

SUPREME COURT OF NEBRASKA

Galaxy Telecom, L.L.C. v. J.P. Theisen & Sons, Inc., 265 Neb. 270

656 N.W.2d 444 (2003) · No. No. S-01-1306 · Decided February 7, 2003

SUMMARY

The Nebraska Supreme Court held that a highway construction contractor was strictly liable under the Nebraska One-Call Notification System Act for damaging an underground fiber-optic cable. The contractor's notice, given more than ten business days before excavation, did not qualify for the statutory exception because the project was a state highway project outside the scope of the referenced statute. The court reversed and remanded for determination of repair damages, declining to address the negligence claim.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stephan, J.; Wright, J.; Connolly, J.; Gerrard, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	February 7, 2003
DOCKET	No. S-01-1306
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Galaxy appealed from the Otoe County District Court's dismissal of its action for damages after the district court granted Theisen partial summary judgment on Galaxy's statutory strict-liability claim and found for Theisen after a bench trial on negligence.
STANDARD OF REVIEW	Statutory interpretation presents a question of law reviewed independently of the trial court's conclusion. Questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion and binding state precedent.
PARTIES	Galaxy Telecom, L.L.C. v. J.P. Theisen & Sons, Inc.

TOPICS

- statutory interpretation
- strict liability
- construction law
- appellate procedure
- damages

PRACTICE AREAS

statutory interpretation

construction law

torts

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether Theisen was strictly liable under Neb. Rev. Stat. § 76-2324 for damaging Galaxy's underground fiber-optic cable after providing notice more than ten business days before the excavation.
2. Whether the exception in Neb. Rev. Stat. § 76-2321(1) for notice given more than ten business days in advance applied to Theisen's state highway construction project.
3. Whether the district court erred in finding Theisen not liable under a negligence theory.

HOLDINGS

1. The exception permitting notice more than ten business days before excavation applies only to projects within the scope of Neb. Rev. Stat. § 86-334, namely county or township road construction, widening, repair, or grading projects requiring work within six feet of specified telephone or electric lines and related structures. It does not apply to Theisen's state highway project or to the fiber-optic cable at issue.
2. Because Theisen did not provide proper and timely notice before the excavation that damaged Galaxy's cable, it was strictly liable under Neb. Rev. Stat. § 76-2324 for the cost of all repairs to the cable.

KEY QUOTATIONS

“Because it did not give proper and timely notice under the Act, Theisen is strictly liable for the cost of all repairs to Galaxy's fiber-optic cable under § 76-2324.” (656 N.W.2d 449)

“The judgment of the district court is reversed, and the cause is remanded for further proceedings to determine the amount of damages which Galaxy is entitled to recover for the cost of repairing the cable damaged by Theisen.” (656 N.W.2d 450)

FACTUAL BACKGROUND

Theisen, a highway construction contractor, began a Nebraska Department of Roads project involving widening a six-mile segment of Nebraska Highway 2. It submitted locate requests to Diggers Hotline in May 1997, but did not contact the center again before excavating in April 1999. Galaxy installed a new underground fiber-optic cable in one of the designated areas in 1998 and notified Diggers Hotline of its location; Theisen later struck and damaged that cable during the highway project.

PROCEDURAL HISTORY

Galaxy sued Theisen for damage to an underground fiber-optic cable, asserting statutory strict liability under Nebraska's One-Call Notification System Act and negligence. The district court granted Theisen partial summary judgment on the strict-liability claim, later found Theisen not liable under negligence, and dismissed the petition. The Nebraska Supreme Court reversed on the statutory claim and remanded for determination of damages; it did not reach the negligence assignment of error.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings to determine the amount of damages Galaxy is entitled to recover for repairing the damaged fiber-optic cable.

CASES CITED

- Eyl v. Ciba-Geigy Corp., 264 Neb. 582, 650 N.W.2d 744 (2002)
- Volquardson v. Hartford Ins. Co., 264 Neb. 337, 647 N.W.2d 599 (2002)
- Luethke v. Suhr, 264 Neb. 505, 650 N.W.2d 220 (2002)
- A-1 Metro Movers v. Egr, 264 Neb. 291, 647 N.W.2d 593 (2002)
- Premium Farms v. County of Holt, 263 Neb. 415, 640 N.W.2d 633 (2002)

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