

SUPREME COURT OF NEBRASKA

Brown v. State

305 Neb. 111 (2020) · No. No. S-19-073 · Decided February 28, 2020

SUMMARY

The Nebraska Supreme Court held that the State Tort Claims Act’s recreational activity exception could not be applied on a motion to dismiss because the complaint did not identify the recreational activity in which Aaron G. Brown was engaged. The court reversed the dismissal with prejudice and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Papik, J.; Freudenberg, J.; Heavican, C.J., participating on briefs
JURISDICTION	Nebraska
DECIDED	February 28, 2020
DOCKET	No. S-19-073
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Brown appealed the district court's dismissal of his negligence action against the State of Nebraska on sovereign-immunity grounds. The Nebraska Supreme Court granted the State's petition to bypass the Nebraska Court of Appeals and reviewed the dismissal de novo.
STANDARD OF REVIEW	A dismissal on the pleadings is reviewed de novo, accepting the complaint's allegations as true and drawing all reasonable inferences in favor of the nonmoving party. Whether the State Tort Claims Act creates a cause of action or an exemption applies is a question of law reviewed independently, as is statutory interpretation.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Aaron G. Brown v. State of Nebraska

TOPICS

- statutory interpretation
- motions to dismiss
- appellate procedure
- negligence
- civil procedure

PRACTICE AREAS

torts

state sovereign immunity

statutory interpretation

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the recreational-activity exception to the State Tort Claims Act barred Brown's negligence claim as a matter of law at the pleading stage.
2. Whether merely being present on or using a maintained area of state property constitutes a recreational activity under Neb. Rev. Stat. § 81-8,219(14).
3. Whether the complaint alleged sufficient facts to identify a recreational activity and establish that Brown's injury resulted from an inherent risk of that activity.

HOLDINGS

1. For the recreational-activity exception in Neb. Rev. Stat. § 81-8,219(14)(a)(i) to apply, the claim must relate to a recreational activity on property leased, owned, or controlled by the State, result from an inherent risk of that recreational activity, and involve no fee charged for participation or spectating.
2. Before applying the recreational-activity exception, a court must identify the particular recreational activity in which the plaintiff was engaged as a participant or spectator.
3. Merely being present on or using a maintained area of state property is not, by itself, a recreational activity under § 81-8,219(14). A recreational activity must involve some leisure activity other than merely being present on state-maintained land.
4. The complaint did not permit a determination as a matter of law that Brown's claim was barred by the recreational-activity exception because it did not identify the specific recreational activity in which he was engaged when injured.

KEY QUOTATIONS

“For the exception in § 81-8,219(14)(a)(i) to apply, the following elements must be met: (1) The claim must relate to a recreational activity on property leased, owned, or controlled by the State; (2) the claim must result from an inherent risk of that recreational activity; and (3) no fee must have been charged for the plaintiff to participate in, or be a spectator at, the recreational activity.” (at 118)

“Only after the recreational activity is identified can a principled determination be made as to whether the plaintiff’s tort claim relates to that particular activity and whether the claim resulted from an inherent risk of that particular activity.” (at 119)

“We thus reject the State’s position and hold instead that a “recreational activity” under § 81-8,219(14) must involve some leisure activity other than merely being present on state-maintained land.” (at 122)

FACTUAL BACKGROUND

Brown visited a Nebraska state recreational area in Elm Creek to fish. After fishing, he sat on a picnic-table bench near the lake. A state employee, agent, or representative operating a gas-powered lawnmower allegedly struck the picnic table, causing the tabletop to hit Brown in the back and propel him forward, resulting in back

injuries and related damages. The complaint did not identify the specific recreational activity Brown was engaged in while seated at the table.

PROCEDURAL HISTORY

Brown sued the State under the State Tort Claims Act after he was injured when a state employee operating a lawnmower struck the picnic table where Brown was sitting at a state recreational area. The district court dismissed the complaint with prejudice for lack of subject matter jurisdiction, concluding that the recreational-activity exception to the State Tort Claims Act preserved sovereign immunity. After the district court denied Brown's motion to alter or amend, Brown appealed, and the Nebraska Supreme Court granted the State's petition to bypass.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded for further proceedings. The lower court must not dismiss the complaint at the pleading stage based on the recreational-activity exception without identifying the specific recreational activity, if any, in which Brown was engaged and determining whether the claim related to that activity and resulted from an inherent risk of it.

CASES CITED

- Rouse v. State, 301 Neb. 1037, 921 N.W.2d 355 (2019)
- Amend v. Nebraska Pub. Serv. Comm., 298 Neb. 617, 905 N.W.2d 551 (2018)
- Jill B. & Travis B. v. State, 297 Neb. 57, 899 N.W.2d 241 (2017)
- Davis v. State, 297 Neb. 955, 902 N.W.2d 165 (2017)
- Bronsen v. Dawes County, 272 Neb. 320, 722 N.W.2d 17 (2006)
- In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019)
- State v. McColery, 301 Neb. 516, 919 N.W.2d 153 (2018)