

SUPREME COURT OF TENNESSEE

Evelyn Nye v. Bayer Cropscience, Inc., et al.

347 S.W.3d 686 (Tenn. 2011) · No. E2008-01596-SC-R11-CV · Decided June 7, 2011

SUMMARY

The Tennessee Supreme Court held that a non-manufacturing seller of asbestos-containing products could be sued in strict liability under Tennessee Code Annotated section 29-28-106(b) because the manufacturers were not subject to service of process due to bankruptcy-related automatic stays. The Court also held that the trial court's jury instruction improperly applied the learned intermediary doctrine and incorrectly identified the employer, rather than the employee, as the consumer who required a warning. Because the instructional error more probably than not affected the verdict, the Court affirmed the Court of Appeals' judgment reversing the trial court and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Sharon G. Lee, J.; Cornelia A. Clark, C.J.; Gary R. Wade, J.; Janice M. Holder, J.; William C. Koch, Jr., J.
JURISDICTION	Tennessee
DECIDED	June 7, 2011
DOCKET	E2008-01596-SC-R11-CV
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Tennessee Supreme Court granted National Service Industries, Inc.'s application for permission to appeal from the Court of Appeals, which had reversed the jury verdict and remanded for a new trial in a products-liability action.
STANDARD OF REVIEW	Statutory interpretation and review of jury instructions are questions of law reviewed de novo with no presumption of correctness. An erroneous jury instruction warrants reversal when it more probably than not affected the judgment of the jury.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	National Service Industries, Inc. f/k/a North Brothers, Inc. v. Evelyn Nye

TOPICS

products liability

strict liability

duty of care

automatic stay

appellate procedure

PRACTICE AREAS

products liability

bankruptcy

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether a non-manufacturing seller may be sued in strict liability under Tennessee Code Annotated section 29-28-106(b) when the manufacturers of the products are not subject to service of process because of bankruptcy-related automatic stays or channeling injunctions.
2. Whether the trial court committed reversible error by instructing the jury that the seller could not be liable for failure to warn if DuPont, the employer, knew of the dangers or had received adequate warnings.
3. Whether DuPont's knowledge of asbestos dangers made DuPont the sole cause in fact of Nye's injuries.

HOLDINGS

1. A non-manufacturing seller may be sued in strict liability when the product manufacturers are not subject to service of process in Tennessee. The bankruptcy petitions, automatic stays, and confirmed-plan channeling injunctions established that the relevant manufacturers were not subject to service of process, satisfying the statutory prerequisite.
2. The learned intermediary doctrine does not apply to a products-liability action involving asbestos or another highly toxic substance purchased by an employer and used by an employee in the workplace. The employee, not the employer, is the consumer to whom the warning duty is directed.
3. Although the jury could consider DuPont's conduct in determining cause in fact, DuPont's knowledge of asbestos dangers did not make DuPont the sole cause of Nye's injuries or eliminate North Brothers' potential liability for failure to warn.

KEY QUOTATIONS

“a ‘claim’ arises when an individual is exposed pre-petition to a product or other conduct giving rise to an injury, which underlies a ‘right to payment’ under the Bankruptcy Code.” (347 S.W.3d at 696)

“The learned intermediary doctrine does not apply in this case, and Mr. Nye, not DuPont, was the consumer.” (347 S.W.3d at 706)

FACTUAL BACKGROUND

Hugh Todd Nye worked at DuPont's Chattanooga facility from 1948 to 1985 and was repeatedly exposed to asbestos dust while inspecting equipment and cleaning debris from asbestos-containing insulation. He later developed mesothelioma and died on August 1, 2006. North Brothers sold asbestos-containing insulation products manufactured by companies that had entered bankruptcy proceedings or were protected by channeling injunctions. Neither North Brothers nor DuPont warned Nye of the health risks, and expert evidence connected his exposure to the products sold by North Brothers with his death.

PROCEDURAL HISTORY

Evelyn Nye sued National Service Industries, successor to North Brothers, and other manufacturers and sellers for strict liability, negligence, and breach of warranty arising from her husband's occupational asbestos exposure. The trial court entered summary judgment on the warranty claims and on sales before June 30, 1969, but allowed the strict-liability claims to proceed. The jury found North Brothers at fault but found DuPont solely responsible and awarded no damages. The Court of Appeals reversed and remanded for a new trial because of erroneous jury instructions. The Tennessee Supreme Court affirmed the Court of Appeals, reversed the trial court's judgment, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court's judgment was reversed and the case was remanded for a new trial. Costs were assessed against National Service Industries, Inc., f/k/a North Brothers, Inc., and its surety.

CASES CITED

- Owens v. Truckstops of Am., 915 S.W.2d 420, 431 (Tenn. 1996)
- Flax v. DaimlerChrysler Corp., 272 S.W.3d 521, 541 (Tenn. 2008)
- Jeld-Wen, Inc. v. Van Brunt (In re Grossman's, Inc.), 607 F.3d 114, 121, 125 (3d Cir. 2010)
- Avellino & Bienes v. M. Frenville Co., 744 F.2d 332 (3d Cir. 1984)
- Whitehead v. Dycho Co., 775 S.W.2d 593 (Tenn. 1989)
- Ford Motor Co. v. Wagoner, 192 S.W.2d 840 (Tenn. 1946)
- Pittman v. Upjohn Co., 890 S.W.2d 425, 429 (Tenn. 1994)
- King v. Danek Med., Inc., 37 S.W.3d 429, 452-53 (Tenn. Ct. App. 2000)
- Harden v. Danek Med., Inc., 985 S.W.2d 449, 451 (Tenn. Ct. App. 1998)
- Snyder v. LTG Lufttechnische GmbH, 955 S.W.2d 252, 256 & n.7 (Tenn. 1997)
- Gorman v. Earhart, 876 S.W.2d 832, 836 (Tenn. 1994)
- Otis v. Cambridge Mut. Fire Ins. Co., 850 S.W.2d 439, 446 (Tenn. 1992)
- Chattanooga-Hamilton Cnty. Hosp. Auth. v. Bradley Cnty., 249 S.W.3d 361, 365 (Tenn. 2008)
- Walker v. Sunrise Pontiac-GMC Truck, Inc., 249 S.W.3d 301, 309 (Tenn. 2008)
- Curtis v. G.E. Capital Modular Space, 155 S.W.3d 877, 881 (Tenn. 2005)
- Lanier v. Rains, 229 S.W.3d 656, 661 (Tenn. 2007)
- State v. Sherman, 266 S.W.3d 395, 401 (Tenn. 2008)
- State v. Flemming, 19 S.W.3d 195, 197 (Tenn. 2000)
- Gleaves v. Checker Cab Transit Corp., 15 S.W.3d 799, 803 (Tenn. 2000)
- Stafford v. Briggs, 444 U.S. 527, 553 n.5 (1980)

- Cathey v. Johns-Manville Sales Corp., 711 F.2d 60, 63 (6th Cir. 1983)
- Lynch v. Johns-Manville Sales Corp., 710 F.2d 1194, 1197 (6th Cir. 1983)
- Kane v. Johns-Manville Corp., 843 F.2d 636, 639-40 (2d Cir. 1988)

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