

SUPREME COURT OF CONNECTICUT

Sequenzia v. Guerrieri Masonry, Inc., 298 Conn. 816

9 A.3d 322 (2010) · No. No. 18364 · Decided November 9, 2010

SUMMARY

The Supreme Court of Connecticut held that the Appellate Court improperly reversed a negligence judgment on an instructional-error claim that the defendant had raised in posttrial motions but abandoned by failing to brief it on appeal. The court reversed and remanded for consideration of the claims properly presented to the Appellate Court.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Norcott, J.; Rogers, C.J.; Katz, J.; Palmer, J.; McLachlan, J.; Eveleigh, J.; Vertefeuille, J.
JURISDICTION	Connecticut
DECIDED	November 9, 2010
DOCKET	No. 18364
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiff appealed, after certification was granted, from the Appellate Court's reversal of a trial-court judgment entered on a jury verdict in the plaintiff's favor in a common-law negligence action.
STANDARD OF REVIEW	The Supreme Court reviewed whether the Appellate Court properly decided the appeal on an issue not raised or briefed by the parties, including whether the Appellate Court's exercise of discretion and its remand for a new trial were proper.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Connecticut.
PARTIES	John Sequenzia v. Guerrieri Masonry, Inc.

TOPICS

[appellate procedure](#) [preservation of error](#) [civil procedure](#) [negligence](#) [construction law](#)

PRACTICE AREAS

[appellate procedure](#) [civil procedure](#) [tort litigation](#) [construction law](#)

QUESTIONS PRESENTED

1. Whether the Appellate Court improperly reversed the trial-court judgment on an instructional-error claim that the defendant had raised in posttrial proceedings but abandoned by failing to raise or brief it on appeal.
2. Whether the Appellate Court could reach the abandoned instructional-error claim under its supervisory or plain-error authority without ordering supplemental briefing or allowing argument.

HOLDINGS

1. Except for questions involving subject matter jurisdiction, the Appellate Court may not decide a case on a basis that the parties never raised or briefed. If the Appellate Court elects to address an issue not previously raised or briefed, it must first request supplemental briefs or allow the parties an opportunity for argument.
2. A claim of error that is not properly briefed on appeal is considered abandoned; posttrial motions and papers filed in the trial court do not substitute for appellate briefing.
3. The Appellate Court improperly relied on the abandoned instructional-error claim under the plain-error doctrine because the claim had been raised and litigated in the trial court, was abandoned on appeal, and was not presented to the parties for appellate briefing or argument.

KEY QUOTATIONS

“We long have held that, in the absence of a question relating to subject matter jurisdiction, the Appellate Court may not reach out and decide a case before it on a basis that the parties never have raised or briefed.... To do otherwise would deprive the parties of an opportunity to present arguments regarding those issues.” (9 A.3d at 323)

“Accordingly, we conclude that the Appellate Court improperly decided the case based on the instructional impropriety claim, which had been abandoned by the defendant.” (9 A.3d at 326)

FACTUAL BACKGROUND

The plaintiff arrived at a construction site to deliver bricks using a truck-mounted boom. Although the defendant's owner warned that the truck was too close to nearby power lines, the plaintiff proceeded with the delivery, and the boom contacted the power lines, causing serious injuries. The plaintiff sued the defendant for common-law negligence, and a jury returned a verdict allocating comparative negligence among the plaintiff, the defendant, and the general contractor.

PROCEDURAL HISTORY

A jury found the defendant negligent and awarded the plaintiff \$591,680.85, allocating 30 percent negligence to the defendant, 25 percent to Hodess Building Company, and 45 percent to the plaintiff. The trial court denied the defendant's posttrial motions, including motions challenging an allegedly unsupported failure-to-warn instruction. On the defendant's appeal, the Appellate Court did not decide the claims raised in the appellate brief but instead reversed and ordered a new trial based on the instructional-error claim, which the defendant had

raised below but abandoned on appeal. The Supreme Court reversed and remanded to the Appellate Court to consider the claims properly raised there.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Appellate Court for consideration of the claims that the defendant raised in that court.

CASES CITED

- Sequenzia v. Guerrieri Masonry, Inc., 113 Conn. App. 448, 449-456, 967 A.2d 508 (2009)
- Sabrowski v. Sabrowski, 282 Conn. 556, 560, 923 A.2d 686 (2007)
- State v. Dalzell, 282 Conn. 709, 715, 924 A.2d 809 (2007)
- Jackson v. Water Pollution Control Authority, 278 Conn. 692, 711, 900 A.2d 498 (2006)
- Czarnecki v. Plastics Liquidating Co., 179 Conn. 261, 262 n. 1, 425 A.2d 1289 (1979)
- State v. Saucier, 283 Conn. 207, 223, 926 A.2d 633 (2007)
- Grimm v. Grimm, 276 Conn. 377, 393, 886 A.2d 391 (2005), cert. denied, 547 U.S. 1148, 126 S. Ct. 2296, 164 L. Ed. 2d 815 (2006)
- Lynch v. Granby Holdings, Inc., 230 Conn. 95, 99, 644 A.2d 325 (1994)
- Sequenzia v. Guerrieri Masonry, Inc., 292 Conn. 903, 971 A.2d 689 (2009)