

SUPREME COURT OF NORTH DAKOTA

Langness v. Fencil Urethane Systems, Inc.

667 N.W.2d 596 (N.D. 2003) · No. No. 20030004 · Decided August 20, 2003

SUMMARY

The Supreme Court of North Dakota held that the trial court abused its discretion by excluding the plaintiff's proffered expert testimony concerning the dispersion and concentration of toxic materials during the application of epoxy primer. The court concluded that the expert was sufficiently qualified and that hypothetical questions could address disputed facts concerning the amount of primer sprayed. The judgment entered on the jury's defense verdict was reversed, and the case was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Carol Ronning Kapsner, Justice; Gerald W. Vande Walle, C.J.; William A. Neumann, J.; Dale V. Sandstrom, J.; Carol Ronning Kapsner, J.; Maring, J.
JURISDICTION	North Dakota
DECIDED	August 20, 2003
DOCKET	No. 20030004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Langness appealed from a judgment entered on a jury verdict finding Fencil Urethane Systems, Inc. was not negligent and dismissing Langness's claims arising from exposure to epoxy primer and toxic chemicals.
STANDARD OF REVIEW	The exclusion or admission of expert testimony, relevance determinations, and the scope of impeachment cross-examination are reviewed for abuse of discretion. Jury instructions are reviewed as a whole for whether they correctly and adequately inform the jury of the applicable law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Duane E. Langness v. Fencil Urethane Systems, Inc.

TOPICS

expert testimony

evidence

relevance

negligence

appellate procedure

PRACTICE AREAS

evidence

torts

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by excluding Dr. Alan Buck's expert testimony concerning the dispersion and concentration of toxic materials.
2. Whether the trial court erred in admitting or instructing the jury concerning the existence of settlements with other defendants.
3. Whether questioning Langness about unrelated prior lawsuits was permissible impeachment.
4. Whether the trial court abused its discretion by excluding an older technical data sheet as irrelevant or potentially confusing.
5. Whether the trial court erred in excluding the late-disclosed testimony and functional capacity evaluation of Geralyn Heitkamp.
6. Whether the trial court properly refused requested jury instructions concerning criminal offenses rather than negligence.
7. Whether the trial court abused its discretion in denying amendment of the complaint to add punitive damages.

HOLDINGS

1. The trial court abused its discretion by excluding Dr. Buck's proffered testimony. His education, training, and experience in chemistry, biochemistry, environmental physiology, hazardous materials, and dispersion of toxic substances could assist the jury, even though he lacked a degree in toxicology and might not have been qualified to offer a medical opinion about the effects on Langness's body.
2. The exclusion of Dr. Buck's testimony affected Langness's substantial rights because the testimony was critical to establishing that Langness was exposed to toxic chemicals during the spraying episodes, an essential component of his negligence claim.
3. On the record presented, the trial court did not abuse its discretion in addressing the absence of settled defendants and allowing limited evidence that other defendants had previously been parties, while instructing the jury not to draw conclusions from the settlements.
4. The trial court did not err by refusing requested instructions on reckless endangerment, menacing, disorderly conduct, and methyl ethyl ketone offenses because the requested instructions concerned criminal liability, while the applicable civil issues were governed by negligence and, where supported by the evidence, strict liability and duty to warn.

KEY QUOTATIONS

“Rule 702, N.D.R.Ev., “envisions generous allowance of the use of expert testimony if [proffered] witnesses are shown to have some degree of expertise in the field in which they are to testify.”” (601)

“Dr. Buck’s proffered testimony that Langness was exposed to toxic chemicals during the spraying episodes was critical to Langness’ claim that Fencil was negligent in his application of the epoxy primer.” (606)

FACTUAL BACKGROUND

Fencil Urethane Systems, Inc. was hired to apply epoxy primer and spray urethane foam inside a steel-arched potato warehouse. The primer contained methyl ethyl ketone and was applied while Langness and other workers were allegedly still inside the building. Langness testified that the spraying created a dense blue fog, caused respiratory and other immediate symptoms, and resulted in his later diagnosis of Reactive Airways Dysfunction Syndrome. His expert, Dr. Alan Buck, was prepared to testify about the dispersion and concentration of toxic materials under hypothetical factual assumptions based on evidence at trial.

PROCEDURAL HISTORY

Langness sued several defendants for negligence and strict liability after allegedly being exposed to epoxy primer during its application inside a warehouse. He settled with all defendants except Fencil. Before trial, the court excluded the testimony of Langness’s expert, Dr. Alan Buck; the jury returned a verdict finding Fencil was not negligent; and judgment was entered for Fencil. The Supreme Court of North Dakota reversed and remanded for further proceedings, while addressing several other issues likely to recur on remand.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion, including proceedings in which Dr. Buck’s proffered expert testimony may be admitted subject to the applicable evidentiary rules. On remand, questions about prior lawsuits must be shown to be relevant and tied to matters at issue.

CASES CITED

- Anderson v. A.P.I. Co., 1997 ND 6, ¶¶ 9, 18, 559 N.W.2d 204
- Estate of Aune, 478 N.W.2d 561, 563-64 (N.D. 1991)
- Oberlander v. Oberlander, 460 N.W.2d 400, 402 (N.D. 1990)
- Kluck v. Kluck, 1997 ND 41, ¶ 10, 561 N.W.2d 263
- Hamilton v. Oppen, 2002 ND 185, ¶ 15, 653 N.W.2d 678
- Myer v. Rygg, 2001 ND 123, ¶¶ 8, 15, 630 N.W.2d 62
- Jore v. Saturday Night Club Inc., 227 N.W.2d 889, 896 (N.D. 1975)
- Feuerherm v. Ertelt, 286 N.W.2d 509, 512 (N.D. 1979)
- Thomas v. Stickland, 500 N.W.2d 598, 600-01 (N.D. 1993)

- Barnes v. Mitzel Builders, Inc., 526 N.W.2d 244, 247 (N.D. 1995)
- Williams County Social Services Board v. Falcon, 367 N.W.2d 170, 178 (N.D. 1985)
- State v. Tucker, 58 N.D. 82, 224 N.W. 878, 887 (1929)
- Wolf v. Estate of Seright, 1997 ND 240, ¶ 14, 573 N.W.2d 161
- Reimche v. Reimche, 1997 ND 138, ¶ 9, 566 N.W.2d 790
- DeCoteau v. Nodak Mutual Insurance Co., 2000 ND 3, ¶ 26 & n.2, 603 N.W.2d 906
- Rittenour v. Gibson, 2003 ND 14, ¶ 15, 656 N.W.2d 691
- Western National Mutual Insurance Co. v. University of North Dakota, 2002 ND 63, ¶ 42, 643 N.W.2d 4
- Hartman v. Estate of Miller, 2003 ND 24, ¶ 9, 656 N.W.2d 676
- Estate of Wieland, 1998 ND 130, ¶ 22 n.3, 581 N.W.2d 140
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999)
- Principal Residential Mortgage, Inc. v. Nash, 2000 ND 21, ¶ 18, 606 N.W.2d 120