, Justice; Mary Muehlen Maring, Justice
JURISDICTION	North Dakota
DECIDED	March 23, 2004
DOCKET	No. 20030171
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from a summary judgment dismissing her premises-liability negligence claims against both defendants.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. The evidence and reasonable inferences are viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Betty Groleau v. Bjornson Oil Company, Inc., Amoco Oil Company

TOPICS

- premises liability
- summary judgment
- duty of care
- negligence
- standard of review

PRACTICE AREAS

Torts

Premises Liability

Civil Procedure

Appellate Procedure

QUESTIONS PRESENTED

1. Whether Amoco had sufficient control over the gas station premises to owe Groleau a premises-liability duty.
2. Whether the raised gas-pump island was open and obvious as a matter of law, eliminating Bjornson's duty and justifying summary judgment.
3. Whether genuine issues of material fact concerning the island's visibility and surrounding circumstances precluded summary judgment.

HOLDINGS

1. Amoco did not owe Groleau a premises-liability duty because it lacked control over the premises. Its contractual control over its trade identities and branding approval did not establish control over the gas station property.
2. The island was not open and obvious as a matter of law on the summary-judgment record. Whether the condition and risk would have been apparent to a reasonable person under the circumstances was generally a fact question.
3. Summary judgment for Bjornson was improper because genuine issues of material fact remained concerning the obviousness of the raised island and whether Bjornson owed a duty to protect or warn Groleau.

KEY QUOTATIONS

“When the existence of duty requires resolution of factual disputes, however, summary judgment is inappropriate and the proper procedure is for the court to instruct the jury as to the defendant's duty, or absence of duty, if certain facts are found.” (676 N.W.2d at 767)

“The determination of whether a dangerous condition is open and obvious, limiting the landowner's duty, is generally a question of fact for the trier of fact, and becomes a question of law only when reasonable minds could reach but one conclusion.” (676 N.W.2d at 770)

“Accordingly, it is not enough, as Bjornson contends, to say that all raised abutments are open and obvious to a person exercising ordinary perception and judgment; the surrounding circumstances must be considered in assessing the obviousness of the dangerous condition.” (676 N.W.2d at 771)

FACTUAL BACKGROUND

Groleau tripped over a raised gas-pump island at a gas station owned by Bjornson while leaving the station after paying for gasoline. She claimed the afternoon sun, her sunglasses, shadows, and the island's black edge caused the edge to blend into the pavement and appear level. She injured her elbow and leg and alleged negligence in lighting, painting, and warning about the condition. Amoco supplied branding specifications but had no contract with Bjornson and no right to control the premises.

PROCEDURAL HISTORY

After discovery, Bjornson and Amoco moved for summary judgment. The district court ruled that Amoco lacked control over the premises and that the raised gas-pump island was open and obvious, concluding neither defendant owed Groleau a duty and entering judgment for both defendants. The Supreme Court of North Dakota affirmed as to Amoco, reversed as to Bjornson, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Affirmance remains in effect as to Amoco. The dismissal of Groleau's claims against Bjornson is reversed, and the case is remanded for further proceedings to resolve the genuine factual issues concerning the pump island's obviousness and Bjornson's duty.

CASES CITED

- Fish v. Dockter, 2003 ND 185, ¶ 7, 671 N.W.2d 819
- Northern Plains Alliance, L.L.C. v. Mitzel, 2003 ND 91, ¶ 8, 663 N.W.2d 169
- Collette v. Clausen, 2003 ND 129, ¶¶ 6, 12, 667 N.W.2d 617
- Skjervem v. Minot State Univ., 2003 ND 52, ¶ 4, 658 N.W.2d 750
- Pierce v. B.P.O. of Elks Lodge No. 1214, 2004 ND 26, ¶ 8, 673 N.W.2d 914
- Iglehart v. Iglehart, 2003 ND 154, ¶¶ 11, 17, 670 N.W.2d 343
- Stanley v. Turtle Mountain Gas & Oil, Inc., 1997 ND 169, ¶¶ 8-9, 567 N.W.2d 345
- Grewal v. North Dakota Ass'n of Counties, 2003 ND 156, ¶ 9, 670 N.W.2d 336
- Hurt v. Freeland, 1999 ND 12, ¶ 9, 589 N.W.2d 551
- Butz v. Werner, 438 N.W.2d 509, 511 (N.D. 1989)
- Barsness v. General Diesel & Equip. Co., 383 N.W.2d 840, 843 (N.D. 1986)
- Doan v. City of Bismarck, 2001 ND 152, ¶ 13, 632 N.W.2d 815
- Green v. Mid Dakota Clinic, 2004 ND 12, ¶ 8, 673 N.W.2d 257
- Sternberger v. City of Williston, 556 N.W.2d 288, 290 (N.D. 1996)
- Morrison v. Grand Forks Hous. Auth., 436 N.W.2d 221, 224 (N.D. 1989)
- Johanson v. Nash Finch Co., 216 N.W.2d 271, 277-78 (N.D. 1974)
- Buchaklian v. Lake County Family Young Men's Christian Ass'n, 314 Ill. App. 3d 195, 247 Ill. Dec. 541, 732 N.E.2d 596, 602 (2000)
- Simmons v. American Drug Stores, Inc., 329 Ill. App. 3d 38, 263 Ill. Dec. 286, 768 N.E.2d 46, 51-52 (2002)
- Ward v. K Mart Corp., 136 Ill. 2d 132, 143 Ill. Dec. 288, 554 N.E.2d 223, 232, 234 (1990)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/north-dakota-supreme-court-of-north-dakota/2004/groleau-v-bjornson-oil-co-inc-2004-nd-55-dfdh3rpc>