

SUPREME COURT OF OHIO

Beckett v. Warren

124 Ohio St. 3d 256, 2010-Ohio-4 (2010) · No. 2008-2106 · Decided January 6, 2010

SUMMARY

The Supreme Court of Ohio held that a plaintiff may pursue claims in the same case under Ohio Revised Code 955.28, which imposes statutory liability for dog-bite injuries, and under common-law negligence. The court concluded that the remedies are not inconsistent, although compensatory damages may not be duplicated and punitive damages are available only under the common-law theory if its elements are proven.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lundberg Stratton, J.; Moyer, C.J.; O'Connor, J.; Cupp, J.; Lanzinger, J.; Pfeifer, J.; O'Donnell, J.
JURISDICTION	Ohio
DECIDED	January 6, 2010
DOCKET	2008-2106
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal and certified-conflict review from the Court of Appeals for Summit County in a dog-bite personal-injury action. The court of appeals reversed the trial court's judgment and remanded for a new trial, holding that statutory and common-law claims could be pursued simultaneously.
STANDARD OF REVIEW	De novo review of the certified legal question concerning whether R.C. 955.28 permits simultaneous statutory and common-law dog-bite claims.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; binding precedent in Ohio.
PARTIES	Richard Warren, Mary Wood v. Yoshanta Beckett

TOPICS

- negligence
- strict liability
- personal injury
- statutory interpretation
- appellate procedure

PRACTICE AREAS

torts

personal injury

statutory interpretation

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether a plaintiff seeking damages for a dog-bite injury may pursue both a statutory claim under R.C. 955.28 and a common-law negligence claim in the same case.
2. Whether the election-of-remedies doctrine requires the plaintiff to select only one of those theories for trial.
3. Whether the coexistence of the claims creates an impermissible risk of jury confusion or double recovery.

HOLDINGS

1. A plaintiff may, in the same case, pursue claims for a dog-bite injury under R.C. 955.28 and common-law negligence.
2. A trial court may instruct the jury to award compensatory damages under the statutory claim and to consider punitive damages under the common-law claim only if the plaintiff proves knowledge of the dog's viciousness and negligent keeping; simultaneous pursuit does not permit double recovery.

KEY QUOTATIONS

“Because we hold that both remedies may be pursued in the same case, we affirm the judgment of the court of appeals.” (¶ 1)

“Thus, the statute itself does not preclude a simultaneous common-law action for damages for bodily injuries caused by a dog.” (¶ 15)

“For all of the reasons above, we hold that a plaintiff may, in the same case, pursue claims for a dog-bite injury under both R.C. 955.28 and common law negligence.” (¶ 22)

FACTUAL BACKGROUND

A minor child was bitten on the head by a dog owned or harbored by Richard Warren and Mary Wood. On the child's behalf, Yoshanta Beckett asserted two common-law negligence claims and one statutory claim under R.C. 955.28. After the trial court required Beckett to elect a theory, she proceeded under the statutory claim and obtained a \$5,000 jury verdict.

PROCEDURAL HISTORY

Beckett sued Warren and Wood on behalf of her minor child after the child was bitten by the defendants' dog, asserting common-law negligence and a statutory claim under R.C. 955.28. The trial court required an election between the theories; Beckett elected the statutory claim, and the jury awarded \$5,000. After the trial court denied a new-trial motion, the court of appeals reversed and remanded for a new trial on both claims, and certified a conflict with *Rodenberger v. Wadsworth*. The Supreme Court of Ohio accepted the certified conflict and a discretionary cross-appeal, then affirmed the court of appeals.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The judgment of the court of appeals was affirmed, leaving in place its remand to the trial court for a new trial on Beckett's statutory and common-law claims.

CASES CITED

- Bora v. Kerchelich, 2 Ohio St. 3d 146, 147, 2 OBR 692, 443 N.E.2d 509 (1983)
- Hayes v. Smith, 62 Ohio St. 161, 56 N.E. 879 (1900)
- McIntosh v. Doddy, 81 Ohio App. 351, 359, 37 Ohio Op. 203, 77 N.E.2d 260 (1947)
- Hirschauer v. Davis, 163 Ohio St. 105, 56 Ohio Op. 169, 126 N.E.2d 337 (1955)
- Kleybolte v. Buffon, 89 Ohio St. 61, 105 N.E. 192 (1913)
- Lisk v. Hora, 109 Ohio St. 519, 143 N.E. 545 (1924)
- Warner v. Wolfe, 176 Ohio St. 389, 27 O.O.2d 356, 199 N.E.2d 860 (1964)
- Rodenberger v. Wadsworth, Ottawa App. No. OT-83-18, 1983 WL 7005 (Ohio Ct. App. Nov. 25, 1983)
- State v. Lowe, 112 Ohio St. 3d 507, 2007-Ohio-606, 861 N.E.2d 512
- Norwood v. McDonald, 142 Ohio St. 299, 315, 27 O.O. 240, 52 N.E.2d 67 (1943)
- Marshall v. Gibson, 19 Ohio St. 3d 10, 12, 19 OBR 8, 482 N.E.2d 583 (1985)
- State v. Henderson, 39 Ohio St. 3d 24, 33, 528 N.E.2d 1237 (1988)
- Parker v. Randolph, 442 U.S. 62, 99 S. Ct. 2132, 60 L. Ed. 2d 713 (1979)
- Beckett v. Warren, 121 Ohio St. 3d 1424, 2009-Ohio-1296, 903 N.E.2d 324