

SUPREME COURT OF SOUTH DAKOTA

Hamer v. Duffy, Cornerstone Poured Foundations, Inc.

2026 S.D. 4 (S.D. 2026) · No. 30776 · Decided February 4, 2026

SUMMARY

The Supreme Court of South Dakota reviewed a personal-injury action arising from an automobile collision involving an employee of Cornerstone Poured Foundations, Inc. The court held that the circuit court properly denied amendment of the complaint to add direct-negligence claims against Cornerstone because of prejudice, but abused its discretion by denying amendment to identify alleged Federal Motor Carrier Safety Regulation violations related to the driver’s existing negligence claims. The court also addressed the exclusion of expert testimony and the refusal to give a jury instruction concerning 49 C.F.R. § 392.3.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of South Dakota                                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Patricia J. DeVaney; Chief Justice Jensen; Justice Salter; Justice Myren; Retired Justice Kern                                                                                                                                                                                                   |
| JURISDICTION          | Supreme Court of South Dakota                                                                                                                                                                                                                                                                    |
| DECIDED               | February 4, 2026                                                                                                                                                                                                                                                                                 |
| DOCKET                | 30776                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Plaintiffs appealed from a circuit-court judgment following a jury trial in an automobile-negligence action. They challenged denial of leave to amend the complaint, exclusion of expert testimony, and refusal to give a jury instruction concerning a federal motor-carrier safety regulation. |
| STANDARD OF REVIEW    | Abuse of discretion for denial of a motion to amend, exclusion of expert testimony, and refusal of jury instructions. An evidentiary error is reversible only if prejudicial, meaning there is a reasonable probability that the result would have differed absent the error.                    |
| PRECEDENTIAL VALUE    | Published and precedential                                                                                                                                                                                                                                                                       |
| PARTIES               | Justin Hamer, Kim Hamer v. Paul Duffy, Cornerstone Poured Foundations, Inc.                                                                                                                                                                                                                      |

## TOPICS

negligence

comparative fault

expert testimony

motion to amend

appellate procedure

## PRACTICE AREAS

Torts

Civil procedure

Evidence

Appellate procedure

## QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying Hamer's motion to amend the complaint to add direct-negligence claims against Cornerstone and allegations that Duffy violated the FMCSRs.
2. Whether the circuit court abused its discretion by excluding the expert testimony of Adam Grill and Michael DiTallo.
3. Whether the circuit court abused its discretion by refusing to instruct the jury that 49 C.F.R. § 392.3 supplied an applicable standard of care and that its violation could constitute negligence.

## HOLDINGS

1. The circuit court did not abuse its discretion in denying the eve-of-trial amendment adding claims for negligent entrustment, retention, supervision, and training against Cornerstone because the amendment introduced substantially different theories of liability, would require additional discovery and defenses, and would prejudice Cornerstone.
2. The proposed allegations that Duffy violated FMCSRs adopted by South Dakota were not futile. Those regulations may establish the standard of care for common-law negligence claims against commercial motor-vehicle operators, and an unexcused violation may constitute negligence per se.
3. The circuit court abused its discretion by excluding Grill's testimony because his specialized knowledge concerning commercial motor vehicles, commercial-driver requirements, FMCSRs, and the heightened skills needed to operate such vehicles would assist the jury in evaluating negligence and comparative fault.
4. The circuit court abused its discretion by excluding DiTallo's testimony because his specialized opinions concerning reaction time, vehicle speed and distance, attentiveness, avoidance, and the mechanics of the collision would assist the jury in evaluating negligence and comparative fault.
5. The exclusion of Grill's and DiTallo's testimony was prejudicial because there was a reasonable probability that the testimony could have affected the jury's assessment of whether Hamer's contributory negligence was more than slight.
6. The circuit court abused its discretion by refusing to instruct the jury on 49 C.F.R. § 392.3 because the regulation was adopted through SDCL 49-28A-3, related directly to Hamer's pleaded allegation that Duffy failed to remain vigilant, awake, and alert, and stated applicable law supported by the evidence.

