

SUPREME COURT OF VIRGINIA

Hannah Leigh Evans, An Infant, Who Sues by Her Mother, Natural Guardian and Next Friend, Cynthia Kay Stevens v. Billy Bradley Evans, II

695 S.E.2d 173 (Va. 2010) · No. Record No. 091469 · Decided June 10, 2010

SUMMARY

The Supreme Court of Virginia held that Virginia Code §§ 46.2-1095 and 46.2-1098 preclude a negligence per se claim based on the failure to secure a child in a child restraint device, but do not abrogate a common-law negligence action arising from the child's injuries. The Court reversed the Circuit Court of Bedford County's dismissal on demurrer and remanded for further proceedings. Justice Kinser dissented, concluding that the statutory language barred the common-law negligence claim at issue.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Donald W. Lemons; All the Justices
JURISDICTION	Virginia
DECIDED	June 10, 2010
DOCKET	Record No. 091469
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hannah appealed from the Circuit Court of Bedford County's order sustaining Evans's demurrer to her amended complaint and dismissing the complaint with prejudice.
STANDARD OF REVIEW	A demurrer admits the truth of the pleaded facts and facts reasonably and fairly implied or inferred, but not the correctness of legal conclusions. The sufficiency of the legal conclusions is reviewed de novo. Statutory interpretation is also reviewed de novo.
PRECEDENTIAL VALUE	Published Virginia Supreme Court opinion; precedential.
PARTIES	Hannah Leigh Evans, an infant, suing by her mother, natural guardian and next friend, Cynthia Kay Stevens v. Billy Bradley Evans, II

TOPICS

negligence

statutory interpretation

personal injury

appellate procedure

standard of review

PRACTICE AREAS

torts

negligence

statutory interpretation

appellate procedure

personal injury

QUESTIONS PRESENTED

1. Whether Code §§ 46.2-1095 and 46.2-1098 preclude a common-law negligence action based on an adult's failure to secure a child in a child-restraint device.
2. Whether the statutes preclude evidence or comment at trial concerning the statutory child-restraint requirements.
3. Whether a four-year-old child may be found contributorily negligent or legally responsible for failing to mitigate personal-injury damages.

HOLDINGS

1. Code §§ 46.2-1095 and 46.2-1098 preclude a cause of action based on negligence per se, but they do not abrogate a common-law negligence cause of action arising from injuries sustained by a child in a motor-vehicle accident.
2. The statutes preclude any mention of their provisions by the parties at trial for any reason in the common-law negligence action.
3. A four-year-old child is not legally capable of contributory negligence.
4. In an infant's personal-injury action, the negligence of a parent is not imputed to the infant child.
5. A four-year-old child is unable, as a matter of law, to mitigate her damages.

KEY QUOTATIONS

"We hold that, read together, Code §§ 46.2-1095 and 46.2-1098: (i) preclude a cause of action based upon negligence per se; and (ii) preclude any mention of the statutory provisions by the parties at trial for any reason." (177)

"Consistent with Code § 1-200 and our case law, we conclude that the General Assembly intended preclusion of a per se negligence action based upon Code §§ 46.2-1095 and 46.2-1098, but did not abrogate a common law action for negligence." (177)

FACTUAL BACKGROUND

When Hannah was four years old, her father placed her in a portable foam seat on the floorboard of a 1972 pickup truck. The truck was involved in a head-on collision, causing Hannah to be thrown about inside the truck and suffer severe injuries, including a skull fracture, cerebral edema, subarachnoid hemorrhage, a ruptured bladder, and pelvic fractures. Her amended complaint alleged that her father's placement of her in an unsafe location breached his common-law duty of care, without relying on Code § 46.2-1095.

PROCEDURAL HISTORY

Hannah sued her father for common-law negligence arising from his alleged failure to secure her safely in a vehicle. The circuit court concluded that Code §§ 46.2-1095 and 46.2-1098 barred the action and sustained the demurrer. The Supreme Court of Virginia granted an appeal, reversed, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Circuit Court of Bedford County for further proceedings consistent with the opinion. The trial court was instructed to observe that the child-restraint statutes could not be mentioned at trial and to apply the rules concerning the child's incapacity for contributory negligence and mitigation of damages.

