UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Mrs. Jewell Schenebeck and Russell Schenebeck v. Sterling Drug, Inc.

423 F.2d 919 (8th Cir. 1970) · No. No. 19576 · Decided April 29, 1970

SUMMARY

The Eighth Circuit affirmed a jury verdict awarding damages to Mrs. Jewell Schenebeck for blindness allegedly caused by prolonged use of Sterling Drug's Aralen. Applying Arkansas law, the court held that sufficient evidence supported submitting to the jury whether Sterling breached its continuing duty to warn physicians and whether the failure to warn proximately caused the injury. The court also held that the evidence did not conclusively establish that permanent eye damage occurred more than three years before the complaint, so the statute-of-limitations issue was properly submitted to the jury.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Bright, Circuit Judge; Vogel, Circuit Judge; Blackmun, Circuit Judge
JURISDICTION	Federal
DECIDED	April 29, 1970
DOCKET	No. 19576
DISPOSITION	affirmed
PROCEDURAL POSTURE	Sterling Drug appealed from a judgment entered on a jury verdict in favor of Jewell Schenebeck and Russell Schenebeck in an Arkansas products-liability negligence action. Sterling argued that its failure to warn was not a proximate cause of the injury and that the action was barred by Arkansas's three-year statute of limitations. The district court denied Sterling's motion for judgment notwithstanding the verdict, and the Eighth Circuit affirmed.
STANDARD OF REVIEW	Review of the denial of judgment notwithstanding the verdict; the court considered whether the evidence, viewed with every favorable inference reasonably justified by the verdict, supported submission of proximate cause and statute-of-limitations issues to the jury.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	Sterling Drug, Inc. v. Mrs. Jewell Schenebeck, Russell Schenebeck

TOPICS

products liability | duty of care | proximate cause | personal injury | damages

PRACTICE AREAS

products liability | torts | personal injury | health law | remedies

QUESTIONS PRESENTED

1. Whether the evidence supported submitting to the jury whether Sterling Drug's failure to timely warn physicians about the risk of permanent eye damage from prolonged Aralen therapy proximately caused or contributed to Jewell Schenebeck's blindness.
2. Whether the Schenebecks' negligence action was barred by Arkansas's three-year statute of limitations because the cause of action accrued before December 9, 1963.

HOLDINGS

1. The evidence was sufficient to submit proximate cause to the jury. A drug manufacturer has a continuing duty to warn physicians of dangers associated with an ethical drug, keep abreast of relevant scientific developments, and communicate newly discovered side effects; the jury could find that Sterling's delayed warning proximately caused or contributed to the blindness.
2. The statute-of-limitations issue was properly submitted to the jury because the evidence did not conclusively establish that permanent chloroquine retinopathy occurred before December 9, 1963. In a slowly developing injury case, accrual may be tied to the occurrence of actual harm rather than merely the earlier negligent act.

KEY QUOTATIONS

> *"We examine the appellant's contentions in the light of the continuous duty cast upon the manufacturer of an ethical drug to warn physicians of the dangers incident to prescribing the drug, to keep abreast of scientific developments touching upon the manufacturer's product and to notify the medical profession of any additional side effects discovered from its use."* (423 F.2d at 920)

> *"Thus, Sterling breached its legal duty to the medical profession and vicariously to this plaintiff."* (423 F.2d at 921)

> *"Thus, we think the plaintiff presented sufficient evidence for the jury to find that Sterling's failure to timely warn constituted an omission on its part which operated through a natural sequence of events to proximately cause or contribute to plaintiff's harm."* (423 F.2d at 922)

> *"In our view, the evidence fails to conclusively establish that Mrs. Schenebeck sustained chloroquine retinopathy rather than temporary visual blurring prior to December 9, 1963."* (423 F.2d at 923)

FACTUAL BACKGROUND

Jewell Schenebeck took Sterling's prescription drug Aralen, or chloroquine, for rheumatoid arthritis from 1958 through May 1963 and developed progressive visual problems that ultimately became industrial blindness and

were diagnosed as chloroquine retinopathy. Sterling's product literature before February 1963 emphasized the drug's safety and did not adequately warn the medical profession about the risk of permanent eye damage from prolonged therapy, although relevant scientific information was available by at least 1961. The evidence supported an inference that a timely warning would have caused her physician to alter her treatment and would have prevented some of her additional exposure to the drug. Ophthalmological examinations before December 9, 1963, did not conclusively establish permanent retinopathy.

PROCEDURAL HISTORY

The Schenebecks sued Sterling Drug in the United States District Court for the Eastern District of Arkansas. A jury awarded Jewell Schenebeck $40,000 for blindness allegedly caused by Aralen and Russell Schenebeck $10,000 for consequential loss. The district court denied Sterling's post-verdict motion for judgment notwithstanding the verdict, and Sterling appealed.

DISPOSITION

affirmed

CASES CITED

- Basko v. Sterling Drug, Inc., 416 F.2d 417, 426 (2d Cir. 1969)
- Davis v. Wyeth Laboratories, Inc., 399 F.2d 121, 130 (9th Cir. 1968)
- O'Hare v. Merck & Co., 381 F.2d 286, 290-291 (8th Cir. 1967)
- Johnston v. Upjohn Co., 442 S.W.2d 93, 95 (Mo. 1969)
- Krug v. Sterling Drug, Inc., 416 S.W.2d 143 (Mo. 1967)
- Parke-Davis & Co. v. Stromsodt, 411 F.2d 1390 (8th Cir. 1969)
- Sterling Drug, Inc. v. Cornish, 370 F.2d 82, 85 (8th Cir. 1966)
- Abbott Laboratories v. Lapp, 78 F.2d 170 (7th Cir. 1935)
- Allen v. Lake Catherine Footwear Corp., 246 Ark. 234, 437 S.W.2d 803 (1969)
- United States v. Bowers, 202 F.2d 139 (5th Cir. 1953)
- Field v. Gazette Publishing Co., 187 Ark. 253, 59 S.W.2d 19, 20 (1933)
- Faulkner v. Huie, 205 Ark. 332, 168 S.W.2d 839 (1943)
- Barksdale v. Silica Products Co., 200 Ark. 32, 137 S.W.2d 901 (1940)
- Burton v. Tribble, 189 Ark. 58, 70 S.W.2d 503 (1934)
- Smith v. Milam, 195 Ark. 157, 110 S.W.2d 1062 (1937)
- Meitz v. Garrison, 413 F.2d 895, 896 (8th Cir. 1969)
- Sterling Drug, Inc. v. Yarrow, 408 F.2d 978 (8th Cir. 1969)
- Kershaw v. Sterling Drug, Inc., 415 F.2d 1009 (5th Cir. 1969)
- Bine v. Sterling Drug, Inc., 422 S.W.2d 623 (Mo. 1968)
- Oppenheimer v. Sterling Drug, Inc., 7 Ohio App. 2d 103, 219 N.E.2d 54 (1964)
- Cochran v. Brooke, 243 Or. 89, 409 P.2d 904 (1966)

- Oliver v. Hallett Construction Co., 421 F.2d 365 (8th Cir. 1970)
- Schenebeck v. Sterling Drug, Inc., 291 F. Supp. 368, 373 (E.D. Ark. 1968)

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