## KEY QUOTATIONS

*"For these reasons, we conclude that the FMCSRs adopted in SDCL 49-28A-3 that Hamer cites when asserting that Duffy negligently operated a CMV may provide a standard of care relating to common law*

*negligence claims against commercial vehicle operators, and that an unexcused violation of such regulations may constitute negligence per se, just like any other traffic safety statute.” (¶ 31)*

*“Properly focusing on that determination, we conclude that Grill’s opinions were admissible, as they provide technical and other specialized knowledge regarding CMVs, and the skills and requirements expected of those who are licensed to drive them, that many laypersons, who have never driven such vehicles or possessed a CDL, would not have.” (¶ 42)*

*“The circuit court’s exclusion of Grill’s and DiTallo’s opinions was, therefore, prejudicial error, warranting a reversal.” (¶ 54)*

## FACTUAL BACKGROUND

On April 8, 2019, Justin Hamer and Paul Duffy entered an intersection controlled by a traffic signal that was flashing red in all directions. Each claimed to have stopped and to have the right-of-way; Duffy, driving a truck for Cornerstone, turned left and struck Hamer's pickup. The collision had no independent eyewitnesses, and the investigating officer issued no citations. The jury later found Duffy negligent but found Hamer contributorily negligent more than slightly, resulting in no damages.

## PROCEDURAL HISTORY

Justin and Kim Hamer sued Paul Duffy and his employer, Cornerstone, after an automobile collision, alleging negligence, respondeat superior liability, personal injuries, property damage, lost earning capacity, pain and suffering, and loss of consortium. The circuit court excluded two proposed experts, denied a late motion to amend adding direct-negligence claims and Federal Motor Carrier Safety Regulations allegations, and refused a proposed instruction on 49 C.F.R. § 392.3. The jury found Duffy negligent but found Hamer contributorily negligent more than slightly and awarded no damages. The Supreme Court affirmed denial of amendment as to Cornerstone's new direct-negligence claims, reversed as to allegations concerning Duffy's conduct, reversed the evidentiary rulings, and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including allowing amendment as to allegations concerning Duffy's negligent conduct, permitting the expert testimony of Adam Grill and Michael DiTallo, and instructing the jury on the standard of care in 49 C.F.R. § 392.3 as it relates to Duffy's alleged negligence.

## CASES CITED

- Ries v. JM Custom Homes, LLC, 2022 S.D. 52, ¶¶ 11-12, 980 N.W.2d 217, 221-22
- Prairie Lakes Health Care System, Inc. v. Wookey, 1998 S.D. 99, ¶ 29, 583 N.W.2d 405, 417
- In re Wintersteen Revocable Trust Agreement, 2018 S.D. 12, ¶ 33, 907 N.W.2d 785, 795
- Bell v. Allstate Life Insurance Co., 160 F.3d 452, 454 (8th Cir. 1998)

- Highmark Federal Credit Union v. Hunter, 2012 S.D. 37, ¶¶ 11-17, 814 N.W.2d 413, 416-18
- Levene v. Staples Oil Co., 685 F. Supp. 3d 791, 808-10 (D.S.D. 2023)
- Schmidt v. Royer, 1998 S.D. 5, ¶¶ 21-22, 574 N.W.2d 618, 624
- Thompson v. Summers, 1997 S.D. 103, ¶ 16, 567 N.W.2d 387, 393
- Fritz v. Howard Township, 1997 S.D. 122, ¶ 16, 570 N.W.2d 240, 243
- NFI Interactive Logistics LLC v. Bruski, 239 N.E.3d 63, 75 (Ind. Ct. App.)
- Fortner v. Tecchio Trucking, Inc., 597 F. Supp. 2d 755, 757-58 (E.D. Tenn. 2009)
- Ballinger v. Gustafson, No. 22CV213, 2022 WL 16758558, at \*3 (D. Neb. Oct. 19, 2022)
- Drake v. Old Dominion Freight Line, Inc., No. 15-1307, 2016 WL 1328941, at \*3-4 (D. Kan. 2016)
- Leon v. FedEx Ground Package System, Inc., No. 13-1005, 2016 WL 836980, at \*14-15 (D.N.M. Feb. 16, 2016)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 591 (1993)
- Black v. Division of Criminal Investigation, 2016 S.D. 82, ¶ 23, 887 N.W.2d 731, 737
- State v. Johnson, 2015 S.D. 7, ¶ 33, 860 N.W.2d 235, 248
- Abrams v. FedEx Ground Package System, Inc., 585 F. Supp. 3d 1131, 1152 (S.D. Ill. 2022)
- South v. National Railroad Passenger Corp. (AMTRAK), 290 N.W.2d 819, 831-32 (N.D. 1980)
- Blalock v. Claiborne, 775 S.W.2d 363, 366 (Tenn. Ct. App. 1989)
- Hughes v. Vestal, 142 S.E.2d 361, 364 (N.C. 1965)
- Weiland v. Bumann, 2025 S.D. 9, ¶ 58, 18 N.W.3d 148, 162
- Olson v. Huron Regional Medical Center, Inc., 2025 S.D. 34, ¶ 18, 24 N.W.3d 405, 412
- Overfield v. American Underwriters Life Insurance Co., 2000 S.D. 98, ¶ 11, 614 N.W.2d 814, 816

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