

SOUTH DAKOTA SUPREME COURT

Tammen v. K&K Mgmt. Servs., Inc.

929 N.W.2d 96 (S.D. 2019) · Decided May 22, 2019

SUMMARY

In this slip-and-fall negligence action, a South Dakota jury found that the restaurant was not negligent after the plaintiff fell on ice in its parking lot. The South Dakota Supreme Court affirmed, holding that the circuit court provided a full and accurate statement of the law and did not err in refusing the plaintiff's proposed premises-liability, nondelegable-duty, contributory-negligence, and pre-existing-condition instructions.

CASE DETAILS

COURT	South Dakota Supreme Court
WRITING FOR THE COURT	Severson, Retired Justice; Gilbertson, Chief Justice; Kern, Justice; Jensen, Justice
JURISDICTION	South Dakota
DECIDED	May 22, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Shirley Tammen appealed from a jury verdict finding the Restaurant not negligent, challenging the circuit court's jury instructions and refusal to give several requested instructions.
STANDARD OF REVIEW	Jury instructions are reviewed de novo and construed as a whole to determine whether they provided a full and correct statement of the law. A circuit court has discretion in the wording and arrangement of instructions, but may not give incorrect, misleading, conflicting, or confusing instructions.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Shirley Tammen v. K&K Management Services, Inc., doing business as Fryn' Pan Restaurant

TOPICS

- premises liability
- jury instructions
- instructions objections
- standard of review
- negligence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court's negligence and reasonable-person jury instructions were accurate and sufficiently complete.
2. Whether the circuit court erred by refusing Tammen's requested premises-liability instructions concerning a business invitee's duties to inspect, warn, and maintain reasonably safe premises.
3. Whether the circuit court was required to give a requested instruction stating that the Restaurant's duty to maintain safe premises was nondelegable when it hired an independent contractor.
4. Whether the court erred in instructing the jury on contributory negligence or refusing an instruction concerning dormant pre-existing health conditions.

HOLDINGS

1. The circuit court properly instructed the jury on negligence and the reasonable-person standard. It was not required to add Tammen's proposed language because the instructions accurately stated the law and substantially covered the relevant principles.
2. The circuit court adequately instructed the jury that a possessor of land owes an invitee the duty to exercise reasonable or ordinary care for the invitee's safety. The court did not err by refusing Tammen's broader requested instructions because they included potentially misleading or confusing propositions and the court was not required to rewrite them.
3. The circuit court did not err by refusing the requested nondelegable-duty instruction because the case did not involve an attempt by the Restaurant to delegate its responsibility for maintaining reasonably safe premises to First Rate Excavate.
4. The court did not reach those issues because the jury found that the Restaurant was not negligent and therefore never considered contributory negligence or damages.

KEY QUOTATIONS

"Although a circuit court has discretion in the wording and arrangement of its jury instructions, "[n]o court has discretion to give incorrect, misleading, conflicting, or confusing instructions." (at 99)

"Indeed, 'a landowner is not an insurer as to the safe condition of the premises.'" (at 102)

FACTUAL BACKGROUND

On January 31, 2014, Shirley Tammen slipped on ice between two parked vehicles while walking toward the Fryn' Pan Restaurant in Sioux Falls, South Dakota. The Restaurant had contracted with First Rate Excavate for snow and ice removal, but its employees did not apply sand between parked cars, and the Restaurant's manager did not specifically inspect the area where Tammen fell. Tammen injured her wrist and later underwent surgery. The jury found that the Restaurant was not negligent.

PROCEDURAL HISTORY

Tammen sued the Restaurant for negligence after slipping on ice in its parking lot. After a three-day trial, the circuit court denied both parties' motions for judgment as a matter of law, struck the assumption-of-risk defense, allowed contributory negligence to go to the jury, and rejected Tammen's requested jury instructions. The jury found the Restaurant not negligent, and Tammen appealed.

DISPOSITION

affirmed

CASES CITED

- Carlson v. Construction Co., 2009 S.D. 6, 761 N.W.2d 595
- State v. Kryger, 2018 S.D. 13, 907 N.W.2d 800
- State v. Klaudt, 2009 S.D. 71, 772 N.W.2d 117
- Vetter v. Cam Wal. Elec. Coop., Inc., 2006 S.D. 21, 711 N.W.2d 612
- First Premier Bank v. Kolcraft Enterp., Inc., 2004 S.D. 92, 686 N.W.2d 430
- Nugent v. Quam, 82 S.D. 583, 152 N.W.2d 371 (1967)
- Westover v. East River Elec. Coop., Inc., 488 N.W.2d 892 (S.D. 1992)
- Janis v. Nash Finch Co., 2010 S.D. 27, 780 N.W.2d 497
- Mitchell v. Ankney, 396 N.W.2d 312 (S.D. 1986)