CASES CITED

- Yuzefovsky v. St. John's Wood Apartments, 261 Va. 97, 102, 540 S.E.2d 134, 136-37 (2001)
- Taboada v. Daly Seven, Inc., 271 Va. 313, 317-18, 626 S.E.2d 428, 429 (2006), aff'd on reh'g, 273 Va. 269, 270, 641 S.E.2d 68, 68 (2007)
- Conyers v. Martial Arts World of Richmond, Inc., 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007)
- Commonwealth v. Zamani, 256 Va. 391, 395, 507 S.E.2d 608, 609 (1998)
- Herndon v. St. Mary's Hospital, Inc., 266 Va. 472, 476, 587 S.E.2d 567, 569 (2003)
- Chesapeake & Ohio Railway Co. v. Kinzer, 206 Va. 175, 181, 142 S.E.2d 514, 518 (1965)
- Mitchem v. Counts, 259 Va. 179, 186, 523 S.E.2d 246, 250 (2000)
- Boyd v. Commonwealth, 236 Va. 346, 349, 374 S.E.2d 301, 302 (1988)
- Isbell v. Commercial Investment Associates, Inc., 273 Va. 605, 613-14, 644 S.E.2d 72, 75 (2007)
- McGuire v. Hodges, 273 Va. 199, 206, 639 S.E.2d 284, 288 (2007)
- Butler v. Frieden, 208 Va. 352, 353, 158 S.E.2d 121, 122 (1967)
- City of Lynchburg v. English Construction Co., 277 Va. 574, 584, 675 S.E.2d 197, 202 (2009)
- Alston v. Commonwealth, 274 Va. 759, 769, 652 S.E.2d 456, 462 (2007)
- Prillaman v. Commonwealth, 199 Va. 401, 406, 100 S.E.2d 4, 7 (1957)
- Grant v. Mays, 204 Va. 41, 44, 129 S.E.2d 10, 12 (1963)
- Morris v. Peyton, 148 Va. 812, 821, 139 S.E. 500, 502-03 (1927)
- Tugman v. Riverside & Dan River Cotton Mills, Inc., 144 Va. 473, 481, 132 S.E. 179, 181 (1926)
- Sawyer v. Comerci, 264 Va. 68, 77, 563 S.E.2d 748, 754 (2002)
- Pavlick v. Pavlick, 254 Va. 176, 181, 491 S.E.2d 602, 604 (1997)
- USAA Casualty Insurance Co. v. Hertz Corp., 265 Va. 450, 457, 578 S.E.2d 775, 778 (2003)
- Taylor v. Shaw & Cannon Co., 236 Va. 15, 19, 372 S.E.2d 128, 131 (1988)
- Gray v. Rhoads, 268 Va. 81, 86, 597 S.E.2d 93, 96 (2004)
- Jackson v. Fidelity & Deposit Co. of Maryland, 269 Va. 303, 313, 608 S.E.2d 901, 906 (2005)

- *Burlile v. Commonwealth*, 261 Va. 501, 511, 544 S.E.2d 360, 365 (2001)
- *Industrial Development Authority v. Board of Supervisors*, 263 Va. 349, 353, 559 S.E.2d 621, 623 (2002)
- *Shelor Motor Co. v. Miller*, 261 Va. 473, 480, 544 S.E.2d 345, 349 (2001)
- *Simon v. Forer*, 265 Va. 483, 490, 578 S.E.2d 792, 796 (2003)
- *Griffin v. Shively*, 227 Va. 317, 321, 315 S.E.2d 210, 212-13 (1984)
- *Atrium Unit Owners Association v. King*, 266 Va. 288, 293, 585 S.E.2d 545, 548 (2003)
- *Halterman v. Radisson Hotel Corp.*, 259 Va. 171, 176-77, 523 S.E.2d 823, 825 (2000)
- *Sansom v. Board of Supervisors*, 257 Va. 589, 595, 514 S.E.2d 345, 349 (1999)
- *Philip Morris USA Inc. v. Chesapeake Bay Foundation, Inc.*, 273 Va. 564, 576, 643 S.E.2d 219, 225 (2007)
- *Virginia Polytechnic Institute & State University v. Interactive Return Service, Inc.*, 271 Va. 304, 310-11, 626 S.E.2d 436, 439 (2